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REVISED STATUTES

OF

NOVA-SCOTIA.

---

SECOND SERIES.

2000

THE  
REVISED STATUTES  
OF  
NOVA-SCOTIA.

---

SECOND SERIES.

---

PREPARED BY

MARTIN I. WILKINS,  
W. A. HENRY,  
JAMES R. SMITH, Esquires.

COMMISSIONERS FOR CONSOLIDATING THE STATUTES OF THE PROVINCE  
AND PUBLISHED UNDER THEIR SUPERVISION, PURSUANT  
TO AN ACT OF THE LEGISLATURE.

---

HALIFAX :  
J. & W. COMPTON, PUBLISHERS,  
1859.



*Resolution of the House of Assembly, passed 27th April, 1857,  
and subsequently agreed to by the Legislative Council.*

“ *Whereas*, it has become indispensable that the Statutes of this Province should be further Revised, and an improved Index made therefor :

*Resolved*, That his Excellency the Lieutenant Governor be respectfully requested forthwith to employ a sufficient number of competent persons, not to exceed three, for the purpose of further Revising the Statutes, so as to have the same prepared and submitted to the Government, at least one month before the next sitting of the Legislature ; and this House will provide for the expense thereof.”





## COMMISSIONERS' REPORT.

---

TO HIS EXCELLENCY SIR JOHN GASPARD LE MARCHANT,

Lieutenant-Governor in and over the Province of Nova Scotia, &c. &c. &c.

*The Report of the undersigned Commissioners appointed by your Excellency to Revise and Consolidate the Laws of the Province:*

May it please your Excellency:

The following Resolution having been passed by the House of Assembly, and concurred in by the Legislative Council at the last session, to wit:

“Whereas it has become indispensable that the Statutes of this Province should be further Revised, and an improved Index made therefor,

*Resolved*, That his Excellency the Lieutenant-Governor be respectfully requested forthwith to employ a sufficient number of competent persons, not to exceed three, for the purpose of further Revising the Statutes, so as to have the same prepared and submitted to the Government at least one month before the next sittings of the Legislature, and this House will provide for the expense thereof.”

And your Excellency having done us the honor of intrusting to us this important duty, we have executed the trust, and beg leave to submit to your Excellency the Laws in the form in which we have consolidated them, entitled “the Revised Statutes of Nova Scotia—Second Series.”

The first series of the Revised Statutes was enacted in the year of our Lord one thousand eight hundred and fifty one, and since that time many material alterations and amendments have been introduced; some chapters have been repealed, and some acts have passed of an independent character.

In revising and consolidating the Laws up to the end of the session of 1857, we have endeavored to make as few alterations in the number and arrangement of the chapters and titles as possible; and we have carefully abstained from making any alteration in the laws themselves, but have compiled them with all alterations and amendments incorporated in the several chapters.

It is essential that a copious and correct Index should be prepared, and we have made arrangements to effect this object while the Statutes are in the course of publication. The marginal notes of the sections were, in the first series, collected at the head of each chapter, and this, in the absence of a perfect index, was desirable; but as we intend carrying those notes fully into the index of the new series, we have not placed

them at the head of the chapters, which, in our estimation, would be an unnecessary waste of space, and would tend inconveniently to expand the work.

From the amount of matter necessarily added to the first series, it may be advisable to divide the new series, with its copious index, into two volumes of about the same size as the volume containing the first series; but we would recommend that if possible, the work shall be published in one volume.

An act to regulate the publication of the Revised Statutes was passed on the 7th April, 1851, to which we refer your Excellency, and it appears to us that it will be advisable to make a similar law in respect to the publication of the new or second series.

The foregoing Report refers more particularly to the revision and consolidation of the general statutes,—we have also prepared a new and amended edition of the private and local acts, with an index, which we also beg leave to submit to your Excellency.

All of which is respectfully submitted.

MARTIN I. WILKINS,

W. A. HENRY,

JAS. R. SMITH.

Halifax, December 31st, 1857.



## AN ACT FOR THE CONSOLIDATION OF THE LAWS.

(Passed the 7th day of May. A. D. 1853.)

Be it enacted, by the Governor, Council and Assembly, as follows :

1. The Governor in Council shall cause the Statutes consolidated under a resolution passed in the last session, to be published with a copious Index, as soon as conveniently can be ; and when the same are so published the Governor may, by Proclamation, declare the same to be in force, and the same thereupon and thereafter shall be in force.

2. All Statutes in force on the first day of this present session, shall thereupon and thereafter be repealed, except such act or parts of acts as have not been substantially incorporated in the said consolidated Statutes, or as shall not have been repealed or have expired.

3. The Acts of the present session shall be printed in the same volume as an Appendix, with proper references, or be incorporated with the consolidated Acts, and shall be included in the Index.

4. All rights accruing or accrued under any of the statutes so repealed, are reserved ; and all penalties incurred thereunder shall be enforced, as if such Statutes had not been repealed.



**A N A L Y S I S**  
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 CONTAINED IN  
**THE REVISED STATUTES.**  
 -----  
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## Province of Nova-Scotia.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED  
AND FIFTY-EIGHT.

---

## AN ACT

FOR REVISING AND CONSOLIDATING THE STA  
TUTES AND LAWS OF THE PROVINCE.

---

Second Series.

---

**B**E IT ENACTED, BY THE GOVERNOR, COUNCIL AND  
ASSEMBLY, as follows :

## CHAP. 1.

## PART I.

## OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

## TITLE I.

## CHAPTER 1.

## OF THE PROMULGATION AND CONSTRUCTION OF STATUTES.

- All acts public. 1. All acts shall be deemed public, and may be declared on, and given in evidence without being specially pleaded.
- Commencement of date. 2. The clerk of the legislative council shall endorse on every act the date of its passage, and the endorsement shall be held part of the act, and shall be the date of its commencement, unless otherwise provided.
- Publication how evidenced. 3. Printed copies of acts published in the royal gazette newspaper, in Halifax, or purporting to be published by the queen's printer for the province, shall be evidence of such acts.
- Repeal or alteration the same session. 4. Any act may be altered or repealed during the session in which it shall have passed.
- Revived by express enactment only. 5. No act nor any portion of an act that shall be repealed, shall be revived, unless by express enactment.
- Proceedings under old acts continued under new. 6. Where an act shall be repealed in whole or in part, and other provisions substituted, all persons acting under the old law shall continue to act as if appointed under the new law, until others are appointed in their stead, and all proceedings taken under the old law shall be taken up and continued under the new, when not inconsistent therewith; and all penalties may be recovered and proceedings had, in relation to matters which have happened before the repeal, in the same manner as if the law were still in force.
- Construction of acts; meaning of terms; general provisions. 7. In the construction of acts, the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intention of the legislature, or repugnant to the context, that is to say:
- The words "queen" or "her majesty" shall include her majesty, her heirs or successors.
- "Governor" and "lieutenant governor" shall include the governor, lieutenant governor or commander in chief, or person administering the government of the province for the time being.
- "Sessions" shall denote the court of general or quarter sessions of the peace for the county or district, and "special session" shall denote a special sessions of the peace for the county or district.



"Justice" shall signify justice of the peace.

"Prothonotary" shall include deputy prothonotary.

"Clerk of the crown" shall include deputy clerk of the crown.

"Jail" shall mean county jail, and where imprisonment is prescribed it shall mean imprisonment in the jail or other building within the county in which debtors may be legally imprisoned.

"Warrant" shall signify warrant under hand and seal.

"Grantor" may be construed as including every person from whom any freehold estate or interest passes by deed; and "grantee" as including every person to whom any such estate or interest passes in like manner.

"Highway" or "road" shall signify a public highway or road, and may also include county bridges.

"Land," "lands," or "real estate," shall include lands, tenements, and hereditaments, and all rights thereto and interest therein.

"Goods" shall mean personal property.

"Issue" as applied to the descent of estates, shall be construed to include all the lawful, lineal descendants of the ancestor.

"Representatives" shall mean executors and administrators.

"Wills" shall include codicils.

"Month" shall signify a calendar month, and "year" a calendar year; and "year" alone shall be equivalent to the expression "year of our Lord."

"Oath" shall include affirmations in cases where by law, an affirmation may be substituted for an oath; and in the like cases the word "sworn" shall include the word "affirm."

"Person" may extend to bodies politic and corporate as well as to individuals.

"Folio" shall mean ninety words.

"Sureties" shall mean sufficient sureties; and "security" sufficient security.

Every word importing the singular number only may extend to several persons or things as well as to one person or thing: and every word importing the plural number only, may extend to one person or thing as well as to several persons or things; and every word importing the masculine gender only, may extend to females as well as to males.

All words purporting to give a joint authority to three or more persons shall be construed as giving authority to a majority of such persons.

Where a penalty shall be imposed, and no particular mode be prescribed for the recovery thereof, the same may be recovered in the name of any person who will sue therefor, in the same manner, and with the like costs, as if it were a

CHAP. 1. private debt due such person, the nature of the offence being briefly stated, and where no particular mode of applying any penalty shall be prescribed, the same shall be paid, one-half to the person who shall have sued therefor, and the other half to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof; and where a penalty, or part thereof, shall be for the use of the poor, it shall be paid to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof.

The imposition of a penalty shall not relieve any person from liability to answer for special damages to a party injured. Appeals to the supreme court shall be allowed by justices of the peace, from every judgment given by them in all cases tried before them, in the same manner and on the same terms as are provided in civil suits, except where otherwise specially provided.

All penalties and forfeitures, not exceeding ten pounds, may be sued for and recovered before any two justices of the peace; but if incurred within the city of Halifax, before the police court.

Prosecutions for such penalties or forfeitures may be in the name of any person, or of any corporate body.

Where authority to make appointments to public situations is conferred, it shall include the power to fill up vacancies caused by death, resignation, removal, or refusal to act.

Where power to make bye laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same, and make others.

No bye law shall be enforced if repugnant to law.

When it is declared that any matter is to form a county charge, the expense shall be presented, confirmed, assessed, levied and collected with and by the same means as by law directed with regard to other moneys for county purposes.

Where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them.

If the day upon which an act is to be done shall fall on a Sunday, Christmas Day, or Good Friday, the same shall be performed on the day following.

Justices of the peace may administer all oaths, with regard to the taking of which no particular directions are given.

Quakers or Moravians, where an oath is prescribed, may, instead of taking the same, solemnly affirm in manner used in their religion; and such affirmations shall have the like effect, and render the parties taking them liable to the like penalties, if false, as attach to an oath.

When bonds are required to be given by a public officer, they shall be taken in her majesty's name when not otherwise directed.

All officers now appointed, or hereafter to be appointed by the Governor, whether by commission or otherwise, shall remain in office during pleasure only, unless otherwise expressed in their commissions or appointments. CHAP. 2.

## TITLE II.

### OF THE LEGISLATURE.

#### CHAPTER 2.

##### OF EXECUTIVE AND LEGISLATIVE DISABILITIES.

1. The following persons holding the situations herein-after mentioned within the province, by themselves or deputies, or by others in trust for them, or for their benefit, shall be incapable of being appointed to, or holding seats in the executive council, or of being appointed to, or of sitting or voting in the legislative council, or of being elected as members of, or sitting or voting in the house of assembly, viz: the judges of the supreme court, the judge of the court of vice admiralty, officers and clerks of the customs and of colonial and light duties, and persons concerned in the receiving or managing of any moneys to be collected under any of such departments, the postmaster general, and persons having a general control or superintendence over the department, the deputy postmaster in Halifax, and persons employed about the department there.

Persons disabled to sit in the Legislature.

2. The appointment, election, or return of persons disabled as hereinbefore mentioned, shall be void; and every person so disabled who shall take his seat as a member of the executive council, or shall sit or vote as a member of the legislative council or of the house of assembly, shall forfeit ten pounds for every day in which he shall so sit or vote, to be recovered in the supreme court.

Penalty in case of offence.

3. After the dissolution of the present house of assembly no person holding any office of profit or emolument under the provincial government shall be eligible as a member of the general assembly, unless within ten days previously to the holding of the sheriff's court for the nomination of members to serve in such general assembly, he shall resign such office of profit or emolument, and signify such resignation to the provincial secretary.

Persons holding offices of emolument under government not eligible.

Proviso.

4. After the dissolution of the present house of assembly no person holding any office of profit or emolument under the provincial government shall continue to hold a seat in the legislative council, unless within thirty days

After dissolution of assembly no one in office of emolument can hold seat in legislative council.

Proviso.

CHAP. 3. after such dissolution he shall resign such office of profit or emolument, and signify such resignation, in writing, to the provincial secretary.

Member accepting office vacates his seat.

5. Any member of the house of assembly, or legislative council, accepting any such office after the dissolution of the present house of assembly, shall vacate his seat thereby.

Offices to which act does not extend.

6. Nothing in this act contained shall extend to any one who shall fill any of the following offices, that is to say: provincial secretary, financial secretary, receiver general, commissioner of crown lands, attorney general, advocate general, solicitor general, queen's counsel, or one member of the railway board in each branch of the legislature, nor shall it extend to justices of the peace.

Members shall not vacate seat on change of office.

7. Whenever any person holding the office of receiver general, provincial secretary, financial secretary, attorney general, solicitor general, commissioner of crown lands, and being at the same time a member of the house of assembly, shall resign his office, and within one month after his resignation accept of any other of such offices, he shall not thereby vacate his seat in such assembly.

### CHAPTER 3.

#### OF THE REPRESENTATION IN GENERAL ASSEMBLY.

Number of county and township members.

1. The representation in general assembly, shall be as follows:

For the counties of Halifax, Hants, Kings, Queens, Lunenburg, Colchester, Cumberland, Pictou, Sydney, Guysborough, Victoria and Inverness, each two members.

For the counties of Annapolis, Digby, Yarmouth, Shelburne, Cape Breton and Richmond, each one member.

For the township of Halifax, two members.

For the townships of Newport, Windsor, Falmouth, Horton, Cornwallis, Granville, Annapolis, Digby, Clare, Yarmouth, Argyle, Shelburne, Barrington, Liverpool, Lunenburg, Truro, Londonderry, Amherst, Pictou, Sydney, and Arichat, each one member.

Annapolis, Digby, Truro, and Londonderry townships defined.

2. For the purposes of this chapter the township of Annapolis shall be understood as including that part of the township of Clements within the county of Annapolis; the township of Digby as including the townships of Hillsburg and Weymouth; the township of Truro as including electoral districts number one, two, three, four and five of the county of Colchester; and the township of Londonderry as including electoral districts numbers six, seven, eight, nine, ten, eleven, twelve and thirteen of the same county; and the township of Sydney as including the township of North Sydney.

**CHAPTER 4.**

## OF THE DURATION OF THE GENERAL ASSEMBLY.

1. No general assembly shall determine merely in consequence of the demise of her majesty.

Duration of assembly not affected by Queen's death.

2. The general assembly shall continue four years from the time appointed by the writs for its meeting, unless sooner dissolved, and no longer.

Duration of assembly limited.

**CHAPTER 5.**

## OF THE QUALIFICATION OF CANDIDATES AND ELECTORS, AND FRAUDS IN REGARD THERETO.

1. Every elector shall be qualified as follows, that is to say:

Qualification of electors.

First—He shall have a legal and not mere equitable freehold estate in possession by himself or his tenants in fee simple, fee tail for his own life, or for the life of another; or,

Secondly—He shall be a mortgagor or *cestui que trust* in possession by himself or his tenants: or,

Thirdly—The husband of a woman seized in dower of the real estate of a former husband where the dower has been set off and reduced into possession: or,

Fourthly—A person holding real estate within the Island of Cape Breton under a crown lease or license of occupation, granted by the former government of the island, and which was in force at the time the island was re-annexed to this province, or under a deed purporting to be a conveyance of freehold estate made from such titles,—the estate in any case to be of the clear yearly value of forty shillings; and if a tenant in common, joint tenant or co-parcener, the individual interest to be of the clear yearly value of forty shillings, to be estimated by the value of agricultural or other produce which the land or property bona fide and actually yields, or by the annual value of the buildings thereon.

2. Fifthly—All natural born and naturalized subjects of the crown of Great Britain, having been and being domiciled as hereinafter limited, and being males over the age of twenty-one years, shall be entitled to vote for members to serve in general assembly, that is to say, provided they shall at the time of voting have had their usual place of

Privilege of voting extended to all natural born and naturalized subjects over 21 years of age.

- CHAP. 5.** abode for at least one year next before voting in the counties for which they shall vote for county members, and in the townships for which they shall vote for township members; and provided also that such naturalized subjects so voting, and such natural born subjects as were not born in Nova Scotia shall, in addition, have resided in the province for at least five years next before voting; and provided also, that persons voting on residence shall only be entitled to vote in the electoral districts in which they reside at the time of voting, and which districts must be in the counties and townships respectively, for representing which the candidates are to be elected at that election; and no person who shall have received aid as a pauper under any poor law in this province, or aid as poor persons from any public grant of government money, within one year before the day of polling, nor any Indian, shall be entitled to vote on residence.
- Paupers and Indians disabled from voting under this act.**
- Registration of titles.** 3. No person shall be entitled to vote under a grant or conveyance made to himself, unless the same shall have been registered six months previously to the teste of the writ for holding the election; but this provision shall not extend to a person holding by descent, devise or in marriage.
- Qualification of candidates.** 4. A candidate shall at the time of election have a qualification which would entitle him to vote, except that it may be situate in any part of the province, and the grant or conveyance thereof need not be registered.
- Fraudulent conveyances.** 5. Fraudulent conveyances for the purpose of qualifying voters subject to agreement for re-conveyance, shall be taken, as against the grantors, as absolute, and collateral securities for defeating the estate, shall be void. And any person making the conveyance, or voting by color thereof, shall forfeit twenty pounds.
- Penalties for fraudulent deeds or voting thereunder.** 6. If a person shall knowingly, falsely, and fraudulently prepare, make or execute, or shall knowingly, falsely and fraudulently assist in the preparing, making or executing any conveyance of land, or of any interest in land, or in the possession thereof, in, or to which the party who shall execute, or be intended to execute, such conveyance shall have no legal or equitable title or claim, for the purpose of falsely and fraudulently creating an apparent title or interest in the land, or the possession thereof, whether with a view to create a colorable or pretended qualification to vote at an election, or for the purpose of falsely and fraudulently inducing a person to vote at an election, or for any other fraudulent purpose whatsoever, or if a person knowing a conveyance to have been so fraudulently made, shall knowingly, falsely, and fraudulently vote, or offer to vote, at an election on any such false and fraudulent title, every such person shall for every offence forfeit twenty-five pounds.
- Prosecutions when to be commenced.** 7. Prosecutions under the two preceding sections shall be commenced within twelve months from the committing of the offence, and no prosecution under either section shall

preclude a party aggrieved from prosecuting an action for damages, or prevent the recovery of a forfeiture under any other section or chapter. CHAP. 5.

8. Every judgment recovered under this chapter, in default of property of the defendant whereon to levy, and of payment by him, may be levied on his body; and the defendant shall thereupon be committed to jail, there to remain until the judgment be paid, or until he shall have continued in jail for a period proportioned to the amount of the penalty, viz: one week for every pound of the penalty, but not in any case to exceed three months. Imprisonment  
on conviction.

9. At every election, the name of each person offering to vote by virtue of residence, shall be entered by the poll clerk in the poll book, and if objection be made in relation to his right to vote at that election, by any person entitled to vote at the same poll, the presiding officer shall tender to him the following preliminary oath:—"You, A B, do swear that you will fully and truly answer all such questions as shall be put to you touching your place of residence, and qualification as an elector. So help you God." The presiding officer shall then proceed to propose to the person challenged, the following questions, or such of them as shall be required by the person objecting. Persons offering  
to vote may be  
sworn—ques-  
tions to be put.

*First.* What is your name?

*Second.* What is your age?

*Third.* In what county do you reside?

*Fourth.* In what township do you reside?

*Fifth.* How long have you resided in this province?

*Sixth.* How long have you resided in this county? [or "township," if voting for a township.]

*Seventh.* Do you reside in this polling district?

*Eighth.* How long have you resided in this polling district?

*Ninth.* Are you a native born subject of her majesty?

*Tenth.* (If not a natural born subject.) Have you been naturalized?

*Eleventh.* (If a naturalized subject.) When and where were you naturalized?

The presiding officer shall allow no other questions to be put to persons voting by virtue of residence, nor shall any questions be put except through him, nor shall he permit the time to be unnecessarily protracted on pretence of questioning a vote, and the presiding officer shall promptly put the questions, and the poll clerk shall instantly enter in the poll book the purport of the answers, and the same being read to the voter shall be conclusive against him. Unnecessary  
questions not  
permitted.

If the elector shall not promptly answer the questions, his name shall be expunged, and he shall not be allowed to poll at that election. Purport of an-  
swers to be en-  
tered.

10. The presiding officer shall point out to the elector, the qualification, if any, in respect to which he shall appear deficient. Effect of answer  
Refusal to an-  
swer.

10. The presiding officer shall point out to the elector, the qualification, if any, in respect to which he shall appear deficient. Where quali-  
fication appears  
deficient.

## CHAP. 5.

Objected votes.

What oaths may be administered.

to the presiding officer to be deficient; and if the person so offering shall persist in his claim to vote, and the objection shall not be withdrawn, a candidate against whom the vote is given, or his agent or inspector, may then direct the vote to be marked "objected" on the poll book without requiring the elector to be sworn, or he may mark the vote "objected," and require the oath number one to be taken by native born Nova Scotians, the oath number two by naturalized subjects or natural born subjects born elsewhere than in Nova Scotia, and the oaths numbers three and four by both classes of voters; and if any of the oaths prescribed by this chapter be declined, the voter's name shall be immediately struck out, and that person shall not be permitted again to poll at that election.

When unqualified persons persist in voting.

11. If any person being so questioned shall persist in voting notwithstanding his answers have clearly shown that he was not entitled to vote under the residence qualification, and shall take the final oath as aforesaid, the vote of such persons shall be subject to the provisions of the thirty sixth section of the seventh chapter, in the same manner as therein is prescribed in the cases of the votes of persons having voted in a wrong district, or more than once.

Voters who have been absent from their place of residence.

12. No person shall lose any part of his residence by being on board ship, or in any seminary of learning, or otherwise temporarily absent for any period less than one year.

Residence qualification for voters.

13. Hereafter no person shall be entitled or permitted to vote at any election of a member to serve in general assembly by reason of real estate situated in the township or county in and for which he shall desire to vote, or by reason of any property qualification whatever, unless such person for three months next immediately preceding his offering to vote shall have had, and at the time of voting shall have, his actual residence and habitation within the county in which his real estate or property qualification lies, and in which he offers to vote at such election.

Every voter must take annexed oath if required by candidate.

14. Any person offering to vote at any election for a representative to serve in general assembly upon or in respect of the possession of real estate or any property qualification, shall, before he shall be permitted to vote, take the oath number five in the schedule hereto annexed, if thereto required by any candidate, candidate's officer, or elector, in addition to any other oath he may be bound to take.

Non-resident forfeits ten pounds.

15. Any person who by reason or on pretence or claim of the possession of real estate or any property qualification, shall vote in any county in which for three months next before the time of his so voting, he shall not have had, and in which at the time of voting he shall not have, his actual residence and habitation, shall forfeit ten pounds, to

How recovered.

be recovered as a private debt by any candidate at such



election, except the candidate for whom such person voted; or if no candidate shall sue therefor within three months, then after that time by any person who will sue for the same, and in such action it shall only be necessary to prove the fact of the election having been held, and of the defendant having voted thereat, and of his non-residence for three months next immediately preceding such election.

## SCHEDULE.

*Oath Number One.*

You, A B, do swear that you are a native born Nova Scotian of the full age of twenty-one years and upwards, and that you have had your usual place of abode, for at least one year next before this day, in the county of \_\_\_\_\_ [*or the township of \_\_\_\_\_ as the case may be;*] and that you have not been polled, nor have given a vote for any candidate at this election; and that you reside and have now your place of abode within this electoral district. So help you God.

*Number Two.*

You, A B, do swear that you are a natural born [*or, as the case may be, naturalized,*] subject of the crown of Great Britain, not born in Nova Scotia, of the full age of twenty-one years and upwards, and that you have resided in this province for at least five years next before this day, and that you have had your usual place of abode for at least one year next before this day, in the county of \_\_\_\_\_ [*or the township of \_\_\_\_\_, as the case may be;*] and that you have not been polled, nor have given a vote for any candidate at this election for this county, [*or township, as the case may be;*] and that you reside and have now your place of abode within this electoral district. So help you God.

*Number Three.*

You, A B, do swear that you have not, within one year next before this day, received aid as a pauper under any poor laws in this province, or as a poor person under any public grant of the province. So help you God.

*Number Four.*

You, A B, do swear that you have not received and had, by yourself, or any person whomsoever in trust for you, or for your use and benefit, directly or indirectly, any sum of money, office, place, emolument, gift or reward, nor any promise or security for any money, office, place, employment, gift or reward, in order to give your vote at this election, and that you have not before this been polled, nor have given a vote for any candidate at this election for this county [*or township, as the case may be,*] and that your place of residence is at \_\_\_\_\_. So help you God.

CHAP. 6.

*Number Five.*

You, A B, do swear that for three months next immediately preceding this election, you have actually resided, and do now actually reside, within this county, in which your real estate or property qualification, on which you claim a right to vote, is situated; and that you have not been previously polled or given a vote for any candidate at this election. So help you God.

**CHAPTER 6.**

OF BRIBERY AND TREATING AT ELECTIONS.

Price of entertainment not recoverable.

1. No person shall recover from a candidate, or his agents for entertainment furnished, at the request of any of them, to other persons at an election; and if upon trial it shall appear that any part of the plaintiff's claim is for entertainment so furnished, he shall be non-suited.

Penalty for furnishing liquors.

2. If a candidate during an election shall furnish, or willingly permit to be furnished to an elector or person claiming to be an elector, any intoxicating liquors, he shall forfeit one hundred pounds.

Penalty for asking or receiving bribes.

3. If an elector, or person claiming to be an elector, shall ask or receive any money or reward for himself or any of his kindred, to vote, or abstain from voting at an election, he shall forfeit one hundred pounds.

Penalty for offering bribes.

4. If a person shall, by any gift or reward, or by a promise, agreement or security for any gift or reward, procure another to vote, or abstain from voting at an election, he shall forfeit one hundred pounds.

Penalty how recovered.

5. In an action for recovery of a forfeiture under this chapter, it shall suffice for the plaintiff to declare that the defendant is indebted to him in the amount of the forfeiture, and to allege the particular offence for which the action is brought, and that the defendant hath acted therein contrary to this chapter, without mentioning the writ for holding the election or the return thereof.

Limitation of actions.

6. Actions under this chapter must be commenced within three months after the offence.

## CHAPTER 7.

## ON THE MANNER OF CONDUCTING ELECTIONS.

1. The electoral districts and polling places shall remain as now established. Of electoral districts.

2. Electors residing in the vicinity of the townships of Windsor and Falmouth, but not in either township, shall vote for the county of Hants, at the court house, in Windsor. Electors near Windsor or Falmouth where to vote.

3. When a new assembly shall be summoned, or more than one vacancy occur at or about the same time, the writs shall be so transmitted that the same may be received by the respective sheriffs as nearly as may be at the same time. There shall be at least forty days between the teste and return of writs. The writs shall in the body thereof express the day when the sheriff shall hold his court for the commencement of the election, allowance being made for enabling the sheriff to give at least ten days' notice of the election throughout the county or township; and in cases of general elections, or where more than one writ shall be required to be issued at or about the same time, the day named for holding the sheriff's court for commencing the election shall be the same in all the writs. Writes how transmitted; their contents.

4. The sheriff shall, immediately on the receipt of a writ, endorse thereon the day of receipt, and shall forthwith cause notice in writing, or by printed handbills to be posted in some of the most public places within every district in the county or township for which representatives are to be elected, which notices shall express the day when the sheriff will hold his court at the county court house, for opening the election, being the day named in the writ therefor, and also the time and place at which, in case a poll be demanded, the same will be taken, and the number of representatives to be elected, and for what places in particular under the writs then in the sheriff's hands; and the poll shall be taken in the week next following that wherein the sheriff's court for opening the election shall be appointed to be held, and on the same day of the week as the day appointed for holding such court. Sheriff's duty on receiving the writ.

5. The election for a county, and the townships within it that return representatives, shall be conducted at the same time; and the polling for the county and townships shall, within the townships, be taken by the same presiding officers and sheriffs' poll clerks, and at the same times and polling places. County and township elections to be conducted together

6. On the day appointed for opening the election, the sheriff shall open his court at the county court house, which, Sheriff's duty on opening his court.

CHAP. 7. in the county of Yarmouth, shall be at the court house in Yarmouth, between the hours of ten and twelve of the clock in the forenoon, and shall read his writs, and shall take the following oath, to be administered by a justice of the peace or any two freeholders of the county then present:

“I, A. B., do swear that I have not received, and will not receive, any sum of money, office or employment, or gratuity, or any bond, bill or note, or promise of gratuity whatsoever, either by myself or another, to my use or advantage, for appointing any presiding officer to take the poll, or for appointing any poll clerk, or for making any return at this election; and that I will make such appointments impartially and faithfully, and will, according to my best judgment, in all things to be done by me in the election, act impartially and according to the law.”

And the sheriff shall then administer to the clerk whom he shall have appointed to assist him in the election, an oath for the faithful and impartial discharge of his duty, and shall continue the court open until four of the clock in the afternoon of that day; and on the same day, and as soon after four of the clock as the duties remaining to be performed will permit, shall finally close the court, or adjourn the same to another day, as the case may require.

His duty at the court.

7. The sheriff shall, at his court, receive the names of the candidates proposed by two freeholders of the county or township previously to four o'clock; and their names shall be, by the clerk, under the sheriff's direction, entered in the sheriff's poll book, and no candidate's name shall be entered after four o'clock, and at that hour the sheriff shall proclaim the names of candidates, and shall receive the schedules of, and administer the qualification oaths to candidates whose qualifications may be questioned, and who shall not have previously qualified; and in the case of each election, in respect of which, previously to four o'clock, no more candidates are proposed than are required to be returned, the election shall be forthwith determined, and the sheriff shall declare the candidates proposed and who shall have qualified if thereto required, duly elected members, and shall make return of the writ accordingly; and in cases of elections where opposing candidates shall be proposed previously to four o'clock, who shall have qualified if required as directed by this chapter, and wherein a poll has been demanded, the sheriff shall then grant the poll, and make proclamation of the time and place at which the poll will be taken in the several districts, conformably with the notices before conditionally given, and shall then adjourn the court as regards the elections in which a poll shall be demanded, to some day within five days next after the day for taking the poll, then to be held at the same place.

Proceedings if candidates' qualification disputed.

8. If, at the court, an elector shall question the qualification of a candidate, the candidate, if present, shall, before

the court is closed or adjourned, deliver to the sheriff a schedule containing the particulars of his qualification, and, at the foot thereof, subscribe the following oath:

"I, A. B., do swear that I am by law qualified to be elected a member of assembly, and that the foregoing schedule doth contain a full, true, and particular account, to the best of my knowledge and belief, of the property in respect whereof I claim a right to be elected, and of my title thereto, and that the same hath not been granted or conveyed to me fraudulently on purpose to qualify me to be so elected."

And if a candidate whose qualification is questioned shall not be present, there shall then be delivered to the sheriff a schedule and deposition in writing in the foregoing form, signed and sworn to by the candidate, or otherwise such schedule signed by an agent appointed by the candidate or by any two electors, and also a deposition signed and sworn to by the agent in the following form:

"I, A. B., do swear that C. D., a candidate for the [*here insert the county or township*] at the present [*or approaching*] election is, to the best of my belief, qualified to be elected a member of assembly, and that the foregoing schedule doth contain a full, true, and particular account, to the best of my belief, of the property in respect whereof the said C. D. hath a right to be elected, and of his title thereto. And that the same hath not been granted or conveyed to him fraudulently on purpose to qualify him to be so elected, to the best of my belief." The oaths to be administered by a justice of the supreme court, a justice of the peace, or the sheriff.

9. If the qualification of a candidate, when questioned, shall not, before the close or adjournment of the court, be specified and verified as in the preceding section directed, the candidate shall be incapable of being elected; nor shall his name be entered on the poll book, or if entered the same shall be expunged at or before the close or adjournment of the court.

If qualification not verified, candidate ineligible.

10. No presiding officer shall receive, nor shall any poll clerk record, the name of a person as a candidate, nor shall any vote be received for him, unless his name shall have been entered as a candidate in the sheriff's poll book at the court, and shall not have been expunged; and votes entered on a poll book contrary to this provision shall, in respect of such person, be expunged and not counted by the sheriff in casting up the votes.

No votes receivable unless candidates' name duly entered.

11. When a poll shall have been granted it shall be opened in the different districts, at or near the polling place, at eight o'clock in the morning of the day appointed, and be kept open until five o'clock in the afternoon, when it shall finally close.

Hours of opening and closing polls.

12. The sheriff shall, prior to the polling, cause booths

Booths to be erected.

CHAP. 7. to be erected, or procure buildings at which the poll may be taken.

Appointment of presiding officers and poll clerks.

13. When a poll has been granted the sheriff shall, by precept under his hand, appoint a presiding officer for taking the poll in each district, who shall be then resident within the county and shall have been so for a year then next preceding, and shall thereby direct the presiding officer at the appointed time and place to take the poll within the district as well for the county as the township, if such district includes any part of a township that is to return a representative; and the sheriff shall also appoint a poll clerk for taking the votes under the direction of the presiding officer in each district, and the clerk shall prepare a poll book and enter therein, in separate columns, the names of the candidates for whom votes are to be given within the district; and the names of the candidates and the necessary information regarding them shall, before the opening of the poll, be furnished by the sheriff to the presiding officers, who shall communicate the same to the electors when required; and the sheriff shall be responsible for the conduct of his presiding officers and poll clerks.

Sheriff a presiding officer.

14. The sheriff may act as presiding officer in a district without precept and without taking the presiding officer's oath.

Duty of presiding officer; his oath; oath of clerk.

15. The presiding officer shall, at the opening of the poll, read aloud his precept and declare the names of candidates, and whether for county or township; and shall at or before the opening of the poll and before receiving a vote, take the following oath:

"I, A. B., do swear that I have not received any sum of money, office, employment or gratuity, or any bond bill or note, or any promise of gratuity, by myself or another, to my use or advantage, for making any return at this election; and that I will faithfully discharge my duty at the election to the best of my knowledge and judgment\*; and that I will return to the sheriff a true and faithful account of the votes polled in this district wherein I preside."

And the poll clerk shall before or at the opening of the poll take an oath in the same form down to the asterisk, with the addition of these words thereafter: "and I will faithfully record the votes received in the district where I act as poll clerk."

The sheriff, a justice of the peace, and, in their absence, any two electors, are authorized and required to administer the oaths.

Appointment of inspector, agent, clerk for candidate; his oath.

16. The presiding officer shall appoint an inspector, an agent, and a clerk, when nominated by or on behalf of a candidate, and their names shall be immediately entered in the poll book, and the clerk shall take the following oath to be administered by the presiding officer:

"I, A. B., do swear that I will take this poll fairly and impartially by entering the names and places of abode of

the electors, and the names of the candidates for whom they shall vote; and also the description they may give of their property and title to vote." CHAP. 7.

17. Electors for the county in which they reside shall vote for the county in the electoral district in which they reside. Electors for the township in which they reside shall vote for the township in the electoral district in which they reside. Where a county and township election shall be held at the same time, electors for both shall give their votes for both at the same time; and after once polling any of their votes shall not be permitted to give any remaining votes; and if any such remaining votes shall be entered on the poll book they shall be expunged by the presiding officer, or, in case of his omission so to do, by the sheriff in casting up the votes. The oath to be taken by the electors in this section mentioned, when required, shall be the first oath in the schedule. Electors how and where to vote.

18. Electors for a township lying in the county in which they reside, but in which township they do not reside, shall vote for the township in the district in which their qualification lies; and the oath to be by them taken, when required, shall be the second oath in the schedule. Non-resident township electors where to vote.

19. Votes given in a wrong district shall be struck out of the poll book; but where the boundary lines between districts are doubtful, the district in which an elector is reputed to reside, shall be held to be the district in which he should vote. Where district lines in dispute.

20. Presiding officers, poll clerks, candidates, and the inspectors, agents, and clerks of candidates, may poll all their votes in the district where they are acting; but the names of inspectors and agents must have been previously entered on the poll book as acting in the capacity. The oath to be taken, when required by voters under this section, shall be the third in the schedule. Presiding officers shall make a special return of voters given under this section for townships in which their districts are not included. Officers may vote where acting.

21. An elector when questioned on behalf of a candidate, through the presiding officer, shall truly describe the property on which he votes, with the annual produce and value he derives therefrom, and his title thereto, and the time of registry of deeds under which he votes, and the description, annual value, title and registry, shall be entered in the poll book and be conclusive on the elector and a candidate against whom the vote is given, or his inspector or agent, may direct the vote to be marked "objected" on the poll book, without requiring the elector to be sworn, or he may mark the vote "objected," and cause the elector to be sworn under the qualification oath applicable, and the oath against fraudulent conveyances and bribery, being the fourth in the schedule, or either of them. Voter's property to be described; manner of objecting.

22. The presiding officer shall administer the oaths to be taken by electors. Oaths how administered.

## CHAP. 7.

Vote expunged  
if oath refused.  
Manner of vot-  
ing.

23. If an elector, when required, shall not take the oaths prescribed, his vote shall be expunged.

24. The presiding officer shall prevent unnecessary delay in polling, and no person shall be permitted to interrupt the polling by addressing the freeholders, or otherwise; and for avoiding needless and factious questioning of voters, the elector shall immediately state for whom he votes; and thereupon, the candidate against whom he votes, or his inspector or agent, may require the presiding officer to put such necessary and pertinent questions as may be proper for ascertaining the elector's right to vote, and the presiding officer shall allow no other questions to be put, nor shall any questions be put, except through him, nor shall he permit the time to be unnecessarily protracted on pretence of questioning a voter, and the presiding officer shall promptly put the questions, and the poll clerk shall instantly enter in the poll book the purport of the answers, and read the same aloud to the voter. If the elector shall not promptly answer the questions his vote shall be expunged, and he shall not be allowed to poll again.

Duty of presid-  
ing officer on  
close of poll.

25. The presiding officer, after the close of the poll, and before making return to his precept, shall subscribe in the poll book the following oath, to be administered by a justice of the peace or two freeholders of the district:

"I, A. B., presiding officer for the district of \_\_\_\_\_, in the county of \_\_\_\_\_, do swear that the poll clerks were duly sworn, and that to the best of my belief this poll book was truly and correctly taken under my direction, and contains a true and correct statement of the votes taken at the poll for the district held in pursuance of the sheriff's precept to me directed, and tested the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_."

Duty of clerk  
on close of poll.

26. The poll clerk, after the presiding officer shall have taken the oath in the preceding section, shall enclose and seal the poll book, and deliver it to the presiding officer at the poll, who shall give a receipt therefor, and shall forthwith return the same, so sealed, with his receipt, to the sheriff.

Penalty for mis-  
conduct of pre-  
siding officer.

27. If a presiding officer shall not, when required, administer the oaths to an elector in a competent state of mind to take them, or shall allow any person to interfere, or put questions to voters, by which time is taken up, or shall put questions other than in this chapter specified, contrary to the wish of any candidate or his agent, or shall wilfully protract, or permit to be protracted, the polling, or shall otherwise offend in the premises, he shall forfeit ten pounds for every offence.

Penalty for not  
returning poll  
book.

28. If a presiding officer shall not, before the opening of the sheriff's court on the day to which the same was adjourned, return the poll book and his precept to the sheriff, or shall alter the poll book, he shall be liable to an action for



damages at the suit of any party aggrieved, and shall also forfeit for every offence fifty pounds, and the further sum of five pounds for every day's neglect to return the poll book.

29. If a poll clerk shall offend in the premises he shall forfeit ten pounds for every offence.

30. If any elector shall knowingly vote in a wrong district, he shall for every offence forfeit five pounds.

31. If a person shall vote more than once at the same election for the same county or township, or shall vote under a false name, or shall personate and vote in the name of another, or not being qualified to vote, shall knowingly vote, he shall for every offence forfeit twenty pounds.

32. The sheriff at his courts, and the presiding officers at their polling places, shall be, during the day on which the election or polling may be prosecuted, conservators of the peace, and vested with the same powers for the preservation of the peace and the apprehension and committal for trial or holding to bail, or trying and convicting violators of the law and good order, as are vested in justices of the peace; and for the purpose of preserving peace and good order at the election or polling, the sheriff or presiding officer may require the assistance of all persons present to assist him, and may commit any persons for breach of the peace, violating or threatening electors at, or coming to, or returning from, the election or polling, or for any violation of good order, to the custody of any person on view, for any time not exceeding twelve hours, or may, by a writing under his hand, commit to prison for a like offence for a period not extending beyond the second day thereafter, and, at the expiration thereof, may cause the offender to be brought before a justice of the peace, who shall inquire into the matter, and may fine the offender in a sum not exceeding forty shillings and costs, and commit him to jail until the fine be paid; and all persons present are enjoined to assist the officer presiding and justices in discharging such duties under pain of being guilty of a misdemeanor; and justices residing in the district, upon being notified in writing by the sheriff or presiding officer, shall attend to aid in preserving peace and order; and the justices, sheriff, and presiding officers, may, when considered necessary, swear in special constables to act as peace officers, and assist in maintaining peace and order; and upon the written application of a candidate or his agent, or two electors, the sheriff or presiding officer shall swear in such special constables as may be requisite.

33. If a presiding officer, before the termination of the poll, shall die, or be incapable of performing, or shall not perform, his duty, the poll clerk shall act in his stead and perform his duties; but before commencing his new duties he shall appoint a poll clerk, who shall, with the new pre-

Penalty for poll clerk's misconduct.

Penalty for voting in a wrong district.

Penalty for twice voting or personating another.

Sheriffs and presiding officers, conservators of the peace.

Poll clerk to act as presiding officer in case of death or accident.

## CHAP. 7.

siding officer, previously to entering upon their duties, take the oath prescribed for presiding officers and poll clerks, and they shall have the same powers and be liable to the same penalties in their new capacities as if originally appointed.

Poll clerk's place how supplied in case of accident.

34. If a poll clerk shall, before the termination of the poll, die, or be incapable of performing, or shall not perform his duty, the presiding officer shall appoint another poll clerk to act in his stead; and the new poll clerk, before entering on his duties, shall take, in manner as if originally appointed, the oath prescribed; and he shall have the same powers and be liable to the same penalties as if originally appointed poll clerk.

Sheriff's duty on re-assembling his court; proclamation of candidate.

35. The sheriff shall keep the poll books unopened until the re-assembling of his court on the day to which the same shall have been adjourned, and then he shall openly break the seals thereon, and cast up the votes as they appear on the poll books, adding those on the special returns, and shall then openly declare the state of the poll; and if within one hour thereafter no objection shall be made on the ground of persons having voted in a wrong district, or more than once, as hereinbefore mentioned, he shall forthwith thereafter proclaim the candidates having the majority of votes as duly elected members, and make return accordingly; but if a candidate, or three freeholders for the county or township shall, within the hour, make objection that a person has polled in a wrong district, or more than once, contrary to the provisions of this chapter, and shall require the sheriff to investigate the objection, the sheriff shall not then proclaim the member chosen, but shall adjourn to the next day but one thereafter, at ten o'clock in the forenoon, at the same place, and shall then and there proceed and continue from day to day to hear evidence for or against the objections, and if it shall thereupon clearly appear that a voter has been polled in a wrong district, or more than once, contrary to the provisions of this chapter, the sheriff shall expunge his vote from the poll book, and shall forthwith thereafter, having ascertained the corrected numbers of votes, proclaim the candidates having then the majority of votes as duly elected members, and shall return the evidence given on the investigation, with his writ, to be laid before the house of assembly, but no decision of the sheriff on the investigation shall conclude any candidate or freeholder who may petition the house thereon either with or without the prosecution of a general scrutiny. Witnesses on the investigation shall be sworn by the sheriff.

Penalty for misconduct of sheriff.

36. If a sheriff shall falsely and wilfully expunge a vote from the poll book, or wilfully return any person as duly elected who shall not have the majority of votes on the poll book, or shall wilfully be guilty of a violation of this chapter, he shall forfeit two hundred pounds.

37. If at the final declaring of the election, a candidate, or his agent, shall publicly demand a scrutiny, the sheriff shall immediately give notice that on the day next following he will attend at a central and convenient place in the county or township, to be then named, and at an appointed hour to proceed in the scrutiny.

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Demand of scrutiny.

38. When any of the precepts for taking the poll shall not be returned at the time to which the sheriff's court was adjourned, the sheriff shall not examine the returns made, but shall further adjourn the court to the following day, and so from day to day until the precepts and poll books shall have been all returned, and in making such adjournment the sheriff shall publicly declare the reason, and he shall in no case continue the adjournment if the house of assembly be in session, or to so late a day as shall interfere with the return of his writ in time for the then next session; but he shall in such cases complete the election and return his writ notwithstanding the deficiency of returns, and he shall in his return mention the deficiencies.

Procedure where poll books not returned.

39. If a presiding officer shall not have returned his precept and poll book at the proper time, the sheriff or a candidate, or a freholder, may make complaint thereof on oath before a justice of the peace, who shall summon the presiding officer to answer the same; and if he shall not appear and shew good cause for the delay, the justice shall, by warrant, commit him to jail until he shall make due return of his precept and proceedings thereon, together with his poll book.

Warrant against presiding officer.

40. A candidate against whom a vote shall be wrongfully polled, or against whom, or to the prejudice, or with the intent to prejudice whose interest, any act shall be wrongfully done contrary to this chapter, and for which vote or act a forfeiture is herein imposed, may, within six months from the commission of the offence, prosecute for the forfeiture, and, upon recovery, the amount, after deducting charges incurred by the candidate about the prosecution, shall be paid to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof. If no prosecution shall be pending, or have been prosecuted to final judgment, then any person may prosecute for the penalty at any time after the expiration of the six months and before the expiration of twelve months from the commission of the offence.

Candidate's remedy where aggrieved

41. Judgments for penalties under this chapter shall be levied with costs on the goods or lands of the defendant, and for want thereof, or of payment by the defendant, may be levied on his body, and the defendant shall thereupon be committed to jail, there to remain until the judgment be paid, or until he shall have continued in jail for a period proportioned to the amount of the penalty, that is to say, one week for every pound thereof, but such imprisonment shall in no case exceed three months.

Judgment for penalty how forced.

CHAP. 7.  
Penalties how  
recovered.

42. Penalties imposed by this chapter shall be recovered with costs as follows: when the penalty shall not exceed twenty pounds, it shall be recovered in a summary manner before two justices of the county, from whose judgment either party may appeal to the supreme court on giving good security as follows: in the case of the plaintiff for payment of the defendant's costs, and in case of the defendant for payment of the penalty and costs if judgment shall be given against the appellant; and the supreme court shall try the same, and give judgment in manner practised in summary causes. When the penalty shall exceed twenty pounds, the same shall be recoverable by action of debt in the supreme court, in which action it shall suffice for the plaintiff to set forth in his declaration that the defendant is indebted to him in the amount of the penalty sought to be recovered, and to allege the particular offence for which the action is brought, and that the defendant hath therein acted contrary to this chapter, without mentioning the writ for holding the election, or the return thereof; and on the trial parol proof of the election shall be sufficient *prima facie* evidence without producing the writ.

Sheriff's fees  
and charges.

43. On the return of a writ the sheriff shall be entitled to receive from the provincial treasury thirty shillings for every member returned. Where there is no contest he shall be entitled to ten shillings from every candidate. And where there shall be a contest and a poll demanded, twenty shillings from every candidate instead of ten shillings. And further, where there shall be a contest there shall be paid to the sheriff by the candidates, in just proportions, according to the number of the polling places in which each candidate is interested, the following sums: twenty shillings for providing a booth or polling place for each district, except where the polling place shall be a public building that can be had without charge, twenty shillings for every presiding officer, and ten shillings for every poll clerk, to include their travelling fees, and the fees shall be paid to the sheriff on the day of opening his court for commencing the election; and the name of no candidate shall be entered on the sheriff's poll book, or returned to presiding officers, who shall not have paid or tendered the sheriff the full amount due from him under this section before the adjournment of the court on that day.

Meaning of  
terms.

44. The word "sheriff" herein shall mean sheriff, under sheriff, or deputy sheriff; "presiding officer" shall mean the person presiding to take the poll; "district" shall mean electoral district; and "election" the election of members to serve in general assembly where the sense requires such constructions.

## SCHEDULE.

## CHAP. 7.

*Elector's oaths.*

1. You, A. B., do swear that you are by law qualified to vote for this election for the county of \_\_\_\_\_ and for the township of \_\_\_\_\_ respectively, [*or for one of them, as the case may be,*] in right of the property and title which have now been taken down in the poll book, and read to you; and that you have not been polled nor have given a vote for any candidate at this election within this district or any other district, and that the place of your abode is at \_\_\_\_\_ in the [*town, district, or settlement, as the case may be,*] of \_\_\_\_\_ and is, according to the best of your knowledge and belief, within this electoral district.

2. You, A. B., do swear that you are by law qualified to vote for this election for the township of \_\_\_\_\_ in right of the property and title which have now been taken down in the poll book, and read to you; and that according to your best belief the said property lies in this electoral district, and that you have not been polled, nor have given a vote, for any candidate at this township election, either in this district or any other district, and that the place of your abode is within this county, but is not within the said township of \_\_\_\_\_

3. You, A. B., do swear that you are by law qualified to vote for this election for the county of \_\_\_\_\_ and for the township of \_\_\_\_\_ respectively, [*or for one of them, as the case may be,*] in right of the property and title which have now been taken down in the poll book, and read to you; and that you have not been polled, nor have given a vote, for any candidate at this election, within this district or any other district, and that the place of your abode is at \_\_\_\_\_ [*in the township, district or settlement, as the case may be,*] of \_\_\_\_\_.

4. You, A. B., do swear that the property in respect whereof you do claim a right to give your vote at this election for the county of \_\_\_\_\_, and for the township of \_\_\_\_\_, or for either of them, [*or for the county of \_\_\_\_\_ or for the township of \_\_\_\_\_ as the case may be,*] hath not been granted or conveyed to you fraudulently on purpose to qualify you to give such vote, and that you have not received or had by yourself, or any person whomsoever in trust for you, or for your use and benefit, directly or indirectly, any sum of money, office, place, employment, gift or reward, nor any promise or security for any money, office, place, employment or gift, in order to give your vote at this election, and that you have not before been polled, nor have given a vote, for any candidate at this election, and that your place of residence is at \_\_\_\_\_.

## CHAP. 8.

## CHAPTER 8.

## OF SCRUTINIES.

Sheriff's duty when scrutiny persisted in.

1. When a scrutiny shall be persisted in, the sheriff shall attend at the appointed time and place with a clerk, and every candidate desiring to proceed in the scrutiny shall then, by himself or his agent, name a freeholder as sheriff's assistant.

Oath of sheriff's assistant.

2. The sheriff and his assistants shall then take an oath in the following form:

"I, A. B., do swear that I will act impartially in the holding of this scrutiny."

The oath to be administered to the sheriff by a justice of the peace, and to the assistants by the sheriff.

Clerk's oath.

3. The clerk shall take an oath in the following form:

"I, A. B., do swear that I will faithfully perform my duty at this scrutiny."

The oath to be administered by the sheriff.

Appointment of time and place for scrutiny.

4. The sheriff and assistants, after the oaths have been administered, shall appoint a time and place for proceeding with the scrutiny; the time not to be less than three days, nor more than seven days thereafter.

Continuation of scrutiny.

5. The sheriff and his assistants and clerk shall, at the time and place appointed, proceed with the scrutiny, and shall continue the same from day to day so long as any party shall tender evidence.

Evidence, how received or rejected.

6. The sheriff and his assistants shall determine upon the reception or rejection of evidence, and shall have each one voice therein, and where equally divided, the sheriff shall have an additional casting voice.

Duty of clerk.

7. The clerk shall take down in writing and engross the evidence received, and shall minute and keep with the testimony, papers received.

Votes marked objected may be scrutinized.

8. No vote shall be scrutinized which shall not have been marked objected on the sheriff's poll book.

Votes polled in a wrong district

9. The circumstance of an investigation having been had on the ground of a voter having been polled in a wrong district, or more than once, shall not prevent its being scrutinized on other grounds if marked objected.

Competency of witnesses. Witnesses how sworn. Of protests concerning evidence.

10. No person shall be a witness touching his own vote.

11. Witnesses shall be sworn by the sheriff.

12. Protests in writing may, at or before the close of the scrutiny, be filed on behalf of any candidate proceeding in the scrutiny in respect of the reception or rejection of evidence; such protests to set out specifically the evidence received or rejected, and the reasons for the dissatisfaction with the decision in reference thereto.

13. If the sheriff shall be unable personally to hold the scrutiny, the deputy sheriff, or other person specially deputed by the sheriff, shall hold the same in the manner, and with the rights, and subject to the provisions, as the sheriff if present.

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When deputy sheriff may hold scrutiny

14. If a sheriff's assistant shall not attend throughout the scrutiny, another freeholder nominated on behalf of the candidate by whom the assistant shall have been chosen, shall be sworn, and act in his place in like manner.

If assistant shall not attend another to be appointed.

15. If the clerk shall, at any time, not attend, another shall be appointed by the sheriff in his place, and be sworn, and act in like manner, and have the same rights.

If clerk shall not attend another to be appointed.

16. The sheriff shall return to the house of assembly the engrossed copy of evidence and proceedings held at the scrutiny, with a certificate annexed under his hand and the hand of his clerk, and also the original papers received at the scrutiny.

Sheriff to return proceedings to the assembly.

17. The sheriff shall be entitled to receive ten shillings for every day he shall be actually engaged in holding the scrutiny from every candidate proceeding therein.

Sheriff's fees on scrutiny.

18. The clerk shall be entitled to receive six pence per folio for the original minutes, and three pence per folio for the copy for the assembly; the amount to be paid in equal proportions by the candidates proceeding in the scrutiny.

Clerk's fees by whom paid.

19. Every candidate proceeding in the scrutiny shall be entitled to receive from the clerk a fair copy of the minutes, upon paying therefor three pence per folio.

Candidate entitled to copies of minutes.

20. If a candidate who demanded the scrutiny shall, after appointing his assistant, abandon the same, or, having gone through the scrutiny, shall not petition the house of assembly against the election, and enter into the requisite recognizance and proceed in the investigation, the opposing candidate at the scrutiny may, after demand made, recover from him, by action in the supreme court for money paid, the expenses incurred for sheriff's and clerk's fees at the scrutiny, and for the engrossing of papers and necessary attendance of witnesses thereat; the expenses to be first taxed, and the just amount thereof determined on proof on affidavit, by a judge of the supreme court after reasonable notice to the opposite party, according to the rates established in the supreme court.

Manner of recovering expenses where scrutiny abandoned

21. If a sheriff shall wilfully be guilty of a violation of this chapter, he shall forfeit two hundred pounds.

Penalty on sheriff for misconduct.

CHAP. 9.**CHAPTER 9.**

## OF CONTROVERTED ELECTIONS.

Qualifications  
of members;  
oath.

1. Every member, before he assumes his seat or shall presume to vote in the house of assembly, if required by order of the house, shall deliver to the clerk a schedule containing the particulars of his qualification, and at the foot thereof shall subscribe the following oath, to be administered by the clerk:

“I, A. B., do swear that I am by law qualified to be elected for the house of assembly, and that the foregoing schedule doth contain a full, true, and particular account, to the best of my knowledge and belief, of the property in respect whereof I claim a right to be elected, and of my title thereto, and that the same hath not been conveyed or granted to me fraudulently on purpose to qualify me to be so elected.”

And he shall also deliver to the clerk the title deeds or papers under which he claims title to the property in the schedule, or attested copies thereof.

Proceedings on  
petition against  
a return.

2. When a petition complaining of an undue election, or return of a member to serve in the house of assembly, shall be presented to the house, a day and hour shall be appointed by the house for taking the same into consideration, and notice in writing shall be forthwith given by the speaker to the petitioner and the sitting member, or their agents, accompanied with an order to them to attend the house at the time appointed, by themselves, their counsel, or agents, and if at the time appointed none of the petitioners shall appear, either personally, or by counsel, or agent, the order for taking the petition into consideration shall be discharged, and the petition shall not be further proceeded in. No such petition shall be received after fourteen days shall have elapsed from the time that the member whose return is complained of shall have taken his seat.

Recognizance  
required.

3. No proceeding shall be had on a petition unless at or before the time appointed for consideration thereof at least one of the petitioners shall enter into a recognizance to her majesty, with sureties, in the sum of two hundred pounds, for the payment of the costs and expenses that may become payable by the petitioners, under any report of committee on the petition; the recognizance, in case of non-payment, to be estreated for the benefit of the parties entitled to the costs and expenses.

Proceedings on  
undefended re-  
turn.

4. If before the day appointed for considering the petition the member whose return is complained of shall die, or accept the office of legislative councillor, or declare, under



his hand, his intention not to defend his return, the speaker shall give notice thereof in writing to the sheriff of the county where the election was had, and shall also notify the same in two public newspapers, so that any of the freeholders of the county or township for which the member was returned may, if they think fit, petition the house to be admitted as parties in the room of the member, and they shall thereupon be so admitted as parties, and stand, as respects the controversy, in the place of the sitting member.

5. At the time appointed for considering the petition, and previous to reading the order of the day therefor, the speaker shall direct the serjeant-at-arms to go to the places adjacent and require the immediate attendance of members on the business of the house; and after his return the house shall be counted, and if there are less than thirty-three members present the order shall be adjourned to a particular hour on the following day, when the house shall proceed in the same manner, and so, from day to day, until there shall be in attendance thirty-three members at the reading of the order.

6. When thirty-three members shall be present, the petitioners, their counsel or agents, and the counsel or agents of the sitting member, shall be ordered to attend at the bar, and then the door of the house shall be locked, and no member shall be suffered to enter into or depart from the house until the drawing shall be completed. The order of the day shall then be read, and the names of the members written on distinct pieces of paper, and, as nearly as may be, of equal size, and rolled up in the same manner, shall be equally divided, and put into two several boxes placed on the table, and shall be shaken together, and the clerk shall publicly draw out of the boxes alternately the pieces of paper and deliver them to the speaker to be read to the house until fifteen names of members then present be drawn.

7. If the name of a member who shall have voted at the election complained of, or against whose return a petition shall be depending shall be drawn, it shall be set aside.

8. If a member drawn shall verify, on oath, an excuse, the substance thereof shall be taken down by the clerk, in order that the same may afterwards be entered on the journals, and the opinion of the house shall be taken thereon, and if they shall resolve that the member is unable to serve, or cannot, without great detriment, serve on the committee, he shall be excused therefrom.

9. If the name of a member then serving on one election committee be drawn, he shall be excused from serving on a second.

10. When members are set aside or excused, others shall be drawn in their place, who may in like manner be set aside or excused and others drawn in their place until the

Proceedings at the time for considering the petition.

Committee how drawn.

Names of members voting at election, or petitioned against, to be set aside. Members how and when excused.

Members serving on a committee to be excused.

When members excused others names to be drawn.

CHAP. 9. whole number of fifteen members not liable to be set aside or excused shall be complete.

Committee how struck: to be sworn: how adjourned.

11. When the drawing shall be completed the door of the house shall be unlocked, and lists of the fifteen members shall be given to each party, and they shall immediately retire with the clerk or his assistant, and each party, his counsel or agent, beginning on the part of the petitioners, shall alternately strike off one of the fifteen members until the number shall be reduced to seven: and the clerk or assistant, within one hour at farthest from the time of the lists being given, shall deliver into the house the names of the seven members then remaining. And the seven members shall be sworn at the table "well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence," and shall be a committee to determine the election: and the house shall by order direct them to meet at a certain time, and the place of their meeting shall be in a committee room of the house, and they shall sit every day, and shall not adjourn for more than a day without leave of the house, upon special cause assigned.

Committee how appointed and struck in undecided cases.

12. If at the time appointed for considering the petition the sitting member shall not appear by himself, or his counsel or agent, the committee shall be appointed as follows: the names of fifteen members shall be drawn in manner hereinbefore prescribed, but in reducing the lists the clerk or clerk's assistant shall stand in the place of the sitting member; and the same method of reducing the number shall be followed whenever a party waives his right of striking off names.

Chairman how selected.

13. The committee shall, on meeting, select a chairman, and if in the selection the voices are equal, the member whose name was first drawn in the house shall have an additional casting vote; and the same course shall be pursued, if necessary, to elect a new chairman, on the death or necessary absence of the previous chairman.

Powers and duty of committee

14. The committee shall have power to send for persons and papers, and shall examine witnesses on oath, and shall consider evidence and proceedings duly had on a scrutiny, and referred to them by the house, and may admit additional evidence sworn to be material, and which in their judgment ought to be received; and shall determine whether the petitioner or the sitting member, or either of them, is duly returned or elected, or whether the election is void, or whether a new writ ought to issue; and their determination shall be final, and the house on being informed thereof by the chairman of the committee, shall order the same to be entered on the journals, and give the necessary directions for carrying the determination of the committee into execution.

Committee may report specially

15. If the committee shall come to any resolution other

than the determination above mentioned, they may report the same to the house for their opinion, and the house may confirm or disagree with the resolution, and make order thereon as they may think proper.

"CHAP. 9.

16. No member of the committee shall absent himself therefrom without leave of the house, and the chairman shall report the name of a member so absenting himself, who shall, for his neglect, be punished or censured at the discretion of the house; and the committee shall never proceed unless five members are present.

Committee-man absenting himself.

17. If the members of the committee shall be unavoidably reduced to less than five, and shall so continue for three days, the committee shall be dissolved, and another chosen in like manner; but the evidence already taken shall be considered by the new committee.

Where committee reduced to less than five.

18. If persons summoned by the committee shall disobey the summons, or if witnesses before the committee shall prevaricate or misbehave in giving or refusing to give evidence, the chairman may, by direction of the committee, report the same to the house for the interposition of their authority or censure.

Disobedience to summons of committee.

19. When the committee shall think it necessary to deliberate among themselves, they may, after hearing the evidence and counsel on both sides, direct the room to be cleared.

Their power and discretion in certain cases.

20. Decisions of the committee shall be made by a majority of voices, and if the voices be equal, including the chairman, he shall have an additional casting vote.

A majority of voices shall decide.

21. The oaths by this chapter directed to be taken in the house shall be administered by the clerk or his assistant, and those before the committee by the chairman.

Oaths how administered.

22. If the general assembly shall be prorogued while a committee shall be sitting, the committee shall not be dissolved, but shall be thereby adjourned to twelve o'clock on the fourth day following that on which the assembly shall meet again in session, and the former proceedings of the committee shall remain in force, and the committee shall meet at the time to which it shall be so adjourned, and continue to act as if there had been no prorogation.

Effect of prorogation while a committee sitting.

23. The committee when they report their final determination to the house, shall also report whether the petition did or did not appear to them frivolous or vexatious, and also whether the opposition thereto did or did not appear to them frivolous or vexatious.

Committee to report whether the petition was frivolous.

24. When a petition shall be reported frivolous or vexatious, the sitting member shall be entitled to recover from the petitioners, or any of them, the expenses of opposing the same.

If a petition reported frivolous expenses recoverable.

25. When the opposition to a petition shall be reported frivolous or vexatious, the petitioners shall be entitled to recover from the sitting member the expenses of prosecuting such petition.

If opposition to a petition reported frivolous expenses recoverable.

**CHAP. 10.**

Expenses how taxed.

26. The expenses of prosecuting or opposing a petition shall include witnesses' fees as well as other costs and expenses, and shall be ascertained as follows:—The speaker, on application, shall direct them to be taxed by the clerk of the house and a master in chancery, who shall tax the same and report the amount to the speaker, who, on the approval of the house, or of such part thereof as the house may allow, shall, on application, deliver to the parties a certificate under his hand, expressing the amount of the expenses allowed; and the persons appointed to tax the expenses and report the amount shall be entitled to such fees, to be paid by the parties for whom the bill is taxed, and included therein, as may be fixed by resolution of the the house.

Expenses how recovered.

27. The parties entitled to expenses, or their representatives, may demand the amount certified from any of the persons liable therefor, and on non-payment may recover the same by action of debt in the supreme court, wherein it shall be sufficient for the plaintiffs to declare that the defendants are indebted to them in the amount certified by virtue of this chapter; and the certificate signed by the speaker shall have the effect of a warrant to confess judgment, and the court shall on motion, and the production of the certificate, enter judgment for the plaintiffs for the amount specified in the certificate in the like manner as if the defendants had signed a warrant to confess judgment in the action for that amount.

A party paying may recover a rateable contribution.

28. Where the expenses shall have been recovered from any person, he may recover in like manner from others, liable to the payment of the same expenses, a proportionable share thereof, according to the number liable.

Explanation of the word sitting member.

29. The word "sitting member," when used in this chapter, shall also comprehend parties admitted to oppose a petition.

**CHAPTER 10.**

## OF VACATING SEATS.

Seats how vacated.

1. Any member of the house of assembly may, by written notice to the speaker, vacate his seat.

Offices which vacate seats.

2. If any member shall accept of any of the following offices, his seat shall become vacant, but he may be re-elected, that is to say: the offices of attorney general, solicitor general, provincial secretary, receiver general, financial secretary, commissioner of crown lands, surveyor general.

Vacancies how supplied.

3. Whenever a seat shall become vacant, the speaker

shall require that a writ may be issued to supply the vacancy. CHAP. 11.

4. The speaker may vacate his seat as speaker and member, either by a declaration to that effect in the house, if in session, or by written notice to any two members, in which case the house, if in session, or otherwise the two members, shall require, that a writ be issued to supply the vacancy. Speaker's seat as speaker and member how vacated.

## TITLE III.

### OF THE PUBLIC REVENUE.

#### CHAPTER II.

##### OF THE CASUAL AND TERRITORIAL REVENUE.

1. The proceeds of all the casual and territorial revenues of the crown in the province, as hereafter designated, shall be paid into the provincial treasury. Casual and territorial revenue where paid.

2. The several casual and territorial revenues of the crown, and the monies and funds, and other rights which are placed at the disposal of the general assembly for the use of the province, under and by virtue of this chapter, are declared to be—all rents, sums of money, returns, profits and emoluments, arising, reserved, due, owing, or in any manner whatsoever which shall have heretofore accrued and shall be in hand, or shall be hereafter to be received in respect of any lease, demise, sale, grant, transfer or occupation of any of the crown lands, mines, minerals or royalties of her majesty within the province, whether in the island of Cape Breton or in any other part of the province, of whatsoever nature or description; and also all fees and payments, and commutation therefor, at the office of the secretary of the province, received or payable, in respect of any writings, licenses, instruments, commissions or patents, there made or issued, and on which fees were heretofore payable for the lieutenant governor and secretary of the province; and lastly, all fines, penalties and forfeitures, under any law of the province imposed and applicable for the use of her majesty. Of what it consists.

3. All the right and title of her majesty, whether in reversion or otherwise, of, in, to, and out of, all mines of gold, silver, iron, coal, iron-stone, lime-stone, slate-stone, slate-rock, tin, copper, lead, and all other mines and minerals, and ores, within the province, which by indenture of lease Transfer of mines and minerals.

## CHAP. 11.

bearing date on or about the twenty-fifth day of August, one thousand eight hundred and twenty-six, were granted, demised and leased by or on the part of his late majesty king George the fourth to his late royal brother the duke of York and Albany, to hold to his royal highness and his assigns for the term of sixty years from the date of the lease, under certain rents and renders therein contained, as by reference to the lease will at large appear; and also all rents and arrears of rents and returns due, or to become due, by virtue of the lease, with all powers, rights and authorities, whether of entry for forfeitures, or breach of condition, or otherwise, in such lease, reserved and contained in respect of the breach of any condition thereof, and also all the estate, right and title of her majesty, reversionary or otherwise, of, in, and to all such coal mines in the island of Cape Breton, or of, in, and to all such reserved mines at Pictou, which were agreed to be leased and demised by his said late majesty for the yearly rent of three thousand pounds sterling, and certain other rents or reservations payable for the use of his said majesty, and which mines, under such agreement, are in possession of, and were, or are now, in operation and worked by or for the general mining association; and likewise the said yearly rent of three thousand pounds sterling, and all other rents and reservations by such agreements, reserved or payable, and all rights, powers, and authorities, whether of entry upon forfeiture or breach of condition, or otherwise, in such agreement contained or reserved, in respect of any breach of the condition thereof: and also all mines of gold, silver, iron, coal, iron-stone, lime-stone, slate-stone, slate-rock, tin, copper, lead, and all other mines, minerals, and ores within the province, including the island of Cape Breton, of which the title is now in her majesty, are hereby respectively assigned, transferred, and surrendered to the disposal of the general assembly of the province, and shall and may be subject only to the existing rights of the lessees and persons entitled under such lease and agreement, and of all persons lawfully claiming under them, or any of them, managed, leased, disposed of, made available, paid and applied in such manner, and to and by such officers and persons, and for such public uses and purposes as by any act of the general assembly for the time being shall be directed.

Management  
provided for.

4. The general assembly may provide for the managing, collecting, and receiving of the revenues, and other matters hereby surrendered and transferred, and for appointing proper officers for the revenues.

Collection pro-  
vided for.

5. For the more easy collection of such revenues, the officers or persons charged with the collection or management of the revenue, may in the name of her majesty, but to the use of the province, take all such lawful ways and means, by information, suit or proceeding at law or in equity, as by

or on behalf of her majesty, might be adopted in respect of the revenues, or any of the lands, mines, or royalties chargeable therewith if the surrender, transfer, and assignment had never been made for the use of the province. CHAP. 12.

6. Nothing herein contained shall interfere with the grant, sale, lease, or disposal of any of the ungranted lands of the crown in this province, except only the mines and minerals hercinbefore specified by or on behalf of her majesty, but all such grants, sales, leases, or disposal of such ungranted lands, and the management, direction or control thereof, shall remain in such officers as her majesty shall deem proper, or as may be directed by any law of this province, and the nett proceeds only of such grants, sales, leases, or disposals of such ungranted lands, after deducting the necessary expenses of managing the same, shall be paid over to the treasury of the province; but an account of such expenses shall be annually submitted to the general assembly, and the salary or allowance of the officers employed, and the expenses of the department, be subject to the control and regulation of the general assembly, and no other or greater salary or allowance or expenses shall be taken than such as shall be allowed thereby. Proceeds of crown lands where payable

7. This chapter shall continue in operation until eighteen months after the demise of her present majesty (whom God long preserve), and thereafter every thing herein contained, and the transfer, surrender, and assignment hereby made, shall cease and determine. Duration of chapter.

## CHAPTER 12.

### Part the First.

#### OF CUSTOMS DUTIES.

1. This chapter shall come into operation on the first day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and shall continue in force until the first day of April, one thousand eight hundred and fifty-nine. Date of operation of chapter.

2. There shall be collected and paid unto her majesty, for the use of the province, upon all goods brought into this province by sea or inland carriage, the several duties set forth in figures in the table hereinafter contained, denominated "table of duties," opposite the respective articles in such table mentioned, according to the value, number or quantity of every such article. Payment of duties provided for.

3. Animals certified by the president and secretary of any agricultural society to have been imported for the Animals for improving breeds exempted.

- CHAP. 12.** purpose of improving the breed, shall be admitted duty free.
- Table of exemptions provided.** 4. The goods mentioned in the table hereinafter contained, denominated "table of exemptions," shall be free of duty.
- Standard for collecting duties.** 5. The duties shall be collected, paid and received, according to the British weights and measures in use in this province; and where the duties are in the table of duties imposed according to any specific quantity, value or number, the same shall apply in the like proportion to any greater or less quantity, value or number.
- Collection and application of duties.** 6. The duties shall be collected, paid and received, and the proceeds thereof applied under the provisions of the provincial statutes from time to time in force concerning the same.
- Duties where and how received.** 7. The duties shall be paid to the collectors of the colonial revenue and received at the receiver general's office, either in treasury notes of the province at their full value of twenty shillings each, or in current coin at the legal rate of tender.
- How applied and how drawn.** 8. Duties paid into the receiver general's office shall be carried to account of the provincial revenue and become part of the public funds, and shall be paid and applied to such purposes, and no other, as may be expressed in the provincial statutes from time to time in force; and shall, even when authorized by any such statute, be drawn only by warrant under the hand and seal of the governor.
- Articles of other provinces exempted by proclamation.** 9. The governor in council may, whenever it shall be thought advisable so to do, declare by proclamation what articles the growth, production or manufacture of the British North American possessions of Canada, New Brunswick; Prince Edward Island, or Newfoundland, or any of them, may be imported into the province free of duty; and may declare in what manner and under what restrictions the same may be so imported.
- Articles exempted in case of American reciprocity.** 10. Whenever the importation into the United States of America of the following articles of the growth and production of British North America, viz: grain and bread stuffs of all kinds, potatoes and other vegetables, fruits, seeds, hops, hay and straw, animals, salted and fresh meat, butter, cheese, lard, tallow, hides, horns, wool, undressed skins, furs of all kinds, ores of all kinds, iron in pigs and blooms, copper, lead in pigs, grindstones and stones of all kinds, earth, coals, lime, ochres, gypsum ground or unground, rock salt, wood, timber, and lumber of all kinds, firewood, ashes; bark, fish, fish oil, train oil, spermaceti oil, head matter and blubber, fins and skins, the produce of fish or creatures living in the water, or any of such articles, shall be by law admitted free from duty, the governor in council may, by proclamation in the royal gazette, fix a short day thereafter on which the duties on like articles, or any



of them, being the growth and production of the United States, shall cease; and from and after the day so appointed all the articles specified in the proclamation, being the growth and production of the United States, shall be admitted into the province duty free upon such proof of origin and character as may be required by any order of the governor in council. CHAP. 12.

11. Provided, that if at any time hereafter, her majesty, Proviso. by order in council, shall declare that by virtue of any treaty with her majesty any other foreign nation is entitled to trade with Nova Scotia, on the same terms as the United States, it shall be lawful for the governor in council, and he is required forthwith, on the receipt of such order in council, to issue a proclamation, declaring that from the date thereof, or from such other day as shall be fixed by her majesty in council, the duties on all such articles as are by this chapter allowed to be imported free of duty, being the growth and production of the United States, shall cease, on the like articles being the growth and production of such foreign nation; and thereupon the duties upon such last mentioned articles shall cease to be payable, so long as such foreign nation shall allow the free importation of the like articles, being the growth and production of Nova Scotia.

12. Wheat flour, the production of Canada, imported into this province, shall be admitted through a warehouse in the United States, or a port in the British provinces, being duly certified as to its origin, on the same terms as if imported direct. Canada flour imported through United States or British provinces.

*Table of Duties.*

ARTICLES.	Duties in sterling money-		
	£	s.	d.
Apples, fresh or dried, per barrel, . . . . .	0	4	0
Bacon, per cwt., . . . . .	0	9	0
Beef, salted, per barrel, . . . . .	0	4	0
" fresh, per cwt., . . . . .	0	5	0
Biscuit, fine, and bread, including crackers or cakes, per cwt., . . . . .	0	3	4
Butter, per cwt., . . . . .	0	8	0
Candles, tallow, per lb., . . . . .	0	0	1
All other candles per lb., . . . . .	0	0	3
Cattle, viz: horses, mares or geldings, each, . . . . .	2	0	0
Neat cattle, viz: oxen or other neat cattle, three years old or upwards, each, . . . . .	1	10	0
Cows and cattle, under three years old, each, . . . . .	0	10	0
Sheep, each, . . . . .	0	3	0

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ARTICLES.	Duties in sterling money.		
	£	s.	d.
Hogs, over 100 lbs. weight, each, . . . . .	1	0	0
of 100 lbs. weight and under, each, . . . . .	0	2	0
Cheese, per cwt., . . . . .	0	5	0
Chocolate or cocoa paste per lb., . . . . .	0	0	1
Coffee, green, per lb., . . . . .	0	0	1
Roasted, burned, or ground, per lb., . . . . .	0	0	2
Flour, viz: wheat flour per barrel, . . . . .	0	1	0
Hams, smoked or dried, per cwt., . . . . .	0	9	0
Lard, per cwt., . . . . .	0	8	0
Leather,—sole leather, including hides and skins partially dressed therefor, per lb., . . . . .	0	0	1
Hides and skins partially dressed, per lb., . . . . .	0	0	2
Molasses, per gallon, . . . . .	0	0	2½
Onions, per cwt., . . . . .	0	2	6
Pears, fresh or dried, per barrel, . . . . .	0	4	0
Pork, salted, per barrel, . . . . .	0	4	4
fresh, per cwt., . . . . .	0	4	0
Raisins, in boxes, per lb., . . . . .	0	0	0½
in other packages, per lb., . . . . .	0	0	0½
Brandy, whiskey, gin, cordials, and other spirits, except rum, not exceeding the strength of proof by Syke's hydrometer, and so in proportion for any greater strength than the strength of proof, per gallon, . . . . .	0	2	8
Rum, not exceeding the strength of proof by Syke's hydrometer, and so in proportion for any greater strength than the strength of proof, per gallon, . . . . .	0	1	6
Shrub or santee, per gallon, . . . . .	0	1	4
Sugar,—refined, per cwt., . . . . .	0	10	0
Crushed and bastard facings, per cwt., . . . . .	0	10	0
Candied brown, per cwt., . . . . .	0	10	0
Brown, or Muscovado, not refined, per cwt., . . . . .	0	7	0
Teas, viz: souchong, congo, pekoe, bohea, pouchong, and all other black teas, per lb., . . . . .	0	0	2
Gunpowder, hyson, young hyson, twankay, and other green teas, per lb., . . . . .	0	0	4
Tobacco, manufactured, except snuff and ci- gars, per lb., . . . . .	0	0	1½
Tongues of cattle, dried or pickled, per cwt.	0	9	0

Ant 20 p. c. in add. to these duties

ARTICLES.	Duties in sterling money.			CHAP. 12.
	£	s.	d.	
Wines, viz: hock, constantia, malmsey, to- kay, champagne, burgundy, her- mitage, claret, called lafitte; latour, lafayette, margaux or hautbrian, per gallon, . . .	0	3	0	} And 20 per cent. in addition to these duties.
Madeira, port, and sherry wines, of which the first cost is £30 per pipe or upwards, per gallon, . .	0	2	6	
Other claret wines, barsac, sautern, vin de grave, moselle, and other French wines, and Lisbon and German wines, per gallon. . .	0	1	3	
All other port, Madeira, and sherry wines, Teneriffe, Marsella, Sici- lian, Malaga, Fayal, and all other wines, per gallon, . . . . .	0	1	3	
Clocks, and all wheels, machinery, and ma- terials, for manufacturing clocks,	20	0	0	}
Confectionary, syrups, and articles manu- factured from sugar, For every £100 of the value,				
Cigars and snuff, Currants and figs, Leather, viz: boots, shoes and leather, upper leather, manufactures of all sorts,	10	0	0	
Meat, fresh, Poultry of all sorts, dead, For every £100 of the value,				
Anchors, grapnels, and anchor palms, Cables of hemp, or other vegetable sub- stance, or of iron,				
Copper, viz: plates, sheets, bars or bolts, for shipbuilding; wrought or cast for machinery, pure, or without other metal; copper castings of every de- scription, for machinery, for mills, or steamboats; copper and composition nails and spikes, for shipbuilding,				
Cordage, tarred or untarred, whether fitted for rigging or otherwise,	2	10	0	
Cotton yarn, Iron, viz: in bars or bolts, castings for mills or steam engines, and cast or un- wrought pipes and tubes, sheet iron and iron spikes,				
Machinery of all sorts, of copper or iron for mills, steamboats and manufactories, and sheathing of muntz metal, For every £100 of the value,				

## CHAP. 12.

## ARTICLES.

Duties in sterling money—  
£ s. d.

Oakum,	}	
Pitch,		
Sail cloth of all kinds, canvass included,		
Tar,		
Zinc, viz: zinc sheathing of a size forty-eight inches long by fourteen inches wide, intended for and to be used as sheathing for vessels, and zinc sheathing nails,		2 10 0
For every £100 of the value,	}	
All other goods, wares, and merchandize, not otherwise charged with duty, and not enumerated in the table of exemptions,	}	10 5 0
For every £100 of the value,		}

*Table of Exemptions.*

Table of exemptions.

- Ashes, viz: pot ashes and pearl ashes.
- Asses and mules.
- Baggage and apparel of passengers not intended for sale.
- Barilla and soda ash.
- Beans.
- Biscuit or bread.
- Books not prohibited to be imported into the United Kingdom.
- Bullion, gold or silver.
- Burr stones.
- Coal.
- Cocoa.
- Coin, gold and silver coins and British copper coins.
- Copper, viz: copper ore, or in pigs or bricks, old or worn, or fit only to be re-manufactured.
- Corkwood.
- Corn, viz: wheat, rye, indian corn, barley, oats, rice, and buckwheat, unground; barley meal, rye meal, oatmeal, indian meal, buckwheat meal, peas, beans, and calavances.
- Engravings.
- Fish, viz: fresh, dried, salted or pickled.
- Fish hooks.
- Fish oil, viz: train oil, spermaceti oil, head matter and blubber; fins and skins, the produce of fish or creatures living in the sea.
- Flax.
- Furniture that has actually been in use, working tools and implements, the property of immigrants or persons coming to reside in the province, and not intended for sale.

- Hay.  
Hemp.  
Hides, or pieces of hides, raw, not tanned, curried or dressed.  
Horns.  
Horses and carriages of travellers, and horses, cattle, carriages, and other vehicles when employed in carrying merchandize, together with the necessary harness and tackle, so long as the same are actually in use for that purpose.  
Iron, viz: unwrought or pig iron, ores of iron of all kinds, iron rails for railroads, boilers, plates and plough moulds, hoop iron.  
Lintels,  
Lime and limestone.  
Lines for the fisheries of all kinds.  
Manures of all kinds.  
Maps and charts.  
Materials of ships registered and owned in this province, and wrecked or stranded on the coasts of the adjacent colonies or elsewhere, upon satisfactory proof by affidavit being given to the collector of the identity of the materials.  
Nets, fishing nets and seines of all kinds.  
Ores of all kinds.  
Paintings.  
Palm oil.  
Pilot bread.  
Plants, shrubs and trees.  
Plate of gold and silver, old and fit only to be re-manufactured.  
Potatoes.  
Printing presses and types.  
Printing paper, of not less than demi size.  
Rags, viz: old rags, old rope, junk and old fishing nets.  
Rosin.  
Sails, rigging and ship materials saved from vessels wrecked on the coast of the province.  
Salt.  
Seeds of all kinds.  
Skins, furs, pelts, or tails, undressed.  
Stone, unmanufactured.  
Sugar of the maple.  
Tallow.  
Twines and lines used in the fisheries.  
Tobacco, unmanufactured.  
Tow.  
Turpentine.  
Whale fin, or bone.  
Wood, viz: boards, planks, staves, square timber, shingles and firewood.

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## CHAPTER 12.

## Part the Second.

## OF A CERTAIN TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA.

Preamble.

Whereas it is expedient to provide for giving effect, as regards this province, to the treaty between her majesty and the United States of America, signed on the fifth day of June, in the year of our Lord one thousand eight hundred and fifty-four:

Power of governor to suspend, &c.

1. The articles enumerated in the schedule to this chapter, being the growth and produce of the United States of America, shall be admitted into this province free of duty, so long as the treaty shall remain in force, any law, act, or statute, to the contrary notwithstanding, except that if at any time the United States shall, under the terms of the treaty, suspend the operation of the third article thereof, so far as this province is affected thereby, then the governor of this province may, if he see fit, declare such suspension by proclamation, after which the exemption from duty under this chapter shall cease while such suspension shall continue; but the governor may again, whenever such suspension shall cease, declare the same by proclamation, from and after which, such exemption shall again take effect.

Further proceedings may be taken.

2. It shall be lawful for the governor in council, by any order or orders to be made for that purpose, to do any thing further in accordance with the spirit and intention of the treaty, which shall be found necessary to be done, on the part of this province, to give full effect to the treaty; and any such order shall have the same effect as if the object thereof was expressly provided for by this chapter.

Secs. 1 to 18 of chap. 94 suspended while treaty in force.

3. The first eighteen sections of the ninety-fourth chapter of this series, "of the coast and deep sea fisheries," together with such provisions of all other laws, acts or statutes of this province now in force, as are contrary to, or inconsistent with, the terms and spirit of the treaty, are hereby declared to be suspended as regards citizens and inhabitants of the United States of America, and vessels, boats and crafts belonging to the citizens and inhabitants of that country, and shall continue to be so suspended, and not in force so long as the treaty shall continue and be in force; any law, act or statute, to the contrary notwithstanding.

## SCHEDULE TO THIS ACT.

Grain, flour, and breadstuffs of all kinds.  
 Animals of all kinds.  
 Fresh, smoked, and salted meats.

Cotton wool, seeds and vegetables.  
 Undried fruits, dried fruits.  
 Fish of all kinds.  
 Products of fish and all other creatures living in the water.  
 Poultry, eggs.  
 Hides, furs, skins, or tails undressed.  
 Stone or marble in its crude or unwrought state.  
 Slate.  
 Butter, cheese, tallow.  
 Lard, horns, manures.  
 Ores of metals of all kinds.  
 Coal.  
 Pitch, tar, turpentine, ashes.  
 Timber and lumber of all kinds, round, hewed and sawed,  
 unmanufactured in whole or in part.  
 Firewood, plants, shrubs and trees.  
 Pelts, wool.  
 Fish oil.  
 Rice, broom corn, and bark.  
 Gypsum, ground or unground.  
 Hewn, wrought, or unwrought burr or grindstones.  
 Dye stuffs.  
 Flax, hemp, and tow unmanufactured.  
 Unmanufactured tobacco.  
 Rags.

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## CHAPTER 13.

### OF THE BOARD OF REVENUE.

1. The receiver general shall be the president of, and, Board of revenue how composed. along with the financial secretary and three other persons to be appointed by the governor in council, shall constitute the board of revenue, the seats at such board to be considered honorary appointments, and the members to be sworn into office.

2. The board shall superintend the working and practical effects of the revenue system, and report thereon to the governor when requisite; they shall examine claims for drawbacks and grant certificates therefor when allowed, and shall direct and carry on prosecutions against delinquent officers and their sureties, and also prosecutions for seizures, forfeitures, and breaches of the revenue laws, over which they shall have a general control; and they may remit penalties in whole or in part, and direct the restoration of property seized, under such terms as they may deem just. Their power and duty.

CHAP. 14.**CHAPTER 14.**

## OF OFFICERS OF THE CUSTOMS.

Appointment of collectors.

1. The governor in council may define and alter the limits of ports, and appoint for every such port, except the port of Halifax, one collector of colonial duties, who may also be empowered to act as landing waiter, gauger and weigher, and may appoint so many additional officers in any port or place within this province as shall, from time to time be deemed necessary for the due security of the colonial revenue, and for the prevention of frauds thereto; and such officers shall be paid by warrant on the treasury at such rates as shall be fixed by the governor in council, subject to the revision of the legislature at the first ensuing session.

Appointment and remuneration of additional officers authorized.

Bonds given and registered

2. Every collector shall, upon appointment, enter into a bond with two sureties in one thousand pounds for the faithful performance of his duties. The bonds shall be registered at length on the oath of a subscribing witness, in a book to be kept for that purpose by the provincial secretary; and if a bond be lost a copy thereof, taken from the registry and certified by the provincial secretary, shall be received in evidence.

Death or insolvency of sureties.

3. If either of the sureties shall die, become insolvent, or remove from the province, the board of revenue shall require the collector for whom he was surety, to give a new bond.

Sets of books to be kept.

4. Collectors shall keep regular sets of books, wherein shall be entered all receipts and payments of money, permits for the removal of dutiable goods, and certificates of drawback: which books shall be regularly balanced and produced for inspection, with all entries and documents in their office, when called for by the financial secretary or the committee of public accounts.

Quarterly returns to be made.

5. Collectors shall, as soon as may be practicable after the termination of every quarter, transmit under oath their quarterly accounts, together with a list of permits given for the removal of dutiable goods to the receiver general, and at the same time pay into the treasury the duties for such quarter.

Per centage allowed.

6. Upon their accounts being audited by the financial secretary, collectors shall be entitled to receive from the treasury a commission of ten per cent. on the duties by them paid in, not exceeding two hundred and fifty pounds in any one year.

Penalty for merchandizing

7. If a collector shall act as a merchant or dealer in dutiable articles, he shall for every offence forfeit fifty



pounds, one half to the use of the government and the other half to the person suing therefor; and no commission shall be allowed such collector on the duties by him collected for the year in which the offence shall have been committed.

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8. If a collector shall resign or be removed from office, he shall forthwith deliver over to the new collector all securities and papers connected with the office which may be in his hands, and shall immediately make up and return his accounts, and pay over to the receiver general all monies in his hands or due to him as collector. If he shall not render such accounts and pay over such monies within three months from his going out of office, he shall forfeit two hundred pounds for the use of her majesty.

Proceedings on resignation or removal.

9. The governor in council may appoint landing waiters, guagers and weighers, for the different ports, who shall receive for their services, in addition to any fees by law allowed, such sums as may be annually granted by the legislature.

Landing waiters, guagers, and weighers.

10. Guagers are required to ascertain, if possible, by Gunter's calipers, or if not, by the rod, the quantities of intoxicating liquor and molasses imported into or distilled in the province, and shall mark with an iron the quantity each task contains, on the stave next the bung stave, or on the head of every cask, together with the initials of his name, and shall be entitled to receive therefor from the importers or owners, the following fees, viz: for a puncheon or pipe, six pence; for a hogshead or tierce, four pence; and for a barrel, two pence; and for other casks in the like proportion; and in addition to such fees, except at the port of Halifax, six pence for every mile they shall necessarily travel, computing the distance from their place of residence to the place of guaging, but no travelling fees shall be charged where the liquor is guaged at the original distilling house. Where more than ten casks shall be guaged at one time and place they shall only be entitled to the following fees: for a puncheon or pipe, three pence; for a tierce or hogshead, two pence; and for a barrel, one penny; besides travelling fees.

Duty of guagers and their fees.

11. The receiver general shall superintend the collection of colonial duties at the port of Halifax, and shall have under his direction for that purpose, a principal clerk, who shall give bond in one thousand pounds, with two sureties, in five hundred pounds each, for the faithful discharge of his duties, and shall receive a salary of two hundred and fifty pounds per annum, payable quarterly.

Receiver general to superintend at Halifax, and be allowed a clerk.

12. Such clerk shall be appointed by the governor in council, and shall pay into the hands of the receiver general the whole duties which he shall receive on the day of receipt, or at such other time as the receiver general may direct.

Appointment and duty of clerk.

13. The receiver general and his clerk, and the collector

Power of administering oaths.

**CHAP. 15.** of. colonial duties, may administer oaths under any act relating to the colonial revenue.

Penalty for neglect of duty.

14. If any officer of the colonial revenue shall neglect his duty he shall forfeit a sum not exceeding fifty pounds, and also the costs of the prosecution.

Penalty for illegally assuming office.

15. If any person shall illegally assume the duties or exercise the functions of any officer of the colonial revenue, he shall, for every offence, forfeit a sum not exceeding fifty pounds and costs of prosecution, and in case of non-payment thereof, may be committed to jail for a period not exceeding three months.

## CHAPTER 15.

### OF THE LAWS OF THE CUSTOMS.

Entry & clearance how made.

1. Papers and proceedings connected with the entry and clearance of vessels and goods shall be made and had in form and manner as heretofore, unless otherwise directed by the board of revenue, but any of them may be dispensed with by order of the governor in council.

Bonds by whom and how taken.

2. Bonds relating to duties required to be given in respect of goods or vessels, shall be taken by the collector in her majesty's name, and after the expiration of three years from the date thereof, or from the time, if any, therein limited for the performance of the condition, every bond not then in suit shall become void and be cancelled.

Samples for ascertaining duties.

3. Revenue officers may take samples of goods when necessary for ascertaining the duties, and the samples shall be disposed of and accounted for as the board may direct.

Questions of rates how regulated.

4. Upon the first levying or repealing of any duty, or the first granting or repealing of any drawback, or the first permitting or prohibiting of any importation or exportation, the time of importation of goods shall be deemed to be the time at which the importing ship shall in due course be reported; and the time of exportation the time when the goods shall be shipped on board the exporting ship. If any question shall arise in respect of any charge or allowance upon any ship exclusive of the cargo, the time of arrival shall be deemed to be the time at which she ought to have been reported, and the time of departure the time of her last clearance for the voyage.

By what law duties shall be computed and penalties recovered.

5. Duties on goods imported before the coming into operation of an act imposing new duties, and whereon the duties have not been paid, shall be collected under the new law, but forfeitures shall be recovered under the law under

which they were incurred, notwithstanding such law may have expired. CHAP. 15.

6. Duties overpaid or improperly charged shall not be recoverable after three years from time of payment. Limitation for recovering over-paid duties.

7. If any person shall counterfeit or falsify, or knowingly use or procure to be used when counterfeited or falsified, any document required under the revenue laws, or in use in connection therewith, he shall for every offence forfeit a sum not exceeding two hundred pounds. This penalty shall not attach to any particular offence for which a penalty is otherwise imposed. Penalties for counterfeiting documents.

8. Officers may require persons applying to transact business for others, to produce a written authority, and in default may refuse to transact business with them. Agent's authority.

9. If any declaration required to be made under the revenue laws, except declarations as to the value of goods, shall be untrue in any particular, or if any person required under such laws to answer questions put to him by officers shall not truly answer such questions, the person making such declaration, or refusing to answer or not truly answering such questions, shall forfeit a sum not exceeding fifty pounds over and above all other penalties to which he may be liable. Penalties for false declarations.

10. All boats, carriages and cattle used in the removal of any goods liable to forfeiture, shall be forfeited; and every person who shall knowingly assist in such removal, or harbor such goods, or knowingly have them in possession, shall forfeit the treble value thereof, or a sum not exceeding one hundred pounds, at the election of the prosecutor, and the averment of such election in the information or libel shall be sufficient proof thereof. The forfeiture of a ship shall include her guns, tackle, apparel and furniture; and of goods, the package containing them. Forfeitures and penalties for removing forfeited goods.

11. All vessels and boats in or from which goods shall have been illegally imported, concealed, landed, or thrown over, may be seized in the first instance, and shall be forfeited in the same manner as if detected hovering on the coasts with prohibited goods; and such boats and vessels may also, upon judgment against the master or other person on board for any penalty thereby incurred, be levied upon and sold under execution issuing on such judgment; but the board on proof that the master and owners of the vessel were ignorant of such illegality, may relieve from the penalty in whole or in part, and on such terms as may be deemed right. Vessels & boats forfeited may be relieved by board of revenue.

12. All goods and all vessels, carriages and cattle, liable to forfeiture, may be seized by any revenue officer or by any person employed for that purpose with the concurrence of the board, and also by any officer of her majesty's navy in command of or serving under the commander of any of her majesty's ships, also by any person commissioned by Seizing officers; fine for obstructing.

CHAP. 15. the governor to protect the revenue laws, and by any sheriff or deputy sheriff, or by any justice of the peace, or by any other person in a place more than ten miles from any collector who shall by the warrant of a justice of the peace on oath before him of such forfeiture, be appointed to seize them; and every person who shall obstruct any such person so employed in the exercise of his office, or any person acting in his aid, shall forfeit a sum not exceeding one hundred pounds.

Goods seized may be restored on security given.

13. If any goods or any vessel shall be seized as forfeited under the revenue laws, the court having jurisdiction over such seizure, with the consent of the collector, may order the delivery thereof to the claimant on security by bond, with two sureties approved by the collector, being given to answer double the value thereof in case of condemnation; and such bond shall be taken in her majesty's name.

Goods seized or detained restored by board of revenue.

14. If any goods, ship or boat shall be seized as forfeited, or detained as undervalued, the board may order the same to be restored on such terms as they shall direct; and if the proprietor accept the terms he shall have no action on account of the seizure or detention, nor shall any proceedings be had for condemnation.

Power of board in cases of trifling amount.

15. If a ship shall have become liable to forfeiture on account of any goods laden therein, or unladen therefrom, or the master shall have become liable to a penalty on account of such goods, and the goods be small in quantity or trifling in value, the board if satisfied that the act was done contrary to the intention of the owner or without the privity of the master, as the case may be, may remit the forfeiture, and remit or mitigate the penalty on the master, in their discretion, and no action shall be thereafter brought in respect of the same.

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Officer may be stationed on board ship in port.

16. The board or the collector or landing waiter, or other proper officer, may station officers on board any ship while within the limits of a port, and the master shall provide every officer sufficient room under deck, in the fore-castle or steerage, for his bed or hammock, under a penalty of fifty pounds.

Persons on board a vessel subject to penalty in certain cases.

17. Every person proved to have been on board any vessel or boat liable to forfeiture for being found within one league of the province, having on board or attached thereto, or conveying or having conveyed, any thing subjecting such vessel or boat to forfeiture, or who shall be proved to have been on board any vessel or boat from which any part of the cargo shall have been thrown overboard or destroyed, shall forfeit twenty pounds—provided such person shall have been knowingly concerned in such acts.

Limitation of actions.

18. No suit for recovery of penalties or forfeitures under the revenue laws shall be brought after the expiration of three years from the incurring thereof.

19. Except in cases specially provided for, no suit shall be commenced for recovery of any penalty or forfeiture under the revenue laws, except in the name of the collector or seizing officer, or of her majesty's attorney general, or in his absence the solicitor general of the province; and if any question shall arise whether any person is an officer of the revenue, or such other person in this section mentioned, oral evidence may be given of the fact.

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Actions in whose name to be brought.

20. In any information or proceeding for any offence against the revenue laws, the averment that the offence was committed within the limits of any port shall be sufficient presumptive proof of the fact.

Averments of place in information sufficient.

21. If goods shall be seized as forfeited, and any dispute shall arise whether the duties have been paid thereon, or the same have been legally imported, laden, or exported, the proof shall be on the owner or claimant.

Proof in cases of seizure.

22. No claim to any thing seized under the revenue laws and returned into a court of record for adjudication shall be admitted, unless entered in the name of the owner, with his residence and occupation, nor unless oath to the property therein be made by the owner, or by his attorney or agent, entering the claim to the best of his knowledge and belief; nor shall any such claim be admitted until security shall have been given in the court, in a penalty not exceeding forty pounds, to respond the costs occasioned by such claim, if decided against the claimant, and in default of the provisions of this section being complied with, such thing shall be condemned.

Claim to goods seized how made.

23. Certificates, and copies of official papers certified under the hand and seal of any of the principal officers of the customs, or of any collector of the colonial revenues in any of the British possessions in America or the West Indies, or of the principal officers of the customs in the united kingdom, or other the British possessions, or of any British consul or vice consul in a foreign country, and certificates and copies of official papers made pursuant to the revenue laws of this province, shall be received as presumptive evidence on the trial of any suit in reference to any matter contained in the revenue laws.

Certificates received in evidence.

24. No action shall be commenced against any person acting under the revenue laws for any thing done in the exercise of his office until one month after written notice shall have been delivered to him, or left at his usual place of abode; in which notice shall be explicitly stated the cause of action, the names and places of abode of the person intending to bring the same, and of his attorney or agent, and no evidence of any cause of action shall be received which was not contained in the notice. In default of the proof of such notice, a verdict shall be given for the defendant. Every such action shall be brought within three months after the cause thereof, and be laid and tried where the acts were committed.

Month's notice before action.

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Collusion how punished.

25. If any revenue officer or person employed for the prevention of smuggling shall make a collusive seizure, or deliver up, or agree to deliver up or not seize any thing liable to forfeiture under the revenue laws, or shall take any reward for the non-performance of his duty, he shall forfeit for every offence a sum not exceeding two hundred pounds, and be incapable of serving her majesty in any office of provincial appointment, and every person who shall give or offer, or promise to give, or procure to be given, any reward to, or shall make any collusive agreement with any officer or person hereinbefore in this section designated, to induce him to neglect his duty, shall forfeit a sum not exceeding one hundred pounds.

Penalties how applied.

26. Except in cases specially provided for, penalties recovered under the revenue laws, or the laws relating to trade and navigation, shall be paid into the hands of the collector of the port where recovered, and shall be applied as follows: after deducting the charges of the prosecution one half of the nett produce shall be paid to the collector for the use of the government, and the other half to the person making the seizure; but the board may, out of the government portion, make a further allowance, in whole or in part, of the same to the person making the seizure, to reward his vigilance, or make such distribution of the government portion as they shall approve. But no officer, except he shall have made the seizure, or been the means of recovering the penalty, shall be entitled to any portion thereof.

Appeals when and how to be prosecuted.

27. No appeal shall be prosecuted, from a judgment of a court of record, touching any penalty under the revenue laws, unless entered, and security therefor filed within twelve months from the time of judgment.

Appeal not to stay execution in certain cases.

28. Where proceedings have been instituted against any vessel, boat, or goods, for recovery of any penalty under the revenue laws, and judgment of restitution is given, the execution thereof shall not be suspended by an appeal, if the party appellee shall give security that, if the judgment shall be reversed, and the vessel, boat, or goods condemned, the full value thereof, to be ascertained by agreement between the parties, or in case of difference, then by appraisement, under the authority of the court, shall be rendered.

Operation of regulations may be suspended.

29. Upon the representation of the board, the governor in council may suspend the operation of any regulation in this chapter contained, for so long a time as may be deemed proper.

Rules for construing revenue laws.

30. In the construction of the revenue laws the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context, that is to say: the word "ship" or "vessel" shall

include vessels of all classes; "boat" shall include all sorts of water conveyances under the class of vessels; "master" shall mean the person having charge of the vessel; "mate" shall mean the person next in command to the master; "seamen" shall mean any of the crew; "board" shall mean the board of revenue; "collector" shall mean the collector of colonial revenue for the port; "officer" shall mean revenue officer; "proper officer" shall mean the person authorized to do the act referred to; "proprietor," "owner," "importer" and "exporter" shall include persons acting in their behalf.

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## CHAPTER 16.

### OF THE IMPORTATION OF GOODS.

1. All goods liable to duties, imported into this province or carried from one part of the province to another, shall be subject to the provisions of this chapter. Provisions of chapter; their extent.

2. No goods shall be unladen from any vessel bringing goods into the province, nor from any vessel having on board dutiable articles brought coastwise, nor shall bulk be broken after the arrival of any such vessel within three leagues of the coast before report and entry and permit granted, and except in conformity with the directions in this chapter contained; and all goods unladen contrary hereto shall be forfeited; and if bulk be broken contrary hereto the master shall forfeit fifty pounds. If after the arrival of any such vessel within three leagues of the coast any alteration be made in the stowage of the cargo so as to facilitate the unlawful unloading of any part thereof, or if any part thereof be fraudulently staved, destroyed, or thrown overboard, or any package be opened, it shall be deemed a breaking of bulk; all goods to be reported, but fresh fish, coin and bullion may be landed without entry or permit, as well as goods in any stranded or wrecked vessel; provided that as soon as such goods are safely deposited on shore report and entry be made thereof; and provided also that such landing shall be in presence of an officer where such officer can be procured. No goods unladen, &c., within 3 leagues of coast before report, &c.

3. The master of every vessel engaged in carrying goods coastwise, shall obtain from the nearest collector a clearance setting forth whether the vessel be laden or in ballast, and if laden whether the goods be the produce of this province, and if the goods are such as are liable to duties, if the duties thereon have been paid; which clearance the master shall hand to the collector at the next port immediately on his arrival. Clearance of vessels carrying goods coastwise.

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Penalty for neglecting to obtain clearance

4. If the master shall neglect to obtain such clearance or to deliver up the same as before specified, he shall be subject to a penalty of ten shillings, and the collector may detain the vessel until the penalty be paid; provided that the collector may dispense with the production of a clearance in all cases where the cargo has been laden at a port where there is no collector or other officer of the revenue, or where the residence of such officer shall be distant more than two miles from the place of shipment; and in other cases where the collector shall be satisfied that the master has not been guilty of wilful neglect; and may allow the master to substitute a written manifest in lieu of a clearance.

Report to be made by master of vessel arriving coastwise.

5. The master of every vessel arriving coastwise with dutiable articles on board, and the master of every vessel arriving from parts beyond the seas, shall at once make a written report at the principal revenue office, of the arrival and voyage of the vessel, her name, country and tonnage, and if British, the port of registry, of the name and country of the master and the number of the crew, whether the vessel is laden or in ballast, and if laden, the marks, numbers and contents of every package, and the particulars of the goods stowed loose; where the goods were laden, and where and to whom consigned, and where any were laden during the voyage, if any such there be, so far as such particulars are known to him; where the vessel has broken bulk, if at all, during the voyage; what part of the cargo is intended for importation at that port, and what part at any other port in the province, and what is intended for exportation, and what surplus stores remain on board; and he shall at the same time, if required by the officer, produce the bills of lading of the cargo or true copies; and he shall further truly answer all questions connected with the foregoing requirements that shall be put to him by the officer.

Penalty.

If the master shall not in all respects comply with the provisions of this section, or if the manifest or bill of lading or copy thereof be false, or if the goods contained in any bill of lading shall not have been *bona fide* shipped, or if any bill of lading shall not have been signed by him or under his authority, or any such copy thereof shall not have been received or made by him in either case before leaving the place of shipment, or if any goods be unladen before report made, the master shall for every offence forfeit fifty pounds, and the goods landed without report shall be forfeited.

Duty of collector where contents of package unknown.

6. If the contents of any package intended for importation into another port, or for exportation, be unknown to the master, the officer may open and examine it, and, if deemed advisable for that purpose, direct the same to be landed; and if any prohibited goods be found therein, they shall be forfeited.



7. If a vessel having live stock or perishable articles on deck shall arrive after business hours, the collector, gauger or any landing waiter may permit the master to unlade the same before report; but report shall in such case be made as soon as may be after the next opening of the office.

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Live stock may be unladen before report—when.

8. The collector may permit the master of any steamboat employed regularly in the conveyance of passengers, upon due report of such boat, to deposit the cargo in a warehouse to be provided by the owner or agent of the boat and approved by the collector, the owner or agent having first given general security by bond with two sureties for payment of the full duties of importation on all such goods as shall be at any time so warehoused therein, or for the exportation thereof; and goods so deposited shall be deemed to be on board the importing steamboat, and shall be subject to the same regulations, penalties and forfeitures, as if they had not been taken thereout; and the master or owner of the steamboat shall have the same lien on the goods for freight or other charges as if the same had not been deposited in the warehouse, but shall not be entitled to any rent for the goods so deposited. The owner or consignee of the goods must make entry thereof within six days from the time of their being deposited in the warehouse. Provided that if a steamboat shall happen to arrive at night or before or after the appointed office hours, it shall be the duty of the collector, or other proper officer to attend until all the goods intended to be landed shall be safely deposited in the warehouse.

Goods by steamers may be unladen and entered.

Steamboat arriving at night.

9. No rum, brandy, gin or alcohol shall be imported or brought into the province by sea or inland carriage or navigation, in any cask or package not capable of containing at least one hundred gallons; nor shall any such liquor in any smaller cask or package be exposed for sale, or be in the possession of any person unless imported previously to the first day of June, one thousand eight hundred and forty-nine, or unless the same shall have been transferred to such smaller cask or package after it shall have been brought into the province, of all which the proof shall be upon the party in possession. Any person offending against any of the provisions of this section shall forfeit ten pounds for every such cask or package, and the liquor shall be forfeited. Nothing in this section contained shall apply to any such liquors imported into the province from Europe, the British West Indies, or any of the British possessions in North America.

Liquors how imported.

10. Revenue officers may board any vessel arriving, and stay on board until all the goods intended to be unladen shall have been delivered. They shall have free access to every part of the vessel with power to fasten down hatchways, the forecastle excepted, and to mark and secure any goods, as may be deemed advisable. If any place, box or

Attendance of revenue officers on board.

CHAP. 16. chest be locked and the keys withheld, the officer, if he be a landing waiter or seizing officer, or a collector, guager or weigher, may open the same; and if he be not an officer of that degree he shall send for his superior officer, who may open the same. If any goods be found concealed on board they shall be forfeited. If the officer shall place any mark, lock, or seal upon any goods and the same shall be wilfully altered, opened or broken before delivery of the goods, or if goods be secretly conveyed away, or if hatchways fastened down by the officer be opened or broken by the master, or with his assent, the master shall forfeit fifty pounds.

Directions in case of partial entry.

11. When report shall be made that part only of the goods are intended to be unladen at that port, the entry shall be confined to such goods, and entry outwards coastwise shall be made of the goods intended for any other port; and on arrival at any such other port, the like proceedings shall be adopted with respect to the goods there to be landed, as hereinbefore directed in respect of the goods landed at the first port. But if at any of the ports the residue of the goods shall be designed to be shipped out of the province, then entry outwards for exportation shall be made, and the regulations applicable thereto attached.

Entry inwards of goods, &c.

12. The importer shall within three days after the entry of the ship, make entry inwards of all goods not intended for exportation in the same ship to parts out of the province, by delivering to the collector or other proper officer a bill of entry thereof, fairly written in words, at length, containing the name of the importer and of the ship and master, and of the place within the port where the goods are to be unladen, and the situation of the warehouse if the goods are to be warehoused, and the name of the person in whose name the goods are to be entered, with the particulars of the quantity and quality of the goods and the packages containing the same with their marks and numbers, and whether the goods are of the production of British America or otherwise, and of the number, guage, weight, measure or value upon which duties are payable thereon; and shall also at the same time deliver two or more duplicates of such entry as may be required by the collector, in which all such sums and numbers may be expressed in figures, and the particulars in all such entries shall be written and arranged as directed by the collector, and one of such duplicate entries signed by the collector shall be the warrant to the landing tide waiter for the landing or delivery of the goods. If the importer do not make such entry within the time specified, the collector upon twenty-four hours notice to the owner of the goods, if known, may land the goods and deposit them in warehouse at the expense of the owner.

13. No entry or permit shall be deemed valid unless the same shall correspond with the ship's report, and also with the manifest and certificate or other document respectively where the same are requisite, nor unless the goods shall have been properly and particularly described in such entry or permit.

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What a valid entry.

14. The importer shall at the time of entry of any goods, either pay down the duties thereon, or, having entered the same for warehouse, enter into the bonds in that respect prescribed by law, or otherwise a permit shall not be granted for the landing thereof; and the collector or other officer shall secure the same and cause them to be sold at public auction within twenty days thereafter, at such time and place as such officer shall by at least four days' public notice appoint for that purpose, and the proceeds shall be applied, first, in payment of the freight and of the charges occasioned by the securing and sale of the goods, secondly in payment of the duties thereon, and the surplus, if any, shall be paid to the importer or other person authorized to receive the same.

Duties to be paid or goods warehoused before permit granted.

15. If any person other than the master of the ship shall fraudulently make any entry inwards of any goods without authority from the proprietor or consignee, he shall for every offence forfeit fifty pounds.

Penalty for entry by persons unauthorized.

16. No goods, except such as are charged with duty, according to the number, weight, gauge, or measure thereof, shall be unladen until entry made and permit granted therefor; nor shall any goods be unladen except at a place where an officer is appointed to attend, unless authorized by the permit, nor shall any goods be unladen except in the presence of the officer, or with his permission. But the board may make regulations for carrying goods coastwise.

Goods not chargeable with duty, by number, weight, &amp;c., how unladen.

17. All goods unladen contrary to law shall be forfeited.

Goods improperly unladen forfeited.

18. Where goods are liable to duty, according to the number, weight, gauge, or measure thereof, upon the report of the ship and cargo being made, the collector shall grant a permit for the unloading of the goods intended to be landed at such place as shall be most convenient to the importer, and as soon as landed the collector shall cause the same to be weighed, counted, gauged or measured, according as the duties are chargeable thereon, and shall cause casks or packages of spirituous liquors to be marked on their heads, with the name of the place whence they shall have come, with the contents and the gauger's surname, or otherwise, as the board shall direct; and shall cause a duplicate return in writing of the contents of each cask or package with reference to the numbers and marks, signed by the gauger and weigher, to be filed in the collector's office; and thereupon the importer shall make the entry. If any such goods shall be removed from the place named in the landing permit, without a removal permit, they shall be forfeited.

Goods chargeable with duty by number, weight, &amp;c., how unladen.

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Entries by bill of sight in certain cases.

19. If the importer, or his agent, shall subscribe a declaration before the collector, or other proper officer, that he cannot, for want of information, make a perfect entry, the collector may receive an entry by bill of sight by the best description of the goods that can be given, and grant a permit for the landing thereof, and the same shall be at once landed, and at the expense of the importer searched by the proper officer, and in the presence of the importer if he shall desire it, and within three days after the goods have been landed the importer shall make perfect entry thereof, and in default the goods shall be taken to a warehouse, and if entry shall not be made within one month thereafter they shall be sold, and the duties thereon, together with warehouse rent and other charges, shall be taken out of the proceeds, and the balance paid to the importer or owner. If any package shall have been landed from a vessel, and goods shall be found concealed therein packed to deceive the revenue officers, the package with all its contents shall be forfeited.

Goods abandoned for duties how disposed of.

20. Whole packages of goods may be abandoned for the duties thereon payable, and shall in such case be described in a written notice of abandonment to be given to the collector, and thereupon the same shall be sold as directed by the board, and after payment of charges the duties shall be paid out of the proceeds and the balance be paid into the treasury.

Abatement of duties allowed on damaged goods.

21. If goods not charged with duty according to the number, weight, gauge, or measure thereof, shall receive damage during the voyage, an abatement of duties shall be allowed proportioned to the damage, provided satisfactory proof be adduced to the board, or officer acting therein under their directions, that the damage was received after the goods were shipped in the importing ship, and before they were landed, and provided claim be made on the first examination of the goods. The officers of the revenue shall examine such goods, and may make an abatement of duties proportioned to the damage which, in their opinion, they shall have received, but if the officers be incompetent to estimate the damage, or if the importer be not satisfied with the abatement by them made, the collector shall appoint two experienced and disinterested merchants, who shall, at the expense of the importer, examine the same, and subscribe a declaration on oath before the collector of what, in their opinion, the damage is, and the collector may make an abatement of duties in accordance therewith.

Invoices on entry to be certified under oath.

22. Where duties are charged according to the value of the goods, the importer, or his agent, shall declare on oath, what is the invoice price thereof at the place whence they were imported, and that he believes such invoice price is the current value thereat, and shall at the same time exhibit to the collector the original invoices, and certify on oath

that they are the original invoices, and that they contain all the dutiable goods imported by, or belonging, or consigned to him in the vessel specified in the entry, to the best of his belief, or if he has not and cannot procure the original invoices he shall make oath thereof, and account for his want of the same, and shall also state on oath what he believes to be the current value of the goods at the place whence they were imported, as near as can be ascertained. All such oaths shall be signed by the party attesting, and be taken by the collector, or, in case of his absence, by his chief clerk or authorized substitute.

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23. If it shall appear to the collector or other proper officer, that goods liable to duty according to their value, have been valued below their real value under the last preceding section, he shall appoint two persons to examine the same, and such persons shall declare on oath before the collector or other proper officer, at what, in their opinion, the same should have been valued, and the same shall be deemed the real value upon which duties are chargeable. The appraisers shall receive ten shillings each for their valuation, to be paid by the collector, or other proper officer, and charged in his accounts.

Proceedings where goods are undervalued.

24. The value of goods not chargeable with duties according to the number, measure, gauge, or weight thereof, brought into the province under the denomination of prize goods, or which shall be sold by order of the court of vice admiralty, or which shall become forfeited, shall, if the value thereof cannot be ascertained by the means hereinbefore prescribed, be ascertained by the gross price which the same shall bring at public auction. And all such goods whether chargeable to pay duties according to value or to number, weight, gauge, or measure, shall be sold at public auction within two years after importation, reasonable notice of the sale being given by the person charged therewith to the collector, and the purchasers shall be considered the importers and pay the duties thereon.

Prize goods, duties on, how and from whom secured.

25. The surplus stores of vessels arriving in this province from parts beyond the seas, shall be subject to the same duties and regulations as if imported as merchandize, but if it shall appear to the collector that such stores are not excessive or unsuitable under the circumstances of the voyage, he may permit them to be entered for the private use of the master or owner, or of any passenger to whom the same may belong, on payment of the proper duties, or to be warehoused for the future use of the vessel.

Surplus stores liable to duty.

26. Where goods are manufactured or composed of different materials, they shall be charged with the highest duty to which any of the component parts are liable.

Goods compounded of different materials, duties on how charged.

27. No goods shall be imported as from the United Kingdom or from any British possession, if any advantage attach to such distinction, unless they shall appear upon the

Goods from Britain or British possessions must have been

**CHAP. 16.** cockets or proper documents to be duly cleared outwards at the port of exportation in the United Kingdom or such British possession, nor unless the grounds upon which such advantage is claimed be stated in the cocket or document.

cleared outwards.

Land-borne goods liable to duty.

28. Goods which might be imported by sea may be brought by land or inland navigation into the province from any adjacent British colony, and they shall be subject to the same duties, regulations, penalties and forfeitures as the like goods if imported would be subject to, so far as the same are applicable; and if any goods shall be brought into the province contrary to this provision, or if they shall be removed from the place appointed for the examination thereof by the revenue officers before the duties thereon shall have been paid, such goods, together, with the vessel or carriage and cattle which shall have brought the same, shall be forfeited.

Duties when payable at Digby or Annapolis.

29. Vessels entering the gut of Annapolis may be reported and entered, and the duties on goods therein imported paid, either at the ports of Digby or Annapolis.

Where vessel having received damage puts in to a port; goods—how landed.

30. If any vessel having received damage shall put into another port in this province than that to which she shall be bound, having dutiable goods on board which it may be necessary to land for the purpose of repairing the vessel in order to enable her to proceed on her voyage, the collector upon application of the master or agent, may permit such goods to be unladen and deposited in a warehouse in the custody of the collector; and the collector shall cause to be taken an exact account of the packages and contents, and entry of the goods shall then be made by the master or agent as hereinbefore directed, and they shall remain in the custody of the collector until the vessel is ready for sea, when upon payment of storage and the reasonable charges of unloading and storing, the collector shall deliver up the same to the master or agent to be exported from the province under the same security and regulations as if such goods had been imported in the usual manner, and such goods shall not be subject to duty. No person shall be entitled to the benefit of this section who shall have sold any of such goods except such as it may have been necessary to sell to defray the expense of repairs and charges of the vessel, or as may have been authorized by the board. If goods are sold for payment of repairs and charges they shall be subject to duty, and shall be warehoused, or the duties thereon paid by the purchaser.

Goods sold for salvage may be exempted from duty.

31. The owner or salvor of dutiable goods saved from the sea, in respect of which any salvage shall have been lawfully awarded or paid or agreed to be paid to the salvors, may sell so much thereof as will pay the salvage, and upon production of the award, or satisfactory proof to the board of such payment or agreement therefor, the board

shall allow the sale of goods free of duty, to the amount of the salvage, or to such other amount as to them shall appear proper. CHAP. 16.

32. Goods derelict, flotsam, jetsam, or wreck, or landed or saved from any vessel wrecked, stranded, or lost, brought or coming into the province, shall be subject to the same duties as goods of the like kind imported are subject unto; if of such sort as are entitled to allowance for damage, such allowance shall be made under the direction of the board. If any person shall have in his possession, in port or on land, any such goods, the same being dutiable, and shall not give notice thereof to the nearest revenue officer without unnecessary delay, or shall not, on demand, pay the duties thereon, or deliver the same to the proper officer, he shall forfeit fifty pounds. And if any person shall remove or alter, in quantity or quality, any such goods, or shall unnecessarily open or alter any package thereof, or shall abet any such act before the goods are deposited in a warehouse under the custody of the revenue officers, he shall forfeit fifty pounds; and if the duties on such goods are not paid within eighteen months from the time when the same were so deposited, the same may be sold in like manner and for the same purposes as goods imported may in such default be sold. If they cannot be sold for enough to pay the duty they shall be delivered over to the person entitled to receive them, and shall be deemed unenumerated goods, and charged with the lower duty accordingly; but any person having lawful claim to such goods, or being in possession thereof, shall be at liberty to retain the same in his own custody, on giving bond, with two sureties approved by the collector, in double the value of the goods for the payment of the duties thereon at the expiration of a year, or to deliver such goods to the proper officer in the same condition as they were at the time of taking possession. Nothing in this section contained shall extend to goods in the custody or under the management of any commissioner for the Isle of Sable.

Wrecked goods liable to duty.

33. No goods, except those allowed to be landed without permit, shall be unladen from any vessel arriving from parts beyond the seas, or arriving coastwise with dutiable goods, on Sundays or holidays, and such goods shall be unladen only in the day time, and between such hours as the board shall appoint, and such goods shall be unladen only in the presence or with the authority of the proper officer, and at the place expressed in the permit; and no such goods after being unladen shall be transhipped, or after having been put into any boat to be landed shall be removed into any other boat or craft previously to their being landed, without the permission of the proper officer.

Goods how, when and where to be unladen.

34. The unshipping, carrying, and landing of goods, and the bringing the same to the proper place after landing for examination, and the putting the same into the scales and

Expenses connected with the landing of goods, how borne.

**CHAP. 17.** taking them thereout after weighing, shall be performed by or at the expense of the importer.

Vessels for Bras  
d'Or Lake  
where to enter.

35. No vessel shall pass into the Bras d'Or Lake without first coming to anchor at the entrance, and making entry of the cargo on board, and paying the duties to the collector appointed to receive the same; the master of any vessel passing without making such entry shall be liable to a fine of twenty-five pounds, in addition to any other penalty he may have incurred.

## CHAPTER 17.

### OF THE WAREHOUSING OF GOODS.

Warehouse ap-  
pointments con-  
firmed.

1. The appointment of warehouses for the securing of goods liable to duty already established, is confirmed, but may be annulled by the board of revenue.

Warehouses  
may be estab-  
lished, and or-  
ders made relat-  
ing thereto.

2. The board may by order establish other warehouses at any warehousing port, and may declare what goods may be warehoused therein, and may also annul any order establishing such warehouses, but all such orders shall be forthwith transmitted to the governor in council and published.

Goods may be  
warehoused,  
and bonds giv-  
en.

3. The importer of any dutiable goods, and the manufacturer of any spirituous liquors, may warehouse the same without payment of duty on the first entry thereof on entering into a bond to the collector, with two sureties by him to be approved, in double the amount of duties, which bond shall be in the form now in use, and shall be otherwise made and executed as the board may direct. And if any of such goods shall be thereafter entered for home use, the duties thereon shall be paid at the time of such entry, and at the same rate as if then imported and entered for the first time. If within two years from the date of the first entry, the goods, or any part thereof, shall be sold, the collector may admit fresh security by bond with sureties from the purchaser, and cancel the original bond, or exonerate the parties thereto to the extent of the new security, but such new security shall not be given for a less sum than one-fifth part of the duties mentioned in the condition of the original bond.

Goods entered  
for warehouse  
forfeited in cer-  
tain cases.

4. If goods entered for warehouse shall not be deposited therein within the time and in the manner directed by the proper officer, or shall afterwards be taken out of warehouse without entry therefor, they shall be forfeited.

Duty of officer  
on entry of  
goods for ware-  
house

5. Upon entry and landing of any goods to be warehoused, the proper officer shall take a particular account thereof and mark the contents on each package, and enter



the same in a book to be kept for the purpose ; and no goods warehoused shall be delivered from warehouse except upon entry and under care of the proper officers for exportation, or upon entry for home use and payment of the duties. Whenever the whole of the goods warehoused under any entry shall be cleared from warehouse or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid and of the quantity exported, and of the quantity, to be then ascertained, of the goods still remaining in the warehouse, deducting from the whole the quantity contained in any whole package which may have been abandoned for duties ; and if there shall be any deficiency of the original quantity, the duty, except as hereinafter provided, payable upon the deficiency, shall then be paid.

6. Goods warehoused shall, by or at the charge of the owner, be stowed in such manner as that easy access may be had there<sup>to</sup>, under penalty on such owner of five pounds for every omission ; and they shall be stowed in such parts or divisions of the warehouse and in such manner as the collector shall direct, and the warehouse shall be secured in such manner, and visited only at such times, and in the presence of such officers, and under such regulations, as the collector, under the authority of the board, shall direct.

Goods how stored and secured in warehouse.

7. The collector, under the regulations of the board or in his own discretion, may permit samples to be taken of goods warehoused, without entry and without payment of duty, except as the same may eventually become payable on a deficiency of the original quantity under the provisions of this chapter.

Samples may be taken.

8. The collector, under the regulations of the board or in his own discretion, may permit the proprietor of goods warehoused, at his own expense to sort, separate, pack and repack the same as may be necessary for their preservation or more convenient disposal, and under the regulations of the board to draw off liquors into bottles or casks, and to mix brandy with wines, and to fill up casks of liquors from other casks thereof respectively in warehouse, and to rack off wines from the lees, or mix wines ; and he may also allow portions of goods so separated to be destroyed, but without prejudice to claim for duty upon the whole original quantity. Whole packages may be abandoned to the collector for duties, and shall not remain liable thereto. No portion of goods less than a whole package shall, however, be taken out of the warehouse at any time.

Owners may do certain acts to goods while in warehouse.

9. Goods warehoused may, under the authority of the collector, be delivered on entry without payment of duty except for any deficiency, for removal to another warehouse in the same or another port in the province under bond to the satisfaction of the collector, or such other regulations

Goods may be removed from one warehouse to another.

**CHAP. 17.** as the board may make for the re-warehousing thereof or payment of duties thereon.

Limitation of time for keeping goods warehoused.

10. Goods warehoused shall be cleared for exportation or entered for home use within two years from the first entry thereof; and if not so cleared or entered the collector unless otherwise directed by the board, shall sell the same, and the proceeds shall be applied—first to the payment of warehouse rent and other charges, next of duties, and the surplus, if any, shall be paid to the proprietor.

How goods in warehouse may be transferred.

11. When goods in warehouse are sold, the seller shall give the buyer a transfer note containing the particulars of the goods and the date of sale, and the purchaser shall lodge the same with the warehouse keeper, who shall make a minute of the transfer in a book to be kept for the purpose, and which shall be produced on application. If this provision shall not be complied with, the goods, so far as respects the officers of the revenue, shall be held the property of the seller.

Penalties for interference with warehoused goods.

12. If goods warehoused shall, with the owner's sanction, be fraudulently concealed in or removed from the warehouse, they shall be forfeited; and if the proprietor, or any person with his knowledge, shall fraudulently open the warehouse or gain access to the goods, except in the presence of the proper officer in the execution of his duty, or shall fraudulently adulterate, reduce or increase the strength of liquors, such proprietor shall, for every offence, forfeit one hundred pounds.

Duties on goods entered for warehouse, re-mitted in certain cases.

13. If goods entered for warehouse, or for delivery therefrom, shall, by unavoidable accident, be lost or destroyed either on shipboard or in the landing or shipping, or the receiving into or delivering from the warehouse of the same, or if any such goods shall be destroyed, or, being liquors, shall leak or evaporate while in the warehouse, the board may remit or return the duties thereon, but no abatement shall be made in respect of deficiency in quantity of liquors or of wastage in any article, unless the goods shall have been warehoused six months.

Goods entered for warehouse, re-entered for home consumption.

14. If the importer of any goods entered for warehouse and landed, shall, before the same are deposited in the warehouse, further enter the same or any part thereof for home use or for exportation, as from the warehouse, the goods so entered shall be considered constructively warehoused, and may be delivered for home use or for exportation, as the case may be.

Warehoused goods liable for freight.

15. Goods warehoused shall continue liable for freight, as if on shipboard.

## CHAPTER 18.

## OF THE EXPORTATION OF GOODS AND OF DRAWBACKS.

1. Whosoever shall export any goods on which on their entry inwards for home use the duties shall have been paid, shall be entitled to a drawback of the whole amount, such goods being of the quantity or value for which a drawback is allowed; and all drawbacks shall be under the management of the board of revenue.

Drawbacks allowed.

2. All goods warehoused on the importation thereof, may be exported from warehouse without payment of duty.

Warehoused goods exported free of duty.

3. No goods on which, upon exportation, any drawback is intended to be claimed, and no goods intended to be exported from the warehouse shall be laden until entry outward shall have been made and permit granted therefor; and no goods shall be laden except at some place at which an officer is appointed to attend, and except in the presence or with the permission, in writing, of the officer; but the board may make such other regulations for carrying goods coastwise as may be expedient. All goods laden contrary to the provisions of this chapter, or to any such regulations, shall be forfeited.

Where drawback claimed, how goods to be exported.

4. The person entering goods outward for drawback or for exportation, or from the warehouse, shall deliver to the collector a bill or entry written at length, containing the name of the exporter, of the ship and of the master and of the place to which bound, the particular place within the port where the goods are to be laden, the particulars of the quality and quantity of the goods and the packages, their marks and numbers and the value thereof; and the collector shall thereupon grant his shipping permit which shall be written upon or annexed to a copy of the entry to be made by the exporter.

Entry to be made of goods entered for drawback.

5. Upon the entry outwards of any goods from the warehouse, the exporter shall give a bond in double the duties, with two sureties that they shall be landed at the place for which they may be entered or accounted for to the board.\*

Bond.

6. Every person who shall make entry outwards of goods for drawback, or for exportation from warehouse, not being the proprietor thereof nor the master of the vessel, shall for every offence forfeit fifty pounds.

Penalty where unauthorized party enters goods outward.

7. No entry outwards, nor any shipping permit, or permit for taking goods from warehouse for exportation, shall be deemed valid unless the particulars of the goods and packages shall correspond with the particulars in the entry inwards for home use, or in the entry for warehousing, nor:

What a valid permit.

CHAP. 18. unless they shall have been properly described in the entry outwards, by the character, denomination and circumstances under which they were originally charged with duty; and any goods laden or taken out of the warehouse by any entry outwards or shipping permit not so corresponding or not properly describing them, shall be forfeited.

Drawback allowed; on what granted.

8. A drawback of the whole duties upon goods on which the duties shall have been paid, shall be allowed upon any quantity of wine not less than twenty-five gallons, or upon any quantity of spirits or other liquors not less than one hundred gallons, exported in the original packages, and upon any quantity not less than three hundred weight of coffee, or any quantity not less than ten hundred weight of sugar, or any quantity not less than two hundred gallons of molasses, or any quantity not less than five hundred pounds of leather, or any quantity not less than two hundred and fifty pounds of tea, and upon any amount not less than fifty pounds sterling of the original value of any articles charged according to the value.

Shipping permit to be certified by gauger.

9. Before any goods not exported from the warehouse and being charged with duty according to the weight, gauge or measure, shall be laden for exportation, the shipping permit shall be exhibited to the gauger and weigher, who shall thereupon, without fee, gauge or weigh them before shipment and certify on the permit the weight, gauge or measure thereof.

Affidavit to be made by person entering goods outward.

10. So soon as any goods so entered outwards, not being from warehouse, shall have been actually laden, the master and exporter shall make an affidavit annexed to the entry that the goods are shipped for exportation and not to be reloaded or disposed of in the province, and that the same, to the best of their knowledge and belief, were part of the stock of the person by whom they were entered for home use, and that the goods, if subject to *ad valorem* duties, are of the value stated in the entry, and that the same is the true value at the place from whence they were originally imported; and shall specify the office where entered and the date of entry, and that they are of the same quality, proof and description as when imported or as described in the entry outwards.

Drawback on certificate.

11. If within one year from entry outwards there shall be produced a certificate annexed to the shipping permit and signed by some principal officer of the customs or colonial revenue at the place to which the goods were exported, or if such place be a foreign country, of any consul or vice consul resident there, or an affidavit annexed to the permit of any person resident at the place and certified by a notary public or magistrate, and in which certificate or affidavit it shall be stated that the goods were actually landed at some place out of the province, or that they were lost, or that the vessel had never arrived at her destination

## CHAP. 18.

and was supposed to be lost, the bond shall be cancelled, or if the duties have been paid the board may allow the drawback thereon, and the exporter shall be entitled to receive the amount of the duties at the receiver general's office. All bonds not so cancelled within twelve months shall be enforced.

12. Whenever dutiable goods shall be sent coastwise, the person to whom they are sent may export them and receive the drawback in the name of the importer; but they must have been duly entered at the first port for exportation to the second port coastwise, and the shipping permit granted, in which it shall be stated that the duties have been paid or secured at the first port, the importing ship's name, the place whence and the time when they were imported, the marks and numbers of the packages; and all liquors must be in the original packages.

How drawback obtained on goods sent coastwise.

13. If the master of a vessel in which a part of the imported goods are intended to be exported shall unnecessarily delay unloading the goods intended for landing, or after unloading them delay longer than three days proceeding on the voyage, he shall pay every day to the tidewater employed the regular wages which would in ordinary cases be chargeable against the government, and the tidewater may recover the same before a justice of the peace, and the collector shall withhold the clearance until the same are paid, with costs, if incurred.

Master delaying to unload to pay tidewater.

14. All wines and distilled spirituous liquors and brown sugar, flour, bread, cheese, oatmeal, peas, salted suet, vinegar, oil, raisins, currants, salted beef, salted pork, butter and cocoa, imported for the army or navy or naval yard, or any commissary or government contractor, and all prize goods purchased for their use, and all spirituous liquors distilled in the province and supplied for their use, shall be exempted from duties, but they shall be warehoused. And when they are intended to be delivered from the warehouse, the entry shall be made as for home use, and shall state that they are solely for the use of the army or navy, or naval yard; and a bond with two sureties, and in double the duties, shall be given to deliver them to the persons authorized to receive them for such use, or otherwise to account for them to the satisfaction of the board.

Articles for army and navy exempt from duties.

15. Upon security being given, a permit shall be granted, and such goods shall be delivered from warehouse in presence of the revenue officer, and shall be conveyed and delivered in presence of a revenue officer to the commissary or other person appointed to receive the same for the use of the army, or on board of some of her majesty's ships or into the naval yard, and a receipt therefor signed on the permit, and on the return thereof, to be made if required under oath, the security shall be cancelled.

How such articles obtained from warehouse

16. If any of the above enumerated goods shall be shipped for such service after the duties have been paid, a

Drawbacks, how obtained on shipment of such goods.

CHAP. 18.

drawback of the whole duties shall be allowed; but a permit for the delivery of them for such use, specifying the quantities thereof with marks, numbers, or packages containing the same, shall have been first obtained from the collector, and the goods shall be conveyed and delivered in manner as in the preceding section prescribed for goods taken from warehouse, and the like receipts on the permits, and verification thereof made; and thereupon the amount of the duties paid thereon shall be repaid from the provincial treasury.

Goods shall be gauged and weighed; if so charged with duty.

17. Where such goods are charged with duty according to the gauge, weight, number, or measure, they shall be gauged, numbered or weighed, and marked, and the drawback paid accordingly.

If re-landed in the province they shall be forfeited.

18. If such goods shall be fraudulently re-landed in this province, or applied otherwise than for such use, they shall be forfeited; and every person concerned therein shall forfeit fifty pounds.

Officers' wines purchased under license from board.

19. The board may, upon the application of the officer in command of any ship of war about to leave the province, grant a license to purchase for the use of the officers so many gallons of wine as shall be approved by the board as adequate to their supply for three months; and the name of the person from whom such wines are to be purchased shall be therein inserted.

Bond for such wines cancelled or drawback allowed.

20. The person selling the wines shall obtain the permit and ship them according to the regulations, and the officers for whose use they have been purchased shall certify that they are actually on board of the ship ready for sea, and that no part shall be re-landed. The certificate, with the license, shall be delivered to the collector, and the bond, on exportation from the warehouse, shall be cancelled; or, if the duties have been paid, the drawback shall be allowed.

Agents may enter goods in certain cases.

21. If a proprietor of goods shall be resident more than ten miles from the office of the collector at the port of shipment, he may appoint an agent to make his entry and clear and ship his goods, or receive for him the drawback on his certificate of drawback, if payable to him; but the name of the agent and the residence of the proprietor shall be subjoined to the name in the entry and shipping permit, and the agent shall make the declaration on the entry which is required of the proprietor, and shall answer the questions that shall be put to him. Any trading corporation or company may appoint an agent for the like purposes.

No drawback allowed after two years.

22. No drawback shall be allowed unless the goods be shipped within two years after the payment of the duties.

Agents may export and receive drawbacks from persons abroad.

23. If any goods which are to be exported for drawback be the property of a person residing abroad, having been consigned to some person residing in this province to be exported on account of the owner, such person may, as

agent of the owner, enter, clear, and ship them, and receive the drawback thereon. CHAP. 19.

24. The board may make rules with regard to the exportation of any spirituous liquors on which a drawback shall be claimed, and for ascertaining the strength thereof for the allowance of the drawback, and for the prevention of fraud. Board to make rules respecting exportation of liquors.

25. If any goods entered for exportation from warehouse, or for drawback, shall not be duly exported to the place for which they were cleared out, or shall be re-landed in this province, such goods not having been duly re-landed as short shipped or for other just cause, or shall be carried to New Brunswick or Prince Edward Island not having been entered and cleared direct thereto, such goods shall be forfeited, together with any vessel or boat used in the infringement of this section; and all persons concerned in the violation of this section shall forfeit double the value of the goods. Goods entered for exportation forfeited if re-landed or not forwarded as cleared.

26. If any person in this province shall give any document in writing stating that goods have been landed in the province for the purpose of enabling any person to obtain a drawback thereon in the United States or in any of the colonies or provinces of North America, he shall, if unable to prove that the goods specified in such document have paid the duties thereon in this province, for every offence forfeit one hundred pounds. Penalty for false documents to get drawbacks.

27. Upon the representation of the board the governor in council may suspend the operation of any regulation in this chapter for so long a time as may be deemed proper. Operation of regulations, how suspended.

## CHAPTER 19.

### OF THE PREVENTION OF SMUGGLING.

1. The officers of the revenue may go on board any vessel within any port in the province and search her for prohibited and uncustomed goods, and also on board any vessel being within one league of any of the coasts, and stay on board while she remains in port, or within such distance; and if she shall continue hovering for twenty-four hours after the master shall have been required to depart, the officer may bring her into port, and search her and examine her cargo, and examine her master upon oath touching the cargo and voyage; and if there be any prohibited goods on board, the ship and cargo shall be forfeited; and if the master shall not answer the questions demanded Officers of revenue may board vessels

**CHAP. 19.** of him, or shall not truly answer the same, he shall forfeit one hundred pounds.

Officer may enter buildings in certain cases, and how.

2. Any revenue officer, having first made oath before a justice of the peace that he has reasonable cause to suspect that goods liable to forfeiture are in any particular building, may, in company with the justice, who is hereby required to accompany him, enter such building at any time between sunrise and sunset; but if the doors are fastened, then admission shall be first demanded, and the purpose for which entry is required declared, when, if admission shall not be given, the justice shall order the officer forcibly to enter; and when in either case entry shall be made, the officer shall search the building and seize all forfeited goods. These acts may be done by a revenue officer without oath, or the assistance of a justice of the peace, in places where no justice resides, or where no justice can be found within five miles, at the time of search.

Officers of revenue may have a writ of assistance.

3. Under the authority of a writ of assistance, which, upon application of the board of revenue and due cause shewn, shall be granted by the supreme court or by any judge thereof and be in force for three months, any revenue officer, taking with him a peace officer, may enter any building or place in the day time, and search for and seize any goods liable to forfeiture, and if necessary for that purpose, break open any doors and packages.

Collectors may enter shops and take account of stock.

4. Every collector may at any time between sunrise and sunset, enter into any building of any person dealing in dutiable goods, and take an account of his stock; and if he shall refuse to open the door, or shall obstruct the officer, he shall forfeit one hundred pounds.

Penalty for obstructing officers.

5. If any person shall obstruct a revenue officer employed as hereinbefore mentioned, or any person assisting him, he shall be guilty of a misdemeanor and be punished in the discretion of the court.

Custody of goods seized.

6. All goods seized under the revenue laws shall be forthwith placed in custody of the nearest collector, and secured by him under the directions of the board, or if seized by any officer in charge of any revenue vessel, shall be retained on board thereof until arrival at Halifax, and

Condemnation.

shall be held to be condemned, and may be sold without further proceeding, unless the person from whom they were seized, or the owner of them, or some person on his behalf, shall, within one month from the seizure, give a written notice to the seizer, or to the collector in whose custody they are, of claim thereto. If claim be made within the

Claim.

month, then, subject however to the control of the board, the collector shall forthwith thereafter have the articles valued by three sworn appraisers who shall sign the valuation, and if it shall amount to forty pounds or upwards an information shall be filed in the supreme court, otherwise an information in writing, if the seizer think proper so to

Information.



proceed, may be exhibited in the name of the collector before two justices of the peace, charging the articles seized as forfeited under some particular section and chapter to be therein referred to, and praying condemnation thereof; and the justices shall thereupon issue a summons for all persons claiming interest in the seizure to appear at a certain time and place, there to claim the articles or answer the information, otherwise the articles will be condemned; and a copy of the summons shall, at least eight days before the time of appearance, be served upon the person from whose possession the things were taken, or shall be left at or affixed to the building or vessel, if there remaining, or at two public places nearest the place of seizure. If any person shall appear to answer the information, the justices shall hear and determine the matter and acquit or condemn the articles; but if no person appear, judgment of condemnation shall be given. The justices, on condemnation, shall issue a warrant to the collector to sell the goods.

Proceedings before Justice.

7. If either party be dissatisfied with the decision of the justices, he may appeal to the supreme court at its next sitting in the county; and such appeal shall be allowed upon security by bond being given to the satisfaction of the justices to abide the decision, which security, if the claimant appeal, shall be in double the appraised value of the articles, but not less in any case than twenty pounds; and if the prosecutor appeal the security shall be in twenty pounds; and the proceedings shall be sent to the supreme court, which shall hear and determine the matter in a summary manner, and confirm or reverse the judgment with or without costs; and if there be judgment of condemnation, shall order the sale of the articles.

Appeal to be allowed.

8. Where articles are condemned and liable to be sold, the collector shall forthwith sell the same at public auction, giving at least five days' notice thereof by advertisements posted up in at least five of the most public places in the county, or such other notice as the board may direct; but the board, instead of such sale, may direct the articles to be destroyed.

Condemned articles—how disposed of.

9. The collector, out of the nett proceeds of the sale, after paying the expense of the proceedings, shall pay one-half part to the seizer, and the remainder as the board shall direct; and the board may thereout grant a further sum to the seizer, or may recompense the informer, or any person assisting in the seizure.

Proceeds—how applied.

10. If on the trial of any information or suit brought on account of any seizure made under this chapter judgment shall be given for the claimant, and the judge or court before whom the cause is tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to costs nor shall the seizer be liable to any

Regulations as to costs in cases of informations.

CHAP. 20.

suit or prosecution on account of the seizure; and if on the trial of any suit or prosecution brought against any person on account of any such seizure, judgment shall be given against the defendant, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or the value thereof, shall not be entitled to more than two pence damages, nor to any costs, nor shall the defendant in such prosecution be fined more than a shilling.

Tender of  
amends.

11. The officer may, within a month after notice, tender amends to the party complaining, or his attorney or agent, and may plead such tender.

Penalties upon  
masters of ves-  
sels and others.

12. The master and owner of any vessel in which dutiable goods shall have been imported from any of the British possessions in North America, such goods not having been warehoused or the duties paid thereon according to law, shall, over and above all other penalties to which they are liable, each severally forfeit for every offence not less than ten nor more than one hundred pounds, and shall also be jointly and severally liable for the duties; and every person concerned in exporting from any of such British possessions to this province, or in bringing in, importing, landing or receiving into this province, or having knowingly in his possession any such goods whereon the duties have not been paid, or which have not been warehoused, shall, for every offence over and above all other penalties to which he is liable, forfeit not less than ten pounds nor more than one hundred pounds, and be liable for the duties.

Operation of re-  
gulations how  
suspended.

13. Upon the representation of the board, the governor in council may suspend the operation of any regulation in this chapter for so long a time as may be deemed proper.

## CHAPTER 20.

### OF THE REGULATION OF DISTILLERIES.

License for dis-  
tilling, how  
granted.

1. Licenses for distilling intoxicating liquors may be granted by the governor in council, and shall be in the form in schedule A, and be signed by the receiver general or his principal clerk in the revenue department.

Annual charges  
for granting li-  
censes.

2. The annual charges for granting such licenses, shall be determined by the governor in council, according to the capacity of the distillery for manufacturing liquors, and such other circumstances as in their judgment ought to affect such annual charge upon each several distillery.

Expiration of  
licenses.

3. All licenses shall expire on the thirty-first day of March next, after the date thereof; and no license shall be

granted for a less sum for a part of a year than for a whole year. CHAP. 20.

4. Every person to whom a license shall be granted shall, before receiving the same, pay down one quarter of the duties, and enter into a bond with two sureties, in the form in schedule B. Duties, how payable.

5. Where a license shall be granted after the first day of July, the balance of the duties shall be payable in equal instalments on the quarter days thereafter, ending on the first day of the months of October, January and April, respectively, or such of them as may not have been passed, and the bond shall be altered so as to conform thereto. Balance of duties when to be paid.

6. Any person so licensed, who shall not intend to renew his license, shall give written notice thereof at the excise office in Halifax, at least one month previous to the expiration of his license, and in default thereof shall forfeit a sum equal to one-fourth of his license duty. Notice to be given if license not to be renewed.

7. The board of revenue may take possession of all liquors belonging to distillers at the expiration of their license, whether the same shall be on their own premises or elsewhere, and shall store the same in a warehouse, and such liquors shall be chargeable with the like duties as if imported, and may be exported under the same regulations. Board of revenue may take possession of liquors; and when.

8. Any person who shall distil intoxicating liquors, or suffer it to be done on his premises without license, shall forfeit not less than fifty pounds, nor more than one hundred and fifty pounds. Forfeiture for distilling without license.

9. All places fitted for the distilling of liquors for which a license shall not have been granted, may be taken possession of by the board of revenue; and the board are empowered to cause search to be made of all premises suspected to be used for the purposes of distilling intoxicating liquors. All illicit distilleries to be taken possession of by board of revenue.

10. Every distiller shall make a monthly return, under oath, of all liquors manufactured by him, to the nearest collector of colonial revenue, under a penalty of not less than ten pounds nor more than fifty pounds. Returns under oath to be made monthly.

11. No distiller shall increase the size or enlarge the number of his stills during his license, without the consent of the board of revenue, under penalty of forfeiture of his license, or of a sum not exceeding one hundred pounds, at the election of the board. Stills not to be enlarged during license.

12. The board of revenue are empowered to make all such regulations as they may deem necessary for carrying out the objects of this chapter, and the prevention of fraud; and may affix such penalties and forfeitures for breach of any such regulations as may be deemed proper. Board of revenue may make regulations.

13. An addition of thirty per cent. shall be made to the charges now payable for licenses for distilling intoxicating liquors, from and after the twenty-fourth day of March, in the year one thousand eight hundred and fifty-eight. Licenses increased.

**CHAP. 21.** 14. This chapter shall remain in force until the first day of April, in the year one thousand eight hundred and fifty-nine, and no longer.

*Duration of act.*

SCHEDULE.

A.

County of \_\_\_\_\_,

License is granted to A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, to distil intoxicating liquors, conformably to law, in his premises, situate [*here describe particularly the situation of the premises*] until the first day of April next.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

B.

Common form, two sureties, with condition as follows:—

Whereas, the above bounden A. B. has been licensed to distil intoxicating liquors until the first day of April, and has paid the sum of \_\_\_\_\_, being one-fourth part of the duties payable thereon, and the remaining three-fourth parts of such duties, amounting to the sum of \_\_\_\_\_, are to be paid in three equal instalments, on the first day of the months of July, October and January next respectively.

Now the condition of this obligation is such, that if the said A. B. do pay to the receiver general or his principal clerk in the revenue department, such remaining three-fourth part of such duties, at the times so limited for payment thereof, and shall in all respects conform to the provisions of an act passed in the fifteenth year of her majesty's reign, entitled, "an act for regulating distilleries," then this obligation shall become void.

Signed, sealed, and delivered, }  
in presence of \_\_\_\_\_ }

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**CHAPTER 21.**

OF LIGHT HOUSE DUTIES.

*Light duties on provincial vessels, how secured.*

1. Vessels registered in the province shall on their first voyage pay six pence per ton to the collector of the colonial revenue or other person in that behalf appointed by the governor in council, who shall deliver to the master a certificate thereof, which shall exempt the vessel from further payment until the first day of April then next; and such vessel shall not be cleared at the custom house without production of the certificate; but new vessels leaving the province on their first voyage and intended for sale shall be

exempted from duty unless they again return; and new vessels cleared on their first voyage after the first of September shall be exempted from further payment of duty until the first of April next following on payment of one-half the amount of the above duty. CHAP. 22.

2. Other vessels coming into the province shall pay, on entry, six pence per ton to the collector or other person appointed as hereinbefore mentioned, who shall grant a certificate thereof which shall exempt them from further duty until the first day of April then next. Light duties on other vessels.

3. Vessels passing through the straits of Canso without the certificate hereinbefore mentioned, shall pay six pence per ton; and a certificate thereof shall be granted which shall exempt them from further payment until the first day of April then next. Light duties on vessels passing through Canso

4. This chapter shall not extend to vessels or steamers belonging to or in the service or employment of her majesty's government, excepting steamers not belonging to her majesty and carrying mails, which shall pay duty. Vessels in government employ exempted.

5. The person receiving the duty shall pay the same into the provincial treasury, deducting five per cent. for his commission. Collector's commission.

6. If the master of any vessel liable to duties hereunder shall refuse to pay or depart without paying the same, he shall forfeit five pounds; to be recovered with the duties in the name of the officer. Penalty for non-payment.

7. If the master shall not pay the duty when duly demanded, the officer shall seize the vessel and detain her until the same, together with the penalty of five pounds, is paid. Seizure authorized.

8. This chapter shall remain in force until the first of April one thousand eight hundred and fifty-nine. Date and limitation of chapter.

## CHAPTER 22.

### OF LICENSES FOR THE SALE OF INTOXICATING LIQUORS.

1. The sessions in each county, upon the recommendation of the grand jury, shall annually appoint as many clerks of the license as they may think fit, and shall define the districts within which they shall exercise their authority, and such clerks of the license shall give bonds to her majesty, with such sureties and in such penalty as the sessions may direct for the faithful performance of their duties, and shall be sworn into office; and such officers shall be appointed although no licenses be granted in the county, provided that if the persons so appointed shall die, refuse Clerks of the licence—appointment of, &c.

- CHAP. 22.** to act, remove from the county, or from any other cause whatever shall be unable to act, a special sessions for the county shall, upon the requisition of any three freeholders addressed to the custos requiring him to call such special sessions, meet and appoint a suitable person to fill such office, subject to the conditions above mentioned.
- In case of death—refusal to act, &c.** 2. No intoxicating liquors shall be sold in quantities less than ten gallons, to be delivered at one and the same time, unless in the original package in which imported, or by license, under a penalty of not less than one pound nor more than twenty pounds for every offence; and no such liquors shall be sold in the city of Halifax without license, unless in the original packages in which the same are imported, and when any intoxicating liquors are imported or sold in bottles contained in casks or cases, such casks or cases shall be considered the original packages.
- No intoxicating liquors to be sold without licence except in original packages, and in quantities above ten gallons. Penalty.** 3. Licenses may be granted by the sessions upon the recommendation of the grand jury, except in the city of Halifax and the municipality of Yarmouth, where they may be granted agreeably to the acts incorporating those places respectively, but such recommendations may be rejected in whole or in part by the sessions: but no license to sell liquors shall be issued or granted to any person, who now does or hereafter shall keep a brothel, or house of ill fame.
- Licenses—how granted, &c.** 4. Licenses shall be of the following kinds, viz: tavern licenses and shop licenses, and in the city of Halifax and town of Pictou there may also be granted general licenses to persons holding tavern or shop licenses.
- Not to be licensed.** 5. Licenses shall be in the form in schedule A.
- Kinds of.** 6. The courts of sessions in the various counties, and the city council of Halifax, and the municipality of Yarmouth, shall fix the amount of duty to be paid for each class of license, and the fees to be paid to the clerk of license and clerk of the peace for issuing the same, and also the commission to be paid to the clerk of license for collecting and paying over such debts.
- Form of.** 7. Every person to whom a license shall be granted shall, before receiving the same, pay down the whole duties, and shall also enter into a bond with two sureties in the form in schedule B, which bond shall be prepared by the clerk of the licenses, and when executed shall be filed with the clerk of the peace.
- Duty for—how fixed, &c.** 8. Licenses free of duty or upon payment of a less duty than that by law imposed may be granted to persons living on public roads little frequented, to encourage them in keeping public houses for the accommodation of travellers.
- Must be paid before licence granted. Bond.** 9. No justice of the peace shall hold a tavern or general license.
- Licenses free of duty.** 10. The clerk of the peace and clerk of the licenses shall each register in a book to be kept for that purpose a list of
- Justices of the peace prohibited.**
- Registry of licences.**

licenses with the dates of such licenses, the names, additions, and residence of the parties so licensed, and a memorandum of the houses or shops for which such licenses were granted, and a statement of the number of bonds taken and of the amount of duties paid; and such books shall be exhibited when required to the sessions and grand jury.

11. If any person holding a tavern license shall not, within ten days after obtaining the same, place a sign on the tavern with his name thereon, importing that liquors are there to be sold, and that entertainment for man and horse can be there had, he shall forfeit a sum not exceeding five pounds; and the neglect to do so for every ten days after every conviction, shall be deemed a fresh offence.

*Tavern license—*  
person holding  
must put up a  
sign.

Penalty.

12. If any person not having a license shall place on any building or in the neighborhood thereof, any inscription importing that intoxicating liquors may be had there, he shall forfeit a sum not exceeding five pounds; and every continuation of such inscription for ten days after conviction, shall be deemed a fresh offence.

Penalty for putting up a sign if possessing no licence.

13. If any person holding a tavern license shall not maintain good order on the premises, or if he shall permit raffling or gambling thereon, or shall on Sunday permit persons other than lodgers or persons coming for necessary victualling only, to remain about the premises drinking or idly spending their time, or where not holding a general license also shall permit anything other than victuals and drink usually consumed in a tavern to be exposed for sale on the premises, or shall not have reasonable accommodation for travellers and their horses, cattle and conveyances, he shall forfeit his license and a sum not exceeding ten pounds for every offence, in the discretion of the court before which he shall be convicted.

Penalties—not maintaining good order—  
gambling, &c.,  
—drinking, &c.,  
on Sundays.

Exposing goods for sale.

Not having reasonable accommodation.

14. If any person holding any license shall sell any intoxicating liquors on Sundays, except in the case of tavern keepers, to lodgers on the premises, he shall incur the like forfeiture as mentioned in the last section.

Selling liquor on Sunday.

15. No person holding a shop license only shall sell less than one gallon of intoxicating liquors, to be delivered at one and the same time, or shall suffer any intoxicating liquors to be drunk on the premises where sold, or any such premises to be opened on Sunday, under the same penalty as that mentioned in the thirteenth section.

*Shop license—*  
restrictions of,  
&c.

16. No person shall recover or be allowed to set off any charge for intoxicating liquors, in any quantity less than one gallon, delivered at one and the same time; and all specialties, bills, notes, or agreements, given in whole or in part to secure any such charge shall be void; but nothing herein contained shall extend to any charge made by a person holding a tavern license only against any boarder or traveller.

Charges for liquor not recoverable, &c., if under one gallon.

Exceptions

## CHAP. 22.

Receiving goods, implements of trade, &c., from servants, &c., or in pawn.

Penalty—form of proceeding.

Penalty against married women or servants for breach of act.

Proviso.

Clerk of the licenses may visit premises.

Penalty for obstructing him.

Accounts of the clerks—when rendered, &c.

Licence duties—penalties, &c. to whom paid.

Penalties, how recovered, &c.

Form of summons—conviction, &c.

Prosecutor or defendant may be witness.

Proviso.

17. If any person holding a tavern license shall purchase from any servant or common laborer any wearing apparel, tools, or implements of trade or husbandry, or household goods, or furniture made up, or shall receive from any person any goods in pawn, any justice of the peace upon sufficient proof on oath of the fact, may issue his warrant for restitution of the property and for payment of the costs; and in default thereof for levy and sale of the offenders goods for double the value of the property and costs; and the offenders shall also be liable to a penalty of forty shillings.

18. Married women and servants concerned in any breach of this act shall be liable to the penalty thereto attaching as if they were unmarried women or principals, provided the husbands or masters shall not have been prosecuted for the same offence, and upon any conviction of a married woman or servant under this section, the husband or master shall not be afterwards sued for the same offence.

19. The clerk of the licenses may, whenever he sees fit, visit the premises of persons holding tavern licenses to see that the provisions of this act are complied with, and he shall prosecute all offenders against such provisions, and if any person shall obstruct him in the exercise of his duty he shall forfeit the sum of five pounds, and may also be indicted for a misdemeanor and fined and imprisoned in the discretion of the court.

20. The clerks of the licenses, except in the city of Halifax, shall render a half yearly account to the county treasurer of all duties collected and of all penalties or portions thereof payable into the county treasury which may have come into their hands, together with a statement of all judgments obtained for penalties so far as the same shall have come to their knowledge and which may be unsatisfied; and shall immediately on the receipt of any license duties, penalties, or portions of penalties, pay the same over to the county treasurer, deducting the commission.

21. Penalties under this chapter may be recovered in the name of any of the clerks of the licenses in their respective districts, or of any other person who will sue therefor, in the same manner and with the like costs as if they were private debts, except that the summons shall be in the form in schedule C, and upon conviction, such conviction shall be endorsed upon or annexed to the original summons in the form of schedule D, and the same when signed by the justices shall be held a valid conviction, and upon the trial of any cause under this chapter, either the prosecutor or the defendant, if he desire it, or at the instance and request of the other party, may be examined as a witness, provided that when the prosecutor without being



called by the other party appears as a witness he shall not retain any part of the penalty, but the whole shall be paid over as directed in the next section. CHAP. 22.

22. Penalties under this chapter, except as provided in the preceding section, shall be paid one half to the person suing, and the other half into the county treasury, except in the cases of Halifax and Yarmouth, where the same shall be paid to the officers now by law authorized to receive such moneys. Penalties—disposal of.  
Exceptions.

23. Appeals from the decisions of the justices for any penalty or forfeiture incurred under this chapter, shall be granted in the same manner as in the case of summary trials before justices of the peace, and the defendant shall become bound with two sufficient securities in a sum double the amount of the judgment to prosecute such appeal, and to pay all costs, fines and penalties, that may be imposed and taxed on the final disposition of the suit, and also that during the pendency of the appeal he or she will not violate any of the provisions of this chapter; and, in the case of certiorari, instead of the bail required in such case, the same bond shall be given as in ordinary appeals, and in case of granting a new trial the court may impose such terms on either party as may best promote the ends of justice. Appeals, how granted.  
Form of, &c.  
Appeal bond.  
In case of certiorari.  
In case of new trial.

24. The bond to be given on such appeal or on issuing a writ of certiorari, shall be in the same form as that in schedule E. Form of bond.

25. If any person subpoenaed as a witness in any suit or prosecution under this chapter shall not attend at the time and place mentioned in the subpoena, without just cause to be allowed by the court or justices before whom the suit or prosecution shall be had, or having attended shall depart without permission of the court or justices, or shall refuse to be sworn or give evidence on the trial, he shall forfeit a sum not exceeding ten pounds, to be levied by warrant of distress from the court or justices on the offenders goods, and for want of such distress such person shall be committed to gaol for a period not exceeding three months, or until the amount be paid; but no person shall be obliged to attend or give evidence on any such trial until he shall have been paid his fees for travel and attendance. Penalty in case of non-attendance, &c., of witnesses.  
How levied.  
Must be paid their fees.

26. In suits instituted by the clerk of the licenses, where the justice before whom the trial is had shall give judgment for the prosecution, or if he give judgment for the defendant, shall certify there was reasonable ground for commencing the suit, the prosecutor shall be fully indemnified for all costs and expenses on both sides, to be taxed by a judge of the supreme court, and to be levied by assessment or amercement on the county. Prosecutor to be indemnified if justice certifies that there was a reasonable ground for the action.

27. No judgment shall be withheld on account of variance between the proof and the summons, if it appears to the satisfaction of the justice trying the cause that the Variance between proof and summons not to affect judgment.

CHAP. 22.

Justice may continue cause.

defendant was aware of the real cause of complaint; but if the justice see fit for this cause he may continue the trial for another day, and no judgment shall be set aside for any variance, or from any formal objection.

Sale by wife, child or servant.

28. Any sale of intoxicating liquors made on the premises of any person, by the wife, child, or servant of such person, shall be considered presumptively as the act of the husband, parent or master, and shall be punished in the same way as if such sale had been made by such husband, parent or master, in person, and the burthen of proof of innocence shall be thrown on such husband, parent, or master.

Mail carrier not to carry liquor.

29. No mail carrier shall knowingly carry in the same waggon or vehicle with her majesty's mails any intoxicating liquors, under a penalty of not less than twenty shillings, nor more than five pounds, for each offence.

Sale to a minor.

30. Any person holding a license who shall knowingly sell intoxicating liquor to a minor, upon proof thereof before a justice of the peace, shall forfeit his license, and shall not again be capable of holding a license.

Penalty for selling to intemperate persons after notice.

31. If the husband, wife, parent, child, brother or sister, master, guardian, or creditor of any person addicted to the intemperate use of intoxicating liquors, or any justice of the peace or overseer of the poor residing within the poor district wherein such intemperate person resides, shall give notice in writing to any person engaged in the sale of intoxicating liquors that such person is addicted to the intemperate use of intoxicating liquors, it shall not thereafter be lawful, under any pretence whatever, for the person receiving such notice by himself, his servants or agents, directly or indirectly, to sell or give any intoxicating liquors to such intemperate persons to be used on the premises, or in any quantity less than ten gallons, to be delivered and removed from the premises at one time, and any person knowingly violating the provisions of this section, upon proof of the truth of the statement contained in such notice, shall be liable to a fine of not more than five pounds for a first offence, and a fine of not less than five pounds, nor more than ten pounds, and imprisonment for a period of not more than thirty days, as the court or justices may direct, for a second or subsequent offence.

Statement that the liquor was not in original package, &amp;c., not necessary in summons.

32. In any suit instituted for a breach of the provisions of this chapter, it shall not be necessary to state in the summons that the liquor sold was not contained in the original package in which it was imported, or that the same was sold without license or in quantities less than ten gallons; but the defendant, if claiming to be exempted by the operation of such exceptions, may set up the same as a defence, in which case the burthen of proof shall be thrown upon such defendant, and it shall not be necessary to attach particulars to the summons as in the case of ordinary civil suits, or to

May be set up as a defence.

No particulars required.

specify the particular kind of liquors sold; but in all cases it shall be sufficient in the summons to charge the party accused with having sold intoxicating liquors contrary to law.

33. In any such suit, in case it shall be alleged in the summons that the sale complained of was made to a person therein named, and on the trial the prosecutor shall fail to prove such charge, but proof shall be given of a sale to another person, the suit shall not thereby be defeated, but the justices shall adjudicate upon the offence so proved as if the same had been alleged in the summons, but in such case the defendant upon application shall be entitled to a continuance of not more than eight days to make his defence, and the prosecutor shall not be obliged again to prove his case, although if he choose he may bring additional proof in support of the prosecution, as well as proof to rebut the defence.

In case of proof of sale to persons not named in summons, suit not defeated.

Defit. entitled to continuance.

34. No person imprisoned under execution issued upon any judgment for a breach of this chapter, shall be entitled to jail limits or to the benefit of chapter 137, "of the relief of insolvent debtors," until he shall have been imprisoned, if for the first offence twenty-five days; for the second offence thirty-five days, and for the third offence forty-five days.

Persons imprisoned not entitled to jail limits, &c., or benefit of cap. 137.

35. Prosecutions for offences against this chapter, or suits brought on any appeal bond, shall be commenced within six months, and the clerk of the peace or any private prosecutor may bring an action on such appeal bond, without special leave obtained therefor.

Limitation of actions.

Action on appeal bond.

36. In case the constable or officer to whom a summons is delivered to be served, shall not be able to affect a personal service, it shall be a sufficient service of the same to leave it at the dwelling house of the defendant, provided that the officer makes an affidavit that he believes that the defendant concealed himself, or in any way endeavored to escape service of such summons.

Service of summons—what sufficient.

Proviso.

#### SCHEDULE.

##### A.

County of \_\_\_\_\_

License office.

Tavern License.

License is hereby granted to \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, to sell and retail in a tavern, to be kept in the house in which he dwells, situate [*here describe particularly the situation of the premises,*] intoxicating liquors conformably to law.

This license to remain in force until the end of the next \_\_\_\_\_ sessions to be held in such county, subject to forfeiture for breach of the law.

CHAP. 22. Given under my hand as clerk of the licenses for the said county, this — day of —, A. D. 18—.

A. B., clerk of the licenses.

By order of the sessions, security having been given as required by law.

C. D., clerk of the peace.

County of —

License office.

Shop license.

License is hereby granted to —, of —, in the county of —, to sell in a shop to be kept in the building occupied by him, situate [*here describe particularly the situation of the premises,*] intoxicating liquors in quantities not less than one gallon, but no part whereof shall be consumed on the premises.

This license to remain in force until the end of the next — sessions, to be held in such county, subject to forfeiture for breach of the law.

Given under my hand as clerk of the licenses for the said county this — day of —, A. D. 18—.

A. B., clerk of the licences.

By order of the sessions, security having been given according to law.

C. D., clerk of the peace.

County of —

License office.

General license.

Whereas a tavern license dated the — day of — in the year 18—, has been granted unto — of —, in the county of —; and whereas the sessions for such county have also ordered a general license to be granted to the said —, license is hereby granted to him to vend goods in his tavern during the continuance of his tavern license.

Given under my hand as clerk of the licenses for the said county, this — day of —, A. D. 18—.

A. B., clerk of the licenses.

By order of the sessions.

C. D., clerk of the peace.

County of —

License office.

General license.

Whereas a shop license dated the — day of —, A. D. 18—, has been granted unto —, of —, in the county of —; and whereas the sessions for such county have also ordered a general license to be granted to the said —, license is hereby granted to him during the continuance of his shop license, to sell by retail any quantity of intoxicating liquors, to be used in the shop in such shop license described.

Given under my hand as clerk of licenses for said county, CHAP. 22.  
this — day of —, A. D. 18—.

A. B., clerk of licenses.

By order of the sessions.

C. D., clerk of the peace.

B.

Know all men by these presents that we, — — —, are held and firmly bound unto our sovereign lady queen Victoria, her heirs and successors, in the sum of fifty pounds of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors and administrators, by these presents, sealed with our seals, and dated the — day of —, A. D. 18—.

Whereas the above bounden —, has been granted a license for the sale by retail of intoxicating liquors in the tavern [*or in the shop*] kept by the said —, in —. Now the condition of this obligation is such, that if the said — shall in all respects conform to the laws in force respecting the retail of intoxicating liquors and connected with such license, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and deli-  
vered in the presence  
of —.

(L. S.)

C.

To any of the constables of —

You are hereby commanded to summon A. B. of —, in the county of —, to appear before us at —, on the — day of —, to answer to the suit of C. D., clerk of the license for the county of —, [*if the suit be brought in his name,*] for selling intoxicating liquors to — within — previous to the issuing hereof, contrary to law.

Witness our hands and seals at —, the — day of —, A. D. 18—.

E. F., J. P. (L. S.)

G. H., J. P. (L. S.)

D.

The within named defendant having been duly summoned as mentioned in the annexed writ of summons, was this day convicted of the offence of violating the license laws, by selling intoxicating liquors without license to — upon his own confession, [*or upon default, or upon the oath of G. H., as the case may be, stating the manner of the party's conviction, and the names of the witnesses who may have been examined.*]

Witness our hands this — day of —, A. D., 18—.

C. D., J. P.

E. F., J. P.

## CHAP. 23.

## E.

Know all men by these presents that we ——— and ——— are held and firmly bound unto her majesty queen Victoria, her heirs and successors, in the sum of ——— pounds, of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors, and administrators, by these presents. Sealed with our seals, and dated the ——— day of ———, A. D., 18—.

The condition of the foregoing obligation is such, that if the above bounden [*party convicted*] shall prosecute an appeal from the judgment given against him for a violation of the license laws by ——— a justice [*or justices*] of the peace for the county of ———, on the ——— day of ———, and shall pay all fines, penalties and costs, that may be awarded against him upon the final disposition of such suit; and also if the said ——— shall not, during the pendency of such appeal, violate any provisions of the laws respecting licences for the sale of intoxicating liquors, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence }  
of ———.

(L. S.)

## TITLE IV.

## CHAPTER 23.

## OF THE POST OFFICE.

The governor in council to have control of the post office.

1. The exclusive right of establishing posts, and of conveying and delivering letters and collecting postage within the province, and the power and authority heretofore vested in the lord of her majesty's treasury by virtue of the acts of the imperial parliament passed in such behalf to order and establish rates of postage herein, are hereby vested in the governor and council.

The governor in council may appoint officers and establish posts.

2. The governor in council may establish, alter, discontinue or extend any posts or post communication, or post offices, and may appoint, suspend or remove the postmaster general, and all or any postmasters, officers, deputies, agents and servants connected therewith.

Postmaster general and deputies to give bonds.

3. The postmaster general shall give bond in the sum of one thousand pounds, with two sureties in the sum of five hundred pounds each; and deputy postmasters shall give bond in such sum and with such sureties as may be directed by the governor in council.

4. The governor in council may make such orders in conformity with this chapter as may be necessary for carrying out the same and promoting the objects thereof, and for avoiding as far as practicable the transmission of mails on the sabbath, and all such orders shall be valid as if in this chapter contained; but no higher penalty than one hundred pounds shall be imposed by any such order in council for the violation thereof.

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Governor in council empowered to make orders.

5. Every such order in council shall be published in the royal gazette and the rates of postage then established shall be demanded and taken immediately after such publication; and every such order, within eight days after it is made, shall be laid before the legislature if then sitting, or otherwise within fourteen days after it shall meet.

Orders to be published in gazette, and laid before legislature.

6. In conformity with the agreements made between the local governments of British North America, the provincial postage on letters and packets, not being newspapers or printed pamphlets, magazines or books, entitled to pass at the lower rates hereinafter referred to, shall not exceed the rate of three pence currency per half ounce for any distance within the province; and the increase of charge on letters weighing over half an ounce shall be regulated according to the British rule and scale of weights. No transit postage shall be charged on any letter or packet passing through the province to any other colony in British North America unless it be posted in this province and the sender choose to prepay it, nor any letter nor packet from any such colony if prepaid there; and the rate of two pence sterling the half ounce shall remain in operation as regards letters by British mails, to be extended to countries having postal communication with the United Kingdom, unless her majesty's government shall see fit to alter the rate thereon to be charged to three pence currency.

Rates of postage, how regulated.

7. The prepayment of provincial postage shall be optional to the sender.

Prepayment optional.

8. All provincial postage received within this province shall be retained as belonging to it; and all provincial postage received within any other of the British North American colonies may be retained as belonging to such colony.

Postage retained where received.

9. The British packet postage and other British postage collected in this province, shall be accounted for and paid over to the proper authorities in the United Kingdom; but the colonial postage on the same letters or packets shall belong to the colony collecting it; or if prepaid to the British post office, it shall be credited and belong to the colony to which such letters or packets are addressed.

British and packet postage how disposed of.

10. No privilege of franking shall be allowed as regards provincial postage.

Franking abolished.

11. Provincial stamps for the prepayment of postage may be prepared, issued and sold, under the orders of the governor in council; and such stamps prepared, issued and

Stamps provided for.

**CHAP. 23.** sold, under the direction of the proper authorities in the other British North American colonies, shall be allowed in this province as evidence of the prepayment of provincial postage in such colonies respectively on the letters or packets to which they are affixed.

**Newspaper postage abolished.** 12. All newspapers, whether published in this province or elsewhere, shall pass through the post offices in this province free of charge.

**Books and pamphlets; postage unregulated.** 13. Printed books, periodical publications and pamphlets, may be transmitted by post within this province at the rate of two pence per ounce up to six ounces in weight, and three pence for each additional ounce up to sixteen ounces, beyond which weight no printed books, publication or pamphlet shall be transmitted by post; but the governor in council may, by order, alter, modify and reduce the rates of postage on such printed books, periodical publications or pamphlets.

**Packet postage regulated and apportioned.** 14. The packet postage for letters shall be one shilling sterling the half ounce, ten pence of which shall belong to the English post office, and two pence to the Nova Scotia office.

**Packet postage paid half-yearly; other postage quarterly.** 15. All monies received on account of packet postage to and from the United Kingdom shall be carried to a separate account by the postmaster general, and the same shall be remitted by the governor not less than twice in every year to the postmaster general in England; and all other monies received by the postmaster general in this province shall be paid by him at the end of every quarter to the receiver general; and he shall also return to the office of the financial secretary, at the end of every quarter, a quarterly account of the whole revenue received by him.

**Express mails; expense of to be subject of agreement.** 16. The rate of remuneration for the transport of British mails by express through this province to or from New Brunswick, Canada and Prince Edward Island shall be paid from time to time by agreement to be made between the government of this province and the other provinces or governments concerned.

**Agreement may be modified.** 17. If it shall appear to the local governments or proper authorities of the other provinces and of the United Kingdom, and to the governor in council, that the foregoing conditions and provisions are not in accordance with the arrangements so made or agreed upon with the other colonies, then the governor in council may alter and modify such conditions and provisions so as to carry out and complete such arrangement.

**Government or parliamentary printed papers free of postage.** 18. All papers ordered to be printed by either house of parliament or by her majesty's command, or by the legislative council or house of assembly of this province, or by virtue of an address of the legislative council or assembly, shall be transmitted by post within this province free of postage.



19. No printed paper, whether newspaper, book, pamphlet, or other paper, permitted by this chapter to be sent by post, shall be transmitted either free or at a reduced rate of postage unless the following conditions shall be observed: first,—it shall be sent without a cover, or in a cover open at the sides or ends; second,—there shall be no words or communication printed on the paper after its publication, or upon the cover thereof, nor any writing or marks upon it, or upon the cover of it, except the name and address of the sender, and of the person to whom it is sent; third,—there shall be no paper or thing enclosed in or with any such paper or publication.

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Conditions to be observed in forwarding printed papers.

20. The postmaster general or any of his officers may examine any printed paper or packet which shall be sent by the post, either without or with a cover, open at the sides or ends, in order to discover whether it is contrary in any respect to the conditions hereby required to be observed; and in any case if the required conditions be not fulfilled, the whole of every such paper shall be charged with postage as a letter; and as to every such printed paper going out of the province, the postmaster general may either detain the same or forward it by post charged with letter postage.

Letter postage chargeable if conditions not complied with.

21. In all cases where a question shall arise whether a printed paper is entitled to the privileges of a newspaper or other publication as regards its transmission by post under this chapter, the question shall be referred to the postmaster general, whose decision, with the concurrence of the governor in council, shall be final.

Questions of postage on printed papers, how decided.

22. If any printed newspaper or other printed paper privileged to go by post and brought into this province shall be directed to a person who shall have removed from the place to which it is directed before the delivery thereof at that place, it may, provided it shall not have been opened, be redirected and forwarded by post to such person at any other place within this province free of charge for such extra conveyance; but if such newspaper or other printed paper shall have been opened, it shall be charged with the rate of a single letter from the place of redirection to the place at which it shall be ultimately delivered.

Removal of parties; provisions for forwarding newspapers in such cases.

23. For encouraging masters of vessels, not being post office packets, to undertake the conveyance of letters between places beyond the British North American colonies and this province, and for regulating the conveyance and delivering of such letters, the postmaster general may allow to the masters one penny half-penny for each letter they shall deliver to the post office at the first port they touch or arrive at in this province, or with which they shall communicate when inward bound; and if from unforeseen circumstances the master cannot, upon delivering his letters at an outport, receive the money to which he is entitled, he shall be paid by means of an order on the postmaster

Ship postage allowed masters of private vessels in certain cases.

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general at such other place as may be convenient; and every master of a vessel inward bound shall, at the port or place of arrival, sign a declaration in the presence of the person authorized to take the same at such port or place, who shall also sign the same, and the declaration shall be in the form or to the effect following:

"I, A. B., commander [*state the name of the ship or vessel*], arrived from [*state the place*], do, as required by the post office laws, solemnly declare that I have, to the best of my knowledge and belief, delivered, or caused to be delivered, at the post office, every letter, letter bag, package or parcel of letters that was on board the [*state the name of the ship*] except such letters as are exempted by such laws."

Ship letters;  
how delivered;  
how secured.

24. No officer of the colonial revenue shall permit such vessel to enter or report until such declaration shall be made and produced, and no vessel shall be permitted to break bulk or make entry in this province until all letters on board the same shall be delivered at the post office, where posts may be established, except such letters as are exempted by this chapter, and also except all such letters as shall be brought by a vessel liable to the performance of quarantine, all which last mentioned letters shall be delivered by the persons having possession thereof to the persons appointed to superintend the quarantine, that all proper precautions may be by them taken before the delivery thereof; and when due care has been had therein, such letters shall be by them despatched in the usual manner by post, and the officers of the colonial revenue at every port or place in this province shall search every vessel for letters which may be on board contrary to this chapter, and may seize all such letters and forward them to the nearest post office, and the officer who shall so seize and send them shall be entitled to a moiety of the penalties which may be recovered for any such offence; and the postmaster general may appoint agents to demand from the masters of vessels arriving in this province all letters on board the same and not exempted by this chapter; and the master of any such vessel shall forthwith deliver all letters on board to such person on his demanding the same.

Way offices, how  
established.

25. The postmaster general, with the approbation of the governor in council, may establish way offices over and above the regular post offices, and every person employed at a way office shall be liable to all the penalties imposed by this chapter on postmasters and other officers of the post office.

Extension of  
postage accom-  
modation, how  
provided for.

26. The postmaster general, with the concurrence of the governor in council, may enter into an agreement with, and take security from, any person applying to him to extend the accommodations of the post to any place, for indemnifying the revenue against the expenses which shall be incurred thereby beyond the amount of postages received.

27. The governor in council may enter into arrangements or conventional agreements with any other of the North American colonies, or with any foreign country, for the transmission of colonial or foreign newspapers, or other printed papers within or through this province upon such terms and conditions as shall be reasonable, and may carry out such arrangements or conventional agreements by orders in council duly published as herein directed.

## CHAP. 23.

Colonial and foreign newspapers; transmission of how provided for.

28. The postage marks, whether British, foreign, or colonial, on any letter brought into this province, shall in all courts of justice, and elsewhere, be received as conclusive evidence of the amount of British, foreign, or colonial postage, payable in respect of such letter, in addition to any other postage chargeable thereon, and all such postage shall be recoverable in this province as postage due to her majesty.

Postage marks; evidence.

29. No postmaster general nor any officer of the post office throughout the province, nor any courier, shall be compelled to serve on any jury or inquest, or in the militia, or as a town or city officer.

Officers exempted from public duty.

30. If any person employed to convey or deliver a post letter-bag or a post letter, shall, whilst so employed, or whilst the same be in his custody or possession, leave a post letter-bag or a post letter, or if any such person shall be guilty of an act of drunkenness or of negligence, or other misconduct, whereby the safety of a post letter-bag or a post letter shall be endangered, or shall collect, receive, convey or deliver a letter otherwise than in the ordinary course of the post, or shall give any false information of an attempt at robbery upon him, or shall loiter on the road or passage, or wilfully mis-spends his time so as to delay the progress or arrival of a post letter-bag, or a post letter, or shall not use proper care and diligence safely to convey a post letter-bag or a post letter at the rate of speed appointed by and according to the regulations of the post office for the time being, he shall forfeit ten pounds.

Misconduct, how punished.

31. No person in the employ of the post office, travelling with a mail, shall pay for passing or repassing a ferry; but the ferryman at every such ferry shall forthwith convey over such person travelling with a mail without payment for the same on pain of forfeiting for every offence five pounds.

Ferry free.

32. Whoever shall abet or procure the commission of an offence which is by this chapter punishable on summary conviction, shall be liable to the same forfeiture or punishment to which a principal offender is by this chapter made liable.

Abettors of offences punished as principals.

33. Subject always to the provisions and regulations hereinbefore contained, the postmaster general shall have the exclusive privilege of conveying, receiving, collecting, sending and delivering letters within this province; and any person who shall, except in the cases hereinafter excepted,

Letters to be forwarded only by mail; exceptions.

CHAP. 23. collect, send, convey or deliver, or undertake to convey or deliver any letter within this province, or who shall receive or have in his possession any letter for the purpose of conveying or delivering it otherwise than in conformity with this chapter, shall for every letter so unlawfully conveyed or undertaken to be conveyed, received, delivered or found in his possession, incur a penalty of five shillings, but such exclusive privilege, prohibition and penalty shall not apply to—

Letters sent by private individuals to be mailed in the first way or post office :

Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver :

Letters addressed to a place out of the province and sent by sea and by a private vessel not being a packet boat :

Letters lawfully brought into this province and immediately posted at the nearest post office :

Letters of merchants owners of merchant vessels, or of the cargo, or loading therein, sent by such vessels or by any person employed by such owners for the carriage of such letters according to their respective addresses, and delivered to the persons to whom they are respectively addressed, without pay or advantage for so doing :

Letters concerning goods sent by common known carriers to be delivered with the goods to which such letters relate, without reward or advantage for receiving or delivering them :

Provided that nothing herein contained shall authorise any person to collect any such excepted letters for the purpose of conveying or sending them as hereinbefore mentioned, and that way letters prepaid may be delivered by the officer to the courier to be dropped along the route at convenient places ; and provided also, that nothing in this chapter shall oblige any person to send any pamphlet, printed book or newspaper by post.

Letters sent otherwise than by mail, seized, &c.

34. It shall be lawful for any person, and it shall be the duty of the officer or person employed in the post office, or in the collection of the revenue, to seize any letters conveyed, received, collected, sent or delivered in contravention of this chapter, and to take them to the nearest post office, and to give such information as he may be able to give to the postmaster for the effectual prosecution of the offender ; and the letters moreover shall be charged with letter postage.

Postage by whom and to whom payable.

35. As well the colonial, British or foreign, as the provincial postage, on any letter or packet, shall, if not prepaid, be payable to the postmaster general by the party to whom the same shall be addressed, or who may lawfully receive such letter or packet : and any refusal or neglect to pay such postage shall be held to be a refusal to receive such letter or packet, which shall be detained and dealt with

accordingly; but if the same be delivered, the postage on it shall be charged against and paid by the postmaster delivering it, saving his right to recover it from the party by whom it was due as money paid for such party. And if any letter or packet be refused, or if the party to whom it is addressed cannot be found, then such postage shall be recoverable by the postmaster general from the sender of such letter or packet; and the postage marked on any letter or packet shall be held to be the true postage due thereon, and the party signing or addressing it shall be held to be the sender until the contrary be shewn; and all postage may be recovered with costs by civil action in any court having jurisdiction to the amount.

36. Subject to the provisions of this chapter and to the orders made under it, and the instructions he may receive from the governor, the postmaster shall have power to open and close post offices and mail routes, to suspend any postmaster or other officer or servant of the department, until the pleasure of the governor be known, and to appoint a person to act in the meantime in the place of such officer or servant; to enter into and enforce all contracts relating to the conveyance of the mail, the local accommodation of the department and other matters connected with the business thereof, and to make rules and orders for the conduct of and management of the business and affairs of the department and for the guidance and government of the officers and servants thereof in the performance of their duties; to sue for all sums due for postages or penalties under this chapter, or by any postmaster, officer or servant of the department, or his sureties; and all such powers may be lawfully exercised by him, or by any postmaster, officer, servant or party whom he shall depute to exercise the same, or whose act in that behalf he shall approve, confirm or adopt; and every officer, servant or party, employed in the post office shall, as regards the duties attached to the office held by him, be deemed the deputy of such postmaster general. And all suits, proceedings, contracts and official acts to be brought, had, entered into and done by the postmaster general, may be so in and by his name of office, and may be continued, enforced and completed by his successor in office as effectually as by himself; nor shall the appointment or authority of any postmaster general, or of any postmaster, officer or servant of the post office, be liable to be traversed or called in question in any case except only by those who act for the crown.

Powers and duties of the postmaster general.

37. In every case in which any seaman in her majesty's navy, sergeant, corporal, drummer, trumpeter, fifer, or private soldier in her majesty's service, or in the service of the East India company, shall be entitled to receive or send letters on the payment of a certain sum and no more, in place of all British postage thereon, the payment of such

Soldiers' and seamens' letters privileged.

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Property in letters, in whom vested.

Lost letters; postmaster general not liable for, except where his own default.

Offences enumerated and defined, and punishment prescribed.

sum shall likewise free such letter from all provincial postage thereon, and the governor in council may make orders for giving effect to this section.

38. From the time any letter, packet, chattel, money or thing shall be deposited in the post office for the purpose of being sent by post, it shall cease to be the property of the sender, and shall be the property of the party to whom it is addressed, or the legal representatives of such party.

39. The postmaster general shall not be liable to any party for the loss of any letter or packet sent by post, unless such loss shall have arisen from his own default.

40. To steal, embezzle, secrete or destroy any post letter shall be felony, punishable in the discretion of the court by imprisonment for not less than three nor more than fourteen years; unless such post letter shall contain any chattel, money, or valuable security; in which case the offence shall be punishable by imprisonment for life, or for a period not less than five years.

To steal from or out of a post letter any chattel, money, or valuable security, shall be felony, punishable by imprisonment for life or for a period not less than five years.

To steal a post letter-bag, or a post letter from a post office, or from any way office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment for life, or for a period not less than five years.

To open unlawfully any post letter-bag, or unlawfully to take any letter out of such bag shall be felony, punishable by imprisonment for not less than one nor more than fourteen years.

To receive any post letter, or post letter-bag, or any chattel, money, or valuable security, the stealing, taking, secreting, or embezzling whereof is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted, or embezzled, shall be felony, punishable by imprisonment for not more than five years, and the offender may be indicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon hath or hath not been previously convicted, or shall not be amenable to justice, and however such receiver shall be convicted, the offence shall be punishable as hereinbefore mentioned.

To forge, counterfeit, or imitate any postage stamp issued or used under the authority of this chapter, or by or under the authority of the government, or proper authority of the United Kingdom, or of any British possession, or of any foreign country, or knowingly to use any such forged, counterfeit, or imitated stamp, or to engrave, cut or sink, or make any plate, die, or other thing, whereby to forge, counterfeit, or imitate such stamp, or any part or portion thereof, except by the permission in writing of the post-

master general, or of some officer or person who, under the orders to be made in that behalf, may lawfully grant such permission, or to have possession of any such die, plate, or other thing, without such permission, or to forge, counterfeit, or unlawfully imitate, use, or affix to or upon any letter or packet, any stamp, signature, initials, or other mark or sign, purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon, or any part thereof, hath been prepaid, or ought to be paid by or charged to any person or department, shall be felony, punishable by imprisonment for life, or for a period not less than five years.

To open unlawfully, or wilfully to keep, secrete, delay, or detain or procure, or suffer to be unlawfully opened, kept, secreted or detained, any post letter-bag, or any post letter, or after payment or tender of the postage thereon, if payable to the party having possession of the same to neglect or refuse to deliver up any post letter to the person to whom it shall be addressed, or who shall be legally entitled to receive the same, shall be a misdemeanor.

To steal, or for any purpose to embezzle, secrete, destroy, wilfully detain or delay any printed vote or proceeding, newspaper, printed paper or book, sent by post, shall be a misdemeanor.

To obstruct or wilfully delay the passing or progress of any mail, or of any animal or carriage employed in conveying any mail on any public highway, shall be a misdemeanor.

To endeavor to procure any person to commit any act hereby made or declared a felony or misdemeanor, shall be a misdemeanor.

Every misdemeanor hereunder shall be punishable by fine or imprisonment, or both, in the discretion of the court before whom the offender shall be convicted.

Every principal in the second degree, and every accessory before or after the fact to any felony hereunder, shall be guilty of felony, and punishable as the principal in the first degree; and every person who shall abet or procure the commission of any such misdemeanor, shall be guilty of a misdemeanor and punishable as a principal offender.

Any imprisonment awarded under this chapter shall be in the provincial penitentiary, if for a term of or exceeding one year; and if the imprisonment awarded be for a less term, it may be with or without hard labor in the discretion of the court awarding it.

41. Any indictable offence against this chapter may be dealt with, indicted and tried, and punished and laid, and charged to have been committed, either in the county or place where the offence shall be committed, or in that in which the offender shall be apprehended or be in custody as if actually committed therein; and where the offence shall

Offenders, how  
prosecuted.

CHAP. 23.

be committed in, upon, or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter-bag or post letter, or chattel or money, or valuable security, sent by post, such offence may be dealt with and inquired of, tried and punished, and charged to have been committed, as well within the county or place in which the offender shall be apprehended or be in custody as in any county or place through any part whereof such mail, person, post letter-bag, post letter, chattel, money or valuable security shall have passed in the course of conveyance and delivery by the post, in the same manner as if it had been actually committed in such county or place; and in all cases where the side or centre, or other part of a highway, or the side bank, centre or other part of a river or canal, or navigable water, shall constitute the boundary between two counties or places, then to pass along the same, shall be held to be a passing through both; and every accessory before or after the fact, if the offence be felony, and every person abetting or procuring the commission of any offence, if the same be a misdemeanor, may be dealt with, indicted, tried and punished as if he were a principal, and his offence may be laid and charged to have been committed in any county or place where the principal offence may be tried.

Property, in whom and how laid; other allegations.

42. In every case where an offence shall be committed in respect of a post letter-bag or a post letter, packet, chattel, money or valuable security, sent by post, it shall be lawful to lay in the indictment the property of such post letter-bag, post letter, packet, chattel, money or valuable security, sent by post, in the postmaster general; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter-bag, post letter, packet, chattel or valuable security was of any value; but except in the cases hereinbefore mentioned, the property of any chattel or thing used or employed in the service of the provincial post office, or of the monies arising from the duties of postage, shall be laid in her majesty, if the same be the property of her majesty, or if the loss thereof would be borne by the province and not by any party in his private capacity, and in any indictment against a person employed in the post office for an offence against this chapter, or in any indictment against a person for an offence committed in respect of some person so employed, it shall be sufficient to allege that such offender or other person was employed in the post office at the time of the commission of the offence, without stating further the nature or particulars of his employment.

Suits may be compounded.

43. The postmaster general, subject always to the orders of the governor in council, may compromise and compound any suit or information which shall be commenced by his authority or under his control against any person for recover-



ing a penalty incurred under this chapter on such terms and conditions as he shall in his discretion think proper, with full power to him or any of the officers and persons acting under his orders to accept the penalty incurred or alleged to be incurred, or any part thereof, without suit or information brought for the recovery thereof. CHAP. 23.

44. All mere pecuniary penalties imposed by this chapter, or by any order of the governor in council made under this chapter, shall be recoverable with costs by the postmaster general, by civil action, in any court having jurisdiction to the amount, and shall belong to the province, saving always the power of the governor in council to allow any part or the whole of such penalty to the officer or party by whose information or intervention the same shall have been recovered, but all such penalties shall be sued for within one year after they are incurred, and not afterwards, provided always, that if the penalty exceed twenty pounds the offender may be indicted for a misdemeanor in contravening the provisions of this chapter or of the regulations made under it, instead of being sued for such penalty, and if convicted shall be punished by fine or imprisonment, or both, in the discretion of the court.

Pecuniary penalties, how recovered; limitation of action.

45. In any action or proceeding for the recovery of postage, or of any penalty under this chapter, any postmaster, or other officer or servant of the post office, shall be a competent witness, although he may be entitled to or entertain reasonable expectation of receiving some portion or the whole of the sum to be recovered; and the burden of shewing that any thing proved to have been done by the defendant was done in conformity to or without contravention of this chapter, shall be on the defendant.

Competency of witnesses: burden of proof.

46. The annual salary of the postmaster general for the province of Nova Scotia shall be six hundred pounds currency.

Pay of postmaster general, clerks, deputy postmasters, and way office keepers.

The salary of the first clerk of the post

office at Halifax,	£187	10	0	} Currency.
Of the second clerk,	125	0	0	
Third clerk,	125	0	0	
Fourth clerk,	125	0	0	
Messenger at Halifax,	75	0	0	

Deputy postmasters shall, until the last day of the next session, receive and retain, in lieu of their services, twenty per cent, on the amount of postage by them collected; and also the several sums now agreed to be paid to them for extra labor and night work.

Way office keepers shall receive forty shillings a year in full, and the practice of charging two pence on the receipt or delivery of letters shall be discontinued.

47. The words "postmaster general" and "post office," when used in this chapter, shall mean the provincial postmaster general and provincial post office, unless otherwise expressed. Definition of terms.

CHAP. 24.

## TITLE V.

## OF PUBLIC BUILDINGS AND ESTABLISHMENTS.

## CHAPTER 24.

## OF THE COMMISSIONERS OF PUBLIC PROPERTY.

Governor may make regulations relative to provincial buildings and establishments.

1. The governor in council may make such regulations for the superintendence and management of the provincial building, government house, provincial penitentiary, and all other buildings and property belonging to the province, with all the light houses, buoys and beacons erected, or to be erected within this province, and of Sable Island, and the Seal and Mud Islands, as may seem judicious; provided that no greater expense is incurred for such superintendence and management than has been heretofore sanctioned or granted by the legislature; such regulations to be laid before the legislative council and assembly, within ten days of the opening of the next session after they shall be made, and they shall be subject to the revision of the legislature.

Power of commissioners.

2. The powers conferred upon the board of works by the revised statutes may be, by order of the governor in council, transferred, in whole or in part, to the commissioners, or other authorities appointed to superintend and manage such works respectively.

Acts of commissioners ratified.

3. The acts done by the commissioners, or other persons charged with the management of such establishments and property, between the first day of September, in the year one thousand eight hundred and fifty-one, and the making of such regulations, and all advances made by the government for the maintenance thereof, are hereby declared as lawful as they would have been, had chapter twenty-four of the revised statutes not been passed, and the acts by which such establishments respectively were previously governed, had continued in force.

Appropriation of land.

4. Whenever any lands are required by the commissioners or other authorities for the erection of any light houses, beacons, or other erections for the protection of navigation, and for roads leading thereto, and for buildings and other necessary purposes connected therewith, the commissioners or other authorities may forthwith appropriate the same to the public service, and the same shall be vested in the public, in the same manner as in the case of lands appropriated to the public service for great roads; and the lands required therefor shall be valued and appraised in conformity with the provisions of chapter sixty-one, "of laying out certain great roads"; the commissioners or

Appraisalment.

other authorities to make the agreement with the owners of the land, and if such agreement cannot be made, to appoint two appraisers, and the owners of the land one; which appraisement shall be laid before the sessions, and confirmed and decided by them. CHAP. 25.

5. If the government shall deem any such valuation extravagant, they may withhold payment of the amount, and order a new appraisement and valuation, in any way they may direct. Government may order a new appraisement.

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## CHAPTER 25.

### OF THE PENITENTIARY.

1. The provincial penitentiary shall be used as a prison for offenders, as hereinafter specified. Penitentiary a prison.
2. The penitentiary shall be absolutely vested in her majesty. Penitentiary vested in her majesty.
3. If any officer on being dismissed shall not quit the penitentiary, and give up possession of any building or apartment belonging thereto within a period to be fixed by the board of works, any justice of the peace shall, on application of the board, by warrant direct the sheriff to remove such person out of the penitentiary, or any building or apartment belonging thereto, in like manner as upon a writ of *habere facias possessionem*. Mode of removing dismissed officers.
4. The board shall have the same powers with respect to the penitentiary which the visiting justices of any prison in England have, or so much thereof as the governor in council may confer, and may hold meetings and make rules for the government of the penitentiary, for the duties and conduct of the principal keeper and other officers thereof, and for the maintenance, employment, and discipline of the convicts. No rules, or alteration or revocation of former rules, shall be in force until approved by the governor in council. Board may make rules for management.
5. The board shall appoint one or more of their number from time to time to visit the penitentiary, and may delegate to such visitors powers to make any order requisite in cases of pressing emergency. Every such order shall be in writing, and shall be reported, with the circumstances, to the board, at their next meeting. Appointment of visitors; their powers.
6. The board may contract for the clothing, diet, and other necessaries for the maintenance of the convicts, and for the implements or materials for any manufacture or trade in which the convicts shall be employed, and may carry on such manufactures or trade, and sell the goods manufactured. Maintenance of convicts; their employment.

## CHAP. 25.

Report of the board to be laid before the legislature annually

7. The board shall, on or before the tenth day of January, in each year, and oftener if required by the governor in council, report to him in writing, under the hands of three or more of them, the state of the buildings, the behaviour of the officers and of the convicts, the amount of the earnings of the convicts, and the expense of the penitentiary, and such other matters relating to the management of the prison as they shall deem expedient, or as the governor in council shall direct, and such report shall be laid before the legislature within one month, if the general assembly be then sitting; if not, then within one month after its next meeting.

Convicts, how removed and received

8. The governor may direct the removal to the penitentiary of any convict under sentence of the supreme court, who, having been examined by a medical officer, shall appear free from any putrid or infectious distemper, and fit to be removed from the place of his confinement. The person having the custody of such convict shall, on the receipt of the order of removal, convey him to the penitentiary, and if, on examination by the medical officer there, he shall appear fit to be admitted, shall deliver him into the custody of the principal keeper, with an attested copy of the order of the court, containing the sentence by virtue of which such convict shall be in custody, and also a certificate specifying such particulars concerning such convict as the governor may direct. The principal keeper shall give a receipt in writing to every such person for every convict received into his custody; and all reasonable expenses of such removal shall be paid by the county in which the offender shall have been convicted.

Convicts must undergo medical examination.

9. When any convict ordered to be confined in the penitentiary shall be brought thither, he shall continue in the custody of the person who shall bring him until he has been examined by the medical officer and ascertained to be fit for admission into the penitentiary; and if the medical officer shall certify that he is not fit to be received there, he shall be placed in some hospital.

Discharge of convicts when sick: how conducted.

10. No convict received into the custody of the principal keeper shall be discharged at the end or other determination of his term if he shall then labor under any acute or dangerous distemper, unless at his own request; and when any such convict shall be finally discharged, such clothing and assistance in money, or otherwise, as the board shall judge proper, shall be given him.

Employ of convicts, how regulated.

11. The convicts may be employed in work at the penitentiary every day in the year except Sundays, Christmas Day, Good Friday, and any day appointed for a general fast or thanksgiving, so many hours, not exceeding twelve, exclusive of the time allowed for meals and exercise, as the board shall order, but they may by a written order allow any convict at his own request to labor for a longer time.

12. No person except the members of the board or servants of the penitentiary, or persons authorised by the rules made by the board, shall be allowed at any time to enter any part of the penitentiary used by the prisoners, or to converse or hold communication with them.

CHAP. 25.  
Admission of  
persons restric-  
ted.

13. The principal keeper, or person under him, having the custody of the convicts, shall, during the term for which they shall be ordered to remain in custody, have the same powers over them as are incident to the office of sheriff or jailer; and in case of any misbehaviour or negligence in the discharge of his office, shall be liable to the same punishment to which a jailer is now liable.

Principal keeper; his powers and responsibilities.

14. If any convict shall assault the principal keeper, or any officer or servant employed in the penitentiary, the board may order him to be prosecuted therefor; and, upon conviction, he shall be imprisoned for any term not exceeding two years, in addition to the term for which he was in the first instance confined.

Punishment of convicts for assaults.

15. The governor may at any time order any convict to be removed from the penitentiary as incorrigible, to any other prison or place of confinement in which he may be lawfully imprisoned.

Incorrigible convicts liable to removal.

16. If any convict shall be found insane during his confinement, and be so reported by the board to the governor, he may, by warrant, order such convicts immediate removal to such lunatic asylum as he may judge proper. Every convict so removed shall remain under confinement in such asylum until it shall be certified to the governor by two physicians or surgeons, that such convict has become of sound mind. If the term of his imprisonment shall not then have expired, the governor may order that such convict be remanded to the penitentiary; if the period of his imprisonment shall have expired, he shall be discharged.

Insane convicts, how treated.

17. Every convict who, during the term of his imprisonment in the penitentiary, shall break prison, or who, while being conveyed to prison, shall escape, shall be punished by an addition, not exceeding three years, to the term of his imprisonment. If afterwards convicted of a second escape or breach of prison, he shall be guilty of felony; and every convict who, during the term of his imprisonment, shall attempt to break prison, or who shall forcibly break out of his cell, or make any breach therein with intent to escape therefrom, shall be punished, by an addition, not exceeding twelve months, to the term of his imprisonment, by the order and direction of the governor in council.

Breaking prison, escapes, and other misconduct, how punished.

18. Any person rescuing a convict from the penitentiary or from the person conveying him thither, or aiding in his rescue, shall be guilty of felony; and every person having the charge of a convict, or employed as a keeper or assistant, who shall wilfully allow such convict to escape, or assist him in an attempt to escape though no escape be

Rescuing convicts, allowing or assisting escapes, how punished.

CHAP. 25. actually made, and any person attempting to rescue any convict, or aiding in such attempt though no rescue be actually made, shall be guilty of felony; and every person having such custody carelessly allowing any such convict to escape, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to fine or imprisonment, or to both, at the discretion of the court.

Subordinate of-  
ficers punish-  
able for miscon-  
duct.

19. Every officer or servant of the penitentiary bringing or carrying out, or endeavoring to bring or carry out, or allowing to be brought or carried out to or for any convict, money or any article not allowed by the rules of the penitentiary, shall be forthwith suspended by the principal keeper, who shall report the offence to the board at their next meeting, and the board shall enquire thereof upon oath, which any one of them may administer, and upon proof of the offence shall dismiss such officer or servant, and may, if they think fit, cause the offender to be apprehended and carried before a justice, who shall hear and determine any such offence in a summary way; and every officer or servant upon conviction of such offence before a justice, shall be liable to a penalty not exceeding fifty pounds, or at the discretion of the justice, to be imprisoned in the common jail or penitentiary, there to be kept with or without hard labor for any term not exceeding six months.

Convicts may  
be tried in su-  
preme court;  
register evi-  
dence of its con-  
tents.

20. Every convict or person who shall commit any offence mentioned herein, for which he is not liable to be summarily convicted, may be tried before the supreme court at Halifax or in the county in which he shall be taken; and in case of any prosecution for any such offence, a copy properly attested of the order of commitment to prison, with proof that the person in question is the same who was delivered with such order, and the production of the register of the prison shall be sufficient evidence of all the facts entered in such register as to such convict without the production of any other proof that such convict had been convicted of felony and legally sentenced to imprisonment in the penitentiary.

Expenses of es-  
tablishment,  
how provided.

21. An account of the expenses of carrying these provisions into execution, shall be annually laid before the legislature, and after deducting therefrom any profits arising from the earnings of the convicts the balance shall be provided for by such sums as may be granted by the assembly.

Protection of  
board and keep-  
er.

22. All provisions of the legislature for protecting justices in the execution of their office, shall extend to the board and the principal keeper of the penitentiary.

Limitation of  
actions.

23. All actions and prosecutions for anything done in pursuance of these provisions, shall be laid and tried in the county where the fact was committed, and shall be commenced within six months thereafter.

Imprisonment  
regulated and  
limited.

24. Any person convicted of felony under these provisions, shall be liable to imprisonment in the penitentiary

for a term not more than fourteen years nor less than one year, as the court shall award. CHAP. 26.

## CHAPTER 26.

### OF SABLE ISLAND AND THE LIGHT HOUSES.

1. Any member of the board of works, or their superintendent, or the resident keeper, may apprehend any person who may be found residing on Sable Island, having voluntarily gone there for any purpose whatever without a license from the governor, describing such person and authorizing him to reside thereon; and may bring him and all property found in his possession to Halifax; and three justices, upon proof that he was so found, may commit him to jail for not more than six months, and further until he give security for his future good behaviour, and whatever property be found on the island belonging to any such offender, if sufficient to pay the expense of the removal of such offender and goods, shall by order of such justices be sold, and the proceeds applied to that purpose, and the residue, if any, returned to the owner; but if it appear that such property has been cast on the shore of the island, or procured from some wrecked or stranded vessel, it shall be sold, and the proceeds, after payment of the expenses, paid to the owner or his agent, or otherwise be paid into the treasury for the right owner when discovered, who, upon proof to the satisfaction of a judge of the supreme court of his right thereto, shall receive the same.
 

Persons and property found on Sable Island, how disposed of.
2. The board may, from time to time, make rules for the government of the island, and for regulating the duties of the resident keeper thereon, for administering relief to shipwrecked persons and their removal, preserving and removing shipwrecked property, and preventing persons not authorized by the governor from taking up their residence thereon, and for the general management of the island.
 

Rules for the regulation of the island, how made.
3. Every member of the board, and also their superintendant and resident keeper, shall have, in every respect upon Sable Island, and in relation to wrecks or wrecked goods there and elsewhere, the same power and authority as a justice of the peace.
 

Members of the board, &c., may act as justices.
4. When vessels or goods shall be stranded on Sable Island, or its bars or coasts, and they, or any part thereof, shall be saved by any of the board, or their superintendant, or any person under the authority of the board, they shall be taken in charge by the superintendant or keeper and sent to Halifax, to be disposed of by the board for the benefit of the owners, after payment of salvage to the establish-
 

Vessels & goods wrecked, how disposed of.

CHAP. 27. ment on Sable Island, and all other expenses incurred with respect to them, unless the board shall give contrary orders to the superintendant or keeper; and all goods so saved shall be held to be in the possession of the board, and shall not on any pretence be taken out of the custody of such superintendant or keeper, or person employed by either of them, except by order of the board, nor until payment of the salvage and expenses, and such goods shall be liable to duties as if imported.

Sable Island within the county of Halifax.

5. In all proceedings in any court, Sable Island shall be held to be within the county of Halifax, and any person charged with any criminal offence committed thereon, or on its shores, banks, or bars, may be proceeded against and tried as if the island were actually within the body of such county.

Expenses of light houses on St. Paul's and Scataric, how provided for.

6. There shall be annually paid to her majesty, out of the public revenues towards the support of the light houses and humane establishments on the islands of Saint Paul and Scataric, so long as they shall continue in operation, such sum of money as shall from time to time become payable on the part of this province under the terms of an award made on the sixteenth day of August, one thousand eight hundred and thirty-six, at Miramichi, by commissioners or arbitrators appointed for that purpose by the provinces of Lower Canada, New Brunswick, Nova Scotia and Prince Edward Island, and the governor shall in each year draw his warrant for such sum in favor of the board of works.

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## TITLE VI.

OF THE MANAGEMENT AND REGULATION OF THE PUBLIC DOMAIN.

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### CHAPTER 27.

OF THE COAL MINES.

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#### Part the First.

Proceedings preparatory to opening coal mines on private lands.

1. Whenever it shall be thought expedient by the government to open and work any mines of coal within the lands of any person for the purpose of raising and taking away coal discovered within the same, the justices, in general or special sessions, on application in writing by the party authorised to open and work any such mines, shall cause the clerk of the peace, in their presence, to draw the names of twenty-four jurors out of the petty jury list then returned



to the supreme court of the county, who shall be persons CHAP. 27.  
 residing at least five miles from, and having no interest in, such lands, and not being of kin to the parties interested therein, or to the persons applying for the opening and working of such mines; and the justices shall direct the clerk to issue a precept in writing to the sheriff of the county, with a list of the jurors so drawn annexed; by which precept the sheriff shall be commanded to summon the persons named in such list to appear at some convenient place upon or near the said lands upon a certain day, to be at least fourteen days after the issuing of the precept, which shall be made returnable to the court of general sessions for such county, to be held next after the day appointed for the meeting of the jurors, and the clerk shall make out and sign notices in writing of the issuing of such precept, of the time and place of meeting, of the jurors, and for what purpose, and upon whose application it issued; six of such notices to be posted up in the most public places in such county, and if the owner of the lands do not reside within such county a notice shall be inserted in two of the Halifax newspapers.

2. Upon the day appointed for the appearance of the jurors, the sheriff shall call over the list, and of those in attendance the twelve who shall first answer to their names shall be sworn as a jury to the faithful discharge of the duties hereby required of them, and such jury shall proceed to the place intended to be opened, and there lay out so much of the lands as will be sufficient to sink a proper shaft or pit to reach the veins of coal, and also so much as will be sufficient for lodging and depositing whatever may be raised from such mines, and whatever may be necessary to bring to such mines, for the purpose of opening and working the same; and the jury shall at the same time lay out and mark so much of such lands adjoining such shaft or pit as will be necessary to pass through for making a drain to carry off the water from such mines, and also so much of such lands as may be necessary to make a road or a way from such mines to the nearest navigable sea water or public highway. And such jury shall assess reasonable damages to the owners and tenants of such lands, according to the several interests therein, and as such owners or tenants ought to receive for being deprived of the use of the lands so laid off, and for injury done thereto, and for expenses imposed upon them for making fences or ditches for the purpose of separating the lands laid off from other parts of their lands, and shall fix a reasonable annual rent for the use of the lands so laid off.

Lands to be laid off by jury, and damages assessed.

3. A list of the names of such jury shall be annexed to the precept, and the verdict of the jury fixing such damages and rent, and to whom and at what time the same are to be respectively paid, shall be entered at the foot of the list

Verdict of jury to be confirmed; bonds for rent.

CHAP. 27. and shall be signed by all the jurors, and the precept, with such list and the verdict of the jury annexed, shall be returned as above mentioned; and the court shall thereupon confirm the same, and order the precept and verdict of the jury to be filed, and shall make an order declaring that so soon as the persons liable by the verdict shall pay the damages therein, and shall enter into bonds, with sufficient sureties to be approved of by the sessions, to pay the annual rent to the persons respectively to whom the same is to be paid, such person shall be authorised to take possession of the lands so set off, with power to hold the same so long as they pay the stipulated annual rents.

The bonds to be made to the queen; person entitled to rent need not be designated.

When the title to receive the damages, &c. is in dispute.

Payment to wrong parties.

Payment of damages in cases of disputed title.

Parties to whom lands are laid off not to be implicated in the controversy.  
Costs on conflicting claims.

Appeals

4. The bonds mentioned in the last section shall be made to the queen for the payment of the annual rent assessed to the person who may be from time to time entitled to the same, without designating such person by name.

5. When the right shall be in dispute, or the persons entitled be unknown or uncertain, the party to whom the lands shall be laid off shall pay the damages assessed to the county treasurer, and the rent annually to such persons as the court of sessions may determine; such payment to the county treasurer shall be equivalent to the payment hereinbefore directed.

6. Payment by the party to whom the lands shall be laid off of the damages or annual rent assessed to the persons designated by the verdict as entitled thereto, or if the verdict shall not designate the persons entitled, to such persons, as in the absence of any dispute, shall be ostensibly entitled thereto, shall exonerate the party making the payment; but any persons subsequently claiming to have been entitled to the damages or rent so paid, may prosecute their claim by action for money had and received against the persons to whom the payment shall have been made.

7. In case of disputed or unknown title, the court of sessions, on application of the claimant, shall order the damages paid to the county treasurer, and the annual rent, so often as the annual rent shall become the subject of controversy, to be paid to the persons who, on due investigation by the court, shall have established their right; but no order shall be made until it shall be shewn to the court that notice has been given, sufficient, in the judgment of the court, to protect the rights of all persons who may be or may claim to be interested.

8. The party to whom the lands shall be laid off shall not be implicated in controversies between persons contesting title to the damages or annual rent.

9. The costs on conflicting claims before the sessions, and on appeal to the supreme court, shall be the same, and governed by the same rules as apply to summary applications in the supreme court.

10. All decisions in the sessions shall be subject to

appeal to the supreme court, which the sessions shall grant on the applicant entering into a bond to the queen, with sufficient sureties, in forty pounds, conditioned for the payment of all such costs as may be ordered by the court of appeal. CHAP. 27.

11. The bonds to the queen required by this chapter shall be available as security to be enforced for the benefit of the persons entitled; such persons shall be liable to costs in the same manner as if suits on the bond had been prosecuted in their own names. Bonds—proceedings under; costs.

12. In no case in which the verdict shall find the amount of damages and the amount of annual rent with sufficient certainty, shall the proceedings for laying off lands under this chapter be refused confirmation, or be set aside because the persons entitled to damages or annual rent are not designated by name, or sufficiently designated; or by reason of irregularity in the finding as to the persons entitled, or of any matter of form; but the sessions, subject to appeal, and the supreme court, on appeal, shall rectify any error or informality, or shall adopt such proceedings as may be necessary for determining to whom the damages or rent shall be paid, or for otherwise carrying into effect the provisions and intent of this chapter. Errors and informalities in proceedings.

13. No person shall use any part of the lands so set off for any other purpose whatsoever, except such as shall be necessary for making roads, opening drains, erecting necessary works, and all other purposes connected with opening and working such mines to the most advantage; and the persons so authorised, and all persons employed about such mines, shall use the lands in such manner as will be least injurious to the owners and occupants of such lands or any other lands contiguous thereto. Lands laid off how to be used

14. Persons to whom possession of any lands shall be hereby given, may make and repair the roads to and from such mines, and erect thereon railways or any other conveniences to facilitate transportation of the articles necessary to be carried to and from the same, and may erect on the ground set off for the use of the shaft, houses and buildings to shelter the workmen and to contain any articles necessary to be used in and about the premises. Railways may be laid down and buildings erected.

15. Persons erecting any engines or machines, houses or buildings on the lands so set off to them, may, during their occupancy, take down the same and remove the materials thereof notwithstanding such buildings and erections may be considered in law as attached to the freehold. And the owners of all the lands set off under the authority of this chapter for the use and accommodation of the workers of such mines, shall be entitled to take possession of all lands so set off in case the working of the mines shall have ceased for six months next before the taking possession unless the working thereof shall have received any temporary interruption from some unforeseen accident; and Possession to revert to owner in certain cases of neglect.

**CHAP. 27.** such owners shall hold the lands so taken possession of as of their first estate, but before such possession be taken reasonable notice must be given to the persons interested in the mines to remove their effects and materials off the premises.

Provisions for recommencing works, or altering the quantity of lands set off.

16. If it be found expedient to re-commence working any mine after the lands set off for the use thereof shall be taken possession of by the owners, or if it be necessary to alter the quantity of land set off for the use of mines, the same proceedings shall be adopted as hereinbefore stated.

New bonds provided for in certain cases.

17. If any change take place of the persons authorised to work any mine, or their sureties die, remove from the province, or become insolvent, the justices in session, on application of either party, may order new bonds to be entered into; and if such new bonds be not given within a time to be limited therefor, the justices may order possession to be restored to the original owner of such lands, who may thereupon assume the possession thereof, and recover whatever compensation may be due for the time that possession of any such land may be held after such bonds ought to be given.

Costs of proceedings to be paid by applicant.

18. All costs incurred in carrying out these provisions shall be paid by the party authorised to open such mines.

Lease of mines—how to be applied for.

19. Any person proposing to work any mines or minerals in any ungranted lands in this province, or in any granted lands wherein such mines and minerals were reserved at the time of the grant, may apply for a lease of such mines and minerals to the governor, by petition, setting forth, particularly, the quality and description of the mines or minerals applied for, and also a description of the lands wherein the same are situate; on receipt of such application the governor shall direct an advertisement to be inserted in the royal gazette for the space of three months, at least, notifying all persons interested, or claiming to be interested in such mines or minerals, of the application so made.

Advertisement of the application.

Lease—when to be granted—term of.

20. If such mines or minerals shall not, within twelve months from the publication of such notice, be opened and worked, the governor in council may order a lease thereof to such person or persons for such term and on such conditions as he may think fit.

Where mine worked and abandoned after 12 months.

21. When the working of any mine, now opened, or hereafter to be opened in this province, shall have been abandoned for a period of twelve months, the governor in council shall have the same power to lease the same as in cases where a mine shall not have been worked after twelve months notice, as herein above provided.

Where only colorably worked.

22. Where any complaint shall be made to the governor in council, that any mines or minerals claimed under a lease from the crown, or under a lease granted pursuant to this chapter are not worked bona fide, but only colorably, or to prevent a forfeiture under the terms of such lease, and such

complaint shall appear to the governor in council to be well founded, the attorney general shall be directed to file in the supreme court, in the name of the queen, an information setting forth the description of the mines and minerals in question, and the substance of the complaints so made; a copy of such information shall be served upon the principal officer in charge of the mines, or in his absence, be posted up in some conspicuous place on the premises; which service or posting shall be considered sufficient notice to the parties interested, to appear and defend such information, and shall be made the same number of days, at least, as are required in ordinary proceedings in the supreme court. The party interested may appear to such information and traverse the allegation that such mines or minerals were not worked bona fide, but only colorably, or to prevent forfeiture, as aforesaid; and thereupon the issue shall be tried as other issues in the supreme court are tried, subject to the same rules and incidents, so far as the same may be applicable. On judgment for the plaintiff, by default, or after verdict, or confession, the governor in council shall have the same power to lease the mines and minerals contained in such lands, as in cases under the second section of this chapter.

23. The royalties reserved under any lease granted in pursuance of this chapter, shall not be less than those now paid by any party holding a lease under the crown of any mines or minerals in this province; and no such lease shall be made to extend beyond the year one thousand eight hundred and eighty-six.

Royalties—  
term of leases  
not to extend  
beyond 1886.

24. The jury, under this chapter are not authorised to determine the title to lands laid off under its provisions, when the title shall be in dispute or unsettled.

Juries under  
this chapter not  
authorized to  
determine dis-  
puted titles.

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## Part the Second.

Whereas an arrangement has been made and entered into between and by or on behalf of her majesty and the general assembly of this province, and Christopher Pearse and John George Nutting, as the legal personal representatives of his late Royal Highness Frederick, duke of York and Albany, and the general mining association, for the surrender to her majesty of all the terms, estates, and interests of the said Christopher Pearse and John George Nutting, and the said association, and of Mary Ann Rundell and Edmond Strong, as the legal personal representatives of Edmond Waller Rundell, deceased, and a trustee for the said association, in the mines and minerals in this province, and for granting to the said association, a new lease of the beds or seams of coal in certain parts of the said province, with full powers for

CHAP. 27. working the same for the term of twenty-eight years, to commence and be computed from the first day of January, in the year one thousand eight hundred and fifty-eight, and also for such portion of the next succeeding year as shall elapse previously to the 25th day of August, in the same year, being the year one thousand eight hundred and eighty-six, at certain rents or royalties, and subject to certain other terms, which have been agreed upon. And whereas it is intended that for effecting the said arrangement a certain indenture, already prepared and engrossed, and bearing date the first day of January, in the year one thousand eight hundred and fifty-eight, and expressed to be made between the said Christopher Pearse and John George Nutting, of the first part, the said Mary Ann Rundell and Edmond Strong, of the second part, the said association of the third part, and her majesty of the fourth part, a true copy of which indenture is contained in the schedule hereto annexed, shall be executed by the several parties thereto, of the first, second, and third parts, respectively, by which indenture all the estate, term, and interest, of the said Christopher Pearse and John George Nutting, and of the said Mary Ann Rundell and Edmond Strong, and of the said association, in the said mines and minerals, are expressed to be surrendered and yielded up to her majesty, her heirs and successors, and whereby certain releases are expressed to be made concerning the said mines and minerals, and the rents, royalties, and reservations, reserved, or agreed to be reserved, by certain leases and agreements for leases, of the said mines and minerals, and also that a certain other indenture, already prepared and engrossed, and bearing date the first day of January, one thousand eight hundred and fifty-eight, and expressed to be made between her majesty, of the one part, and the said association, of the other part, a true copy of which last mentioned indenture is contained in the schedule hereto, should be executed by the said association, by which same indenture all the beds and seams of coal in certain parts of this province are expressed to be demised to the said association, their successors and assigns, for the said term of twenty-eight years, and such portion, as aforesaid, of another year, at certain rents or royalties, and upon certain terms therein mentioned. And whereas the said two indentures so prepared and engrossed as aforesaid, have not, nor hath either of them, been executed by or on behalf of any of the parties named as parties thereto, but drafts of the same have been duly signed and approved of by Henry Revel Reynolds, esquire, the solicitor to her majesty's treasury, on behalf of her majesty, and by the honorable James William Johnston and Adams George Archibald, esquire, delegates appointed under the authority and on behalf of the general assembly of this province, and by Francis Thomas Bircham, the solicitor of and on behalf of

the said association. And the said indenture of surrender has been duly signed and approved of by Messrs. Farrar, Ouvry and Farrar, the solicitors of and on behalf of the said Christopher Pearse and John George Nutting, and by Messrs. Wilson and Bristows, the solicitors of and on behalf of the said Mary Ann Rundell and Edmond Strong. And whereas, the said arrangement cannot be fully carried into effect without an act of the general assembly of this province. CHAP. 27.

Be it therefore enacted, by the lieutenant governor, council, and assembly, that when and so soon as the said first hereinbefore mentioned indenture shall have been duly executed by the said Christopher Pearse and John George Nutting, or the legal personal representative or legal personal representatives for the time being, of the said duke of York and Albany, and by the said Mary Ann Rundell and Edmond Strong, or the legal personal representative or legal personal representatives, for the time being, of the said Edmond Waller Rundell, and by the said Association, and the said secondly hereinbefore mentioned indenture shall have been duly executed by the said association, and when and so soon as the said two several indentures, duly executed as aforesaid, shall have been delivered to the lieutenant governor, for the time being, of this province, then, and in such case and notwithstanding, the same indentures shall not have been executed by or on behalf of her majesty, but not before all the said executions hereinbefore mentioned shall have been duly effected, and the said two several indentures shall have been delivered to the said lieutenant governor, as aforesaid, the said two several hereinbefore mentioned indentures shall respectively thereupon stand and be absolutely confirmed by the general assembly of this Province, and the said first mentioned indenture shall operate and enure as an effectual surrender of all the terms, estates, and interests, thereby expressed to be surrendered, and an effectual merger and extinguishment thereof in the reversion and inheritance, and as effectual releases of all the claims and demands thereby expressed to be released, according to the tenure and purport of the same indenture, and the said secondly mentioned indenture shall operate and enure as a valid and effectual grant, lease, and demise of all the premises thereby expressed to be granted, released, and demised for the term, at the rents, royalties, and reservations, and with, under and subject to the covenants, agreements, conditions, and provisoes by and in the same indenture respectively granted, contained and reserved, or expressed so to be according to the tenor and purport of the same indenture, and that when and so soon as all the said executions hereinbefore mentioned, shall have been duly effected, as aforesaid, and the said two several indentures shall have been delivered to the said lieutenant

Leases, agreements, &c. when confirmed—operation and effect of.

CHAP. 27. governor, as aforesaid, the same indentures shall respectively operate and take effect as from the said first day of January, one thousand eight hundred and fifty-eight, and as if the same had been duly executed the same day by all the parties named as parties thereto, respectively, including her majesty, and had been delivered to the said lieutenant governor, as aforesaid, on the same day. Provided always, and it is hereby further enacted, that if the said two several indentures shall not be respectively duly executed, as aforesaid, and delivered to the said lieutenant governor, as aforesaid, during the year one thousand eight hundred and fifty-eight, then, and in that case, the same indentures and the enactments hereinbefore contained shall be absolutely void and of none effect.

Proviso.

Sections 19, 20, 21, 22 and 23 not to apply to mines demised by lease 1st January, 1858.

2. And for giving more full effect to the said lease of the first day of January, in the year one thousand eight hundred and fifty eight, be it further enacted, that in case the said two several indentures shall be respectively executed as aforesaid, and delivered to the said lieutenant governor as aforesaid, during the year one thousand eight hundred and fifty-eight, sections nineteen, twenty, twenty-one, twenty-two, and twenty-three shall not apply to the coal mines expressed to be demised by the same lease, and during the continuance of the term expressed to be thereby granted, but not further or otherwise.

Schedule to be taken as part of chapter.

3. And be it enacted, that the schedule to this chapter shall be read and taken as part of this chapter.

Indentures to be recorded.

4. And be it further enacted, That when and so soon as conveniently may be, after the said two several indentures shall have been respectively executed, as aforesaid, and delivered to the said lieutenant governor, as aforesaid, the same indenture first above mentioned shall be recorded in the registry of deeds at Halifax, in the said province, and the indenture secondly herein mentioned shall be recorded in the registry of deeds in each of the counties in which the respective areas comprised in the said lease are situate, and this chapter, or certified copies of and extracts from the registry of the same indentures respectively, under the hand of the proper officer, shall be admitted as evidence of the contents and due execution of the same indentures, respectively, in all courts of law and equity, or other judicature.

Certified copies to be received in evidence.

#### SCHEDULE.

This indenture, made the 1st day of January, in the year of our Lord 1858, between Christopher Pearse, of No. 35 Loundes Street, Belgrave Square, in the county of Middlesex, esquire, and John George Nutting, of No. 3 Gloucester terrace, Hyde park, in the same county, esquire, of the first part; Mary Ann Rundell, of Moncton



house, near Taunton, in the county of Somerset, widow, and the reverend Edmond Strong, of the parish of Clyst, Saint Mary's, in the county of Devon, clerk, of the second part; the general mining association, of the third part, and the Queen's most excellent majesty, of the fourth part. CHAP. 27.

Whereas, by letters patent, bearing date the 25th day of August 1826, being in the form of an indenture made or expressed to be made between his late majesty king George the fourth, of the one part, and his late royal highness Frederick, duke of York and Albany, of the other part, his said late majesty king George the fourth granted and demised certain mines and minerals in the province of Nova Scotia, unto the said duke of York and Albany, his executors, administrators, and assigns, for the term of 60 years, from the day of the date of the said letters patent, at the rents or royalties therein mentioned. And whereas by an indenture of underlease, bearing date the 12th day of September, 1826, and made between the said duke of York and Albany, of the one part, and John Bridge, Edmond Waller Rundell, Thomas Bigge and John Gawler Bridge, all since deceased, of the other part, the said duke of York and Albany granted and demised the same mines and minerals unto the said John Bridge, Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge, their executors, administrators, and assigns, for the then residue of the said term of sixty years, except the last day thereof, at the rents or royalties therein mentioned. And whereas, in the reign of his late majesty king William the fourth, an agreement was entered into between his said majesty's then secretary of state for the colonies, on behalf of the crown, and the said John Bridge, Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge, for a grant or lease from the crown, to them the said John Bridge, Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge, of certain mines and minerals in the said province, which were not included in, or were excepted out of, or were alleged not to be included in, or to be excepted out of the said letters patent and indenture of underlease respectively, at certain rents and royalties, but no grant or lease was ever executed in pursuance of the said agreement. And whereas, the said association became absolutely entitled to all the beneficial estate and interest under the said indenture of the 12th day of September, 1826, and the said agreement, but no assignment to them of the premises comprised therein respectively, or any part thereof has ever been executed. And whereas, the said association has worked various coal mines under or by virtue of the said indenture of underlease and the said agreement respectively. And whereas, the said Frederick, duke of York and Albany, died in the month

CHAP. 27. of January, 1827, having duly made his last will, bearing date the 26th day of December, 1826, and thereby appointed Sir Herbert Taylor and Sir Benjamin Charles Stephenson his executors, by whom the said will was, on or about the 30th day of January 1827, duly proved in the prerogative court of the archbishop of Canterbury. And whereas, the said Sir Benjamin Charles Stephenson survived the said Sir Herbert Taylor, and died on the 10th day of June, 1839, intestate. And whereas, on the 19th day of February, 1840, letters of administration to the estate and effects of the said duke of York and Albany, then left unadministered, were granted to the said Christopher Pearse and John George Nutting by the prerogative court of the archbishop of Canterbury. And whereas, on the 27th day of May, 1851, letters of administration to the estate and effects of the said duke of York and Albany, in the said province of Nova Scotia, were granted to Lawrence Hartshorne, as the attorney and on the behalf of the said Christopher Pearse and John George Nutting, as such administrators as aforesaid, by the proper court in the said province, and by an indenture bearing date the 5th day of February, 1852, and made between the said Lawrence Hartshorne, of the one part, and the said Christopher Pearse and John George Nutting, of the other part, the said mines, minerals, and premises, comprised in and granted and demised by the said hereinbefore recited letters patent, were assigned by the said Lawrence Hartshorne unto the said Christopher Pearse and John George Nutting, their executors, administrators, and assigns. And whereas, many years ago, disputes arose between the said Sir Herbert Taylor and Sir Benjamin Charles Stephenson as the legal personal representative of the said duke of York and Albany and the said association, concerning the rents and royalties payable under or by virtue of the said indenture of the 12th day of September, 1826, and suits were instituted in the high court of chancery by the said Sir Herbert Taylor and Sir Benjamin Charles Stephenson as such legal personal representatives as aforesaid, against the said Edmond Waller Rundell and others, for determining such disputes, and suits of revivor and supplement have since been instituted in relation thereto. And whereas, an agreement for compromising the said disputes was entered into between the said Christopher Pearse and John George Nutting and the said association, with the approbation of the legal advisers of her present majesty, queen Victoria, and with the approbation of the said court of chancery in the said suits, and in certain suits instituted in the said court for administering the estate of the said duke of York and Albany, and the terms of such agreement were expressed in an indenture, bearing date the 29th day of May, 1849, and made between the said Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge, of the first part, the said

association, of the second part, the said Christopher Pearse and John George Nutting, of the third part, and Robert Moser, Alfred Charles Bridge and Henry Warre, of the fourth part, and such terms were in part to the effect that the said letters patent bearing date the 25th day of August, 1826, and the said indenture of underlease of the 12th day of September, 1826, and the said agreement entered into in the reign of king William the fourth, for a lease from the crown hereinbefore respectively recited or mentioned, should be surrendered to her majesty, and that a new lease of the said mines should be granted by her majesty to the said Christopher Pearse, and John George Nutting, as such legal personal representatives as aforesaid, at certain rents or royalties, and that a new underlease of the same mines should be granted by the said Christopher Pearse and John George Nutting to the said association, at certain rents or royalties, and further, that in the meantime and until such lease and underlease should be granted, the said association should invest the rents and royalties which would be payable as part of the estate of the said duke of York and Albany, if such lease and underlease had been actually granted in the purchase of bank £3 per cent. annuities, and should accumulate the dividends thereof. And whereas the terms of the said agreement were afterwards modified with the approbation of the said court in the said suits. And whereas, it became impracticable to carry the said agreement into effect by reason of the provisions of the act of the general assembly of the said province of Nova Scotia entituled, "An act for transferring the crown revenues of Nova Scotia and providing for the civil list thereof," which was passed on the eighth day of March, 1849, and received the royal assent on the 29th day of June, 1849, and whereby the right and title of her majesty in and to the said mines and minerals and the rents and royalties payable for or in respect of the same, were assigned, transferred, and surrendered to the disposal of the general assembly of the said province, without making any provision for carrying out the said agreement. And whereas, the said Edmond Waller Rundell survived the said John Bridge, Thomas Bigge, and John Gawler Bridge, and died on the 10th day of February, 1857, having first duly made and signed his last will and testament in writing, bearing date on or about the 19th day of October, 1853, and thereof appointed the said Mary Ann Rundell and Edmond Strong, executrix and executor respectively, who, on or about the fifth day of March, 1857, duly proved the said will, together with a codicil thereto, in the prerogative court of Canterbury. And whereas, with a view to a final settlement of all matters in difference between the said Christopher Pearse and John George Nutting, as such legal personal representatives as aforesaid, and the said association, it has been agreed between them, with the

CHAP. 27. approbation of her majesty, and of the said court in the said suits, so instituted as aforesaid, that the said association should purchase for the sum of £120,000 all the term, estate, and interest whatsoever of the said Christopher Pearse and John George Nutting, as such legal personal representatives as aforesaid, whether under or by virtue of the said letters patent of the 25th day of August, 1826, or the said indenture of underlease of the 12th day of September, 1826, or the said indenture of the 29th day of May, 1849, or the modifications of the agreement expressed therein, or otherwise howsoever, of and in all the mines, minerals and premises in the said province of Nova Scotia, comprised in and demised by the said indenture of underlease, or forming the subject of the said indenture of the 29th day of May, 1849, or the modifications of the agreement expressed therein, and of and in the rents, royalties, reservations, and payments payable in respect of the same, and of and in all the bank annuities in which any of the said rents, royalties, reservations, and payments have been invested, and the accumulation thereof. And the said Christopher Pearse and John George Nutting, and the said Mary Ann Rundell and Edmund Strong, at the request of the said association, have agreed to make and execute the surrender hereinafter on their part contained. And whereas, all the rents, royalties and reservations, which have become payable to her majesty for or in respect of the said mines and minerals, or any of them, up to and including the 31st day of December, 1857, have been duly paid and satisfied. And it has been agreed that the releases hereinafter contained should also be executed, it being understood and agreed that an act of the general assembly of the said province of Nova Scotia will be passed and assented to by her majesty for confirming and giving more full effect to these presents:

Now this indenture witnesseth, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £120,000 to the said Christopher Pearse, and John George Nutting, by the said association, paid at or immediately before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, and for other the considerations hereinbefore recited, the said Christopher Pearse and John George Nutting, and the said Mary Ann Rundell and Edmond Strong, at the request and by the direction of the said general mining association (testified by their execution of these presents,) and the said general mining association, according to their several and respective estates and interests in the premises, do each, and every of them doth, surrender, release, and yield up unto the queen's most excellent majesty, her heirs and successors, all the mines, minerals, powers, and premises whatsoever, comprised in and granted or demised by the said hereinbefore recited letters patent of the 25th day of August, 1826, and all the

mines, minerals, and premises agreed to be granted or demised by or forming the subject of the said agreement, entered into in the reign of his late majesty king William the fourth, for a lease from the crown as hereinbefore is mentioned. And all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said surrendering parties and every of them, in, to, and out of the said premises, to the intent that the several residues now unexpired of the said term of sixty years, granted by the said letters patent, and of the said term of sixty years wanting one day, granted by the said indenture of underlease, and all the interest agreed to be granted by the said agreement entered into in the reign of his late majesty king William the fourth, for a lease from the crown, and all other the estate, term, and interest of the said surrendering parties, and every of them, in the mines or minerals in the said province of Nova Scotia, and every part thereof, may be merged and extinguished in the reversion and inheritance of the said premises. And this indenture further witnesseth, that in consideration of the premises, our said sovereign lady the queen, of her especial grace, certain knowledge, and mere motion, doth acquit, release, and for ever discharge the said Christopher Pearse, and John George Nutting, their heirs, executors, and administrators, and the estate and effects of the said duke of York and Albany, and also the said Mary Ann Rundell, and Edmond Strong, respectively, their respective heirs, executors, and administrators, and the estates and effects of the said John Bridge, Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge, respectively, and also the said association and their successors, of and from all and all manner of actions, suits, extents, accounts, reckonings, sums of money, rents, royalties, reservations, costs, charges, expenses, claims, and demands whatsoever, which either at law or in equity our said sovereign lady the queen, her heirs or successors, now hath or have, or hereafter shall or may or otherwise could or might have, under or by virtue of the said hereinbefore recited letters patent and underlease, or the said hereinbefore mentioned agreement, entered into in the reign of his late majesty king William the fourth, for a lease from the crown, or the said indenture of the 29th day of May, 1849, or the modifications made in the agreement therein expressed, or by reason of the said suits instituted as aforesaid, or any of them, or in any wise relating to the premises. And this indenture further witnesseth, that in consideration of the premises the said Christopher Pearse and John George Nutting, do, and each of them doth, acquit, release, and for ever discharge the said Mary Ann Rundell and Edmond Strong, respectively, their respective heirs, executors, and administrators, and the estates and effects of the said John Bridge, Edmond Waller Rundell, Thomas Bigge, and John Gawler Bridge,

CHAP. 27. respectively, and also the said association and their successors, of and from all and all manner of actions, suits, accounts, reckonings, sums of money, rents, royalties, reservations, costs, charges, expenses, claims and demands whatsoever, which, either at law or in equity, they, the said Christopher Pearse and John George Nutting, as such legal personal representatives as aforesaid, or either of them, or the heirs, executors, or administrators of them, or either of them, or the legal personal representative, or legal personal representatives, for the time being, of the said duke of York and Albany, have or hath or hereafter shall or may or otherwise could or might have, under or by virtue of the said hereinbefore recited underlease, or the said indenture of the 29th day of May, 1849, or the modifications made in the agreement therein expressed, or by reason of the said suits instituted as aforesaid, or in anywise relating to the premises. And this indenture further witnesseth, that in consideration of the premises, the said Mary Ann Rundell and Edmond Strong, at the request and by the direction of the said association, (testified as aforesaid), and the said association do and each of them doth acquit, release, and forever discharge the said Christopher Pearse and John George Nutting, and each of them, and the heirs, executors, and administrators of them, and each of them, and the estates and effects of the said duke of York and Albany, Sir Herbert Taylor, and Sir Benjamin Charles Stephenson, respectively, of and from all and all manner of actions, suits, accounts, reckonings, sums of money, rents, royalties, reservations, costs, charges, expenses, claims and demands whatsoever, which, either at law or in equity, the said Mary Ann Rundell and Edmond Strong, his heirs, executors, or administrators, or the said association, or their successors or assigns hath or have, or hereafter shall or may, or otherwise could or might have, under or by virtue of the said hereinbefore recited underlease, or the said indenture of the 29th day of May, 1849, or the modifications made in the agreement therein expressed, or by reason of the said suits instituted as aforesaid, or any of them, or in anywise relating to the premises.

In witness, &c.

This indenture, made the first day of January, 1858, between the queen's most excellent majesty, of the one part, and the general mining association, of the other part, WITNESSETH:

That in consideration of certain surrenders and releases, effected and contained in and by a certain indenture, bearing even date with these presents, and made or expressed to be made between Christopher Pearse and John George Nutting, of the first part, Mary Ann Rundell and Edmond Strong, of the second part, the said association, of the third part, and

her majesty, of the fourth part, and in consideration of the rents and royalties hereby reserved, and of the covenants and agreements herein contained, and on the part of the said association, their successors, and assigns, to be observed and performed, our said sovereign lady the queen, of her especial grace, certain knowledge, and mere motion, doth grant and demise unto the said association, their successors, and assigns, all and singular the beds and seams of coal, whether opened or unopened, within, under, or upon, the six several tracts of land hereinafter described, that is to say :

First, within, under, or upon, all that tract in the island of Cape Breton, which comprises the works of the association on or near Sydney harbour and on or near Point Aconi, and is bounded as follows, that is to say : beginning at Stubbert's Point above Indian Cove on the northern shore of Sydney harbour, thence running in a northerly direction, and crossing the Little Bras d'Or to the head of Mill Pond on Boularderie Island, where the Aconi Brook enters into said pond, thence northerly by the eastern side of said pond to the sea shore, and round Point Aconi and north-eastwardly by the shore, crossing the little entrance of the Bras d'Or round Cranberry Head, and thence along the northern shore of Sydney harbour to the place of beginning.

Tract of land at Sydney.

Secondly, within, under, or upon all that tract in the island of Cape Breton, which lies on the southern side of Sydney harbour, and comprises the works of the association at Lingan on the north side of Bridgeport harbour, and is bounded as follows, that is to say : beginning on the southern side of Sydney harbour at McPhee's brook or ferry ; thence running in a southerly direction to the mouth of the north-west brook, so called, which empties into Bridgeport basin ; thence by the northern shore of said basin to Indian bay, and by the shore of the said bay eastwardly to the "North Head" on the sea shore ; thence northwardly and westwardly by the sea shore and Sydney harbor to the place of beginning.

Tract at Lingan.

Thirdly, within, under, or upon all that tract in the island of Cape Breton which lies on the southern shore of Indian Bay or Bridgeport, and comprises the ancient works of the association on the southern side of Bridgeport, and is bounded as follows, that is to say : beginning at a point on the southern shore of Indian Bay at the distance of 25 chains, westwardly by the shore from Level Mouth (so called) ; thence south 35 deg. 45 min. west (being parallel to the out-crop of the coal seam on this tract) 98 chains to a tree marked as a corner bound ; thence south 54 deg. 15 min. east 102 chains and 30 links to a squared post on the east side of Caddigan's or Cadougan's Brook, thence parallel with the line first described 131 chains, or to the shore of Dead Man's Cove at a point distant 5 chains, eastwardly by the shore of said cove from the mouth of said brook ; thence westwardly by the shore of said cove and Indian Bay to the

Tract at Bridgeport.

CHAP. 27. place of beginning, comprising an area by measurement of two square miles.

Tract at Pictou  
—Albion mines.

Fourthly, within, under, or upon all that tract near New Glasgow in the county of Pictou, and comprising the works of the association known as the Albion mines, and is bounded as follows, that is to say: beginning at the southern angle of the church at the Albion mines; thence south 57 deg. 20 minutes east (being on the same range with a line running through the spire of said church) 104 chains and 88 links to post No. 1. marked G. M. A.; thence north 32 deg. 40 minutes east crossing McLellan's Brook 106 chains and 70 links to post No. 2 marked G. M. A.; thence north 57 deg. 20 minutes west (crossing the East River of Pictou) 240 chains to post No. 3 marked G. M. A.; thence south 32 deg. 40 minutes west 106 chains and 70 links to post No. 4 marked G. M. A.; thence south 57 deg. 20 minutes east through the spire of the church aforesaid to the place of beginning, and which last mentioned tract covers an area of four square miles by measurement.

Tract at Jog-  
gins in Cumber-  
land.

Fifthly, within, under, or upon all that tract lying in the county of Cumberland on the shore of Cumberland basin, at or near the Joggins, so called, and comprising the works of the association at the Joggins, and is bounded as follows, that is to say: Beginning at a squared post marked 1857 on the bank of the shore of Cumberland basin 2 chains and 75 links southward by the said shore from the mouth of Dennis Brook; thence south 73 deg. 30 min. east 256 chains to a squared post marked 1857; thence north 16 deg. 30 min. east 100 chains to a squared post marked 1857; thence north 73 deg. 30 min. west, passing a post at high water mark on the Joggins shore of the basin aforesaid, and extending thereby into said basin until the whole distance of 256 chains has been run out; thence south 16 deg. 30 min. west to the place of beginning crossing the mouth of Dennis Brook, comprising an area of four square miles by measurement.

Tract at Spring  
Hill in Cumber-  
land.

And sixthly, within, under, or upon all that tract lying in the county of Cumberland at or near Spring Hill, so called, and is bounded as follows, that is to say: Beginning at a birch tree at the south-west angle of a lot containing one hundred and twenty-eight acres, granted to the general mining association by letters patent bearing date 26th April, 1849, (vide book 16, No. 1494 of the registry of grants in the crown land office, Halifax); thence south 40 deg. east 39 chains and 50 links to a squared post marked 1857; thence north 50 deg. east 160 chains to a post marked 1857; thence north 40 deg. west 160 chains to a post marked 1857; thence south 50 deg. west 160 chains to a post at Mill Pond on Coal Mine brook and marked 1857; thence south 40 deg. east 120 chains and 50 links to the place of beginning, and which last mentioned tract covers an area of four square



miles by measurement, which said several courses indicate the direction of the magnet at this date—and which said six areas or parcels have been surveyed and laid off by officers of the association under the supervision of officers of the government of Nova Scotia, and plans thereof, subscribed by the said officers respectively, have been lodged in the office of the commissioner of crown lands at Halifax, for explanation of the limits and boundaries of the said areas and parcels, as by the said plans, upon reference thereto, may more fully appear.

And also, so far as her majesty, with the concurrence of the general assembly of the said province of Nova Scotia, can or lawfully may give or grant the same, full and free liberty, license, and authority, to and for the said association, their successors and assigns, and their tenants, servants, workmen and agents, to search for, dig, work, and take, such beds and seams of coal, and to make or use any pit and pits, trench and trenches, quarry and quarries, groove and grooves, and to drive and use any drift and drifts, watergate and watergates, waygate and waygates, airgate and airgates, watercourse and watercourses, as well for working, winning, obtaining and getting the said coal, as also for voiding and carrying away the water, foul air, and rubbish from the mine thereof, and also to make or use and enjoy sufficient and convenient pit room, ground room, and heap room, within the limits of the said tracts or districts hereinbefore described, for the laying and placing as well the coal which has heretofore been had, wrought, won, or gotten, or which shall, from time to time hereafter, be had, wrought, won, or gotten, from or out of the said coal mines, or any of them, as also all such stones, gravel, sand, deads, and other rubbish, which has heretofore proceeded or been had or gotten, or shall hereafter proceed or be had or gotten from or out of the said mines, or any of them, or in the working or digging thereof, or in getting or raising the said coal, and also to make, place, erect, and set up, or use within the limits of the said tracts or districts, and every of them, all such gins, engines, furnaces, refineries, cupolas, foundries, cranes, forges, mills, houses, stables, hovels, lodges, sheds, offices, and other machinery, buildings, and erections as shall, from time to time, be needful or convenient for opening, working, or drawing the said mines, and every or any of them, and for lodging, stacking, depositing or placing the same, and for burning and making bricks, tiles, and pipes, and for withdrawing or carrying away of water from the said mines, and every or any of them, or for the standing, lodging, laying or placing of the workmen, work-horses and work-gear, to be used or employed in or about the making and carrying on the works of the said mines, respectively, and also within the limits of the said tracts or districts, and every or any of them, to use and enjoy all such gins,

CHAP. 27. engines, furnaces, refineries, cupolas, foundries, cranes, forges, mills, houses, stables, hovels, lodges, sheds, offices, and other machinery, buildings, and erections, as have been heretofore made, placed, erected and set up within the limits of the said tracts or districts, or any of them, for the purposes aforesaid, and are now standing or being thereon, and also within the limits of the said tracts or districts, and every or any of them, to use and enjoy sufficient and convenient way, leave, and liberty of passage, and liberty to make, lay, and place, one or more way or ways, railway or railways, tramroad or tramroads, and to remove, take away, amend and repair, alter and change the same, respectively, and to take, lead, drive and carry away, in, through, along, and over, the said way or ways, railway or railways, tramroad or tramroads, and in, through, along, and over any way or ways, railway or railways, tramroad or tramroads, heretofore made and now subsisting within the limits of the said tracts or district, or any of them, and with horses, carts, wains, waggons, or any other carriage or carriages, and with engines, all the coals to be had, wrought and gotten forth and out of the said mines, and all other substances necessary or convenient to be removed therefrom. And also so far as her majesty with the concurrence of the general assembly of the said province, can or lawfully may give or grant the same, full and free liberty, license and authority, for the said association, their successors and assigns, to make such ways, roads, railways and tramroads, through, across, or over any lands in the vicinity of and other than the said tracts or districts, from and to any mine or mines under or upon the said tracts or districts, or any of them, to and from such navigable water as shall be considered by the said association, their successors or assigns, most convenient and suitable for the shipment of coal or the carriage of materials for the purposes of their mining operations and the agents and workmen of the said association, in such places as shall be reasonable, and shall by the said association, their successors or assigns, be thought best, and for the purposes aforesaid, and no other purposes, to use all such ways, roads, railways and tramroads, as shall be so made, the said association, their successors and assigns, doing as little damage as possible thereby, and paying to our sovereign lady the queen, her heirs or successors, by the hands of the lieutenant-governor, for the time being, of the said province, for the use of the said province, a full and fair compensation, in respect of the exercise of the said last mentioned rights of way, the position and dimensions of such ways, roads, railways and tramroads, and the amount of the said compensation to be respectively determined, in case of difference, by the arbitration and award, in writing, of any two out of three indifferent persons, to be appointed in manner

following, that is to say: one to be appointed in writing by the lieutenant governor, for the time being, of the said province, and another to be appointed in writing by the said association, their successors, or assigns, or in case either of the said parties shall refuse or neglect to appoint an arbitrator for the space of one calendar month after being required in writing by the other party so to do, then both the said two indifferent persons to be appointed in writing, by such other party, and the other of such three indifferent persons to be appointed in writing by the said two indifferent persons to be first appointed as aforesaid; and generally to have, hold, use, and enjoy, during the continuance of this grant or demise, all other powers and privileges whatsoever, within, over and upon the said tracts or districts, or any of them which shall or may be useful, necessary, or convenient for, or in or about the searching for, winning, working, digging, getting, or drawing of coal from, and out of the said mines, or any of them, and taking and carrying away the same, and for stacking and lodging the same, or any part thereof, and which her majesty, with the concurrence of the general assembly of the said province, can or lawfully may give or grant, they, the said association, their successors and assigns, and their tenants, servants, agents, and workmen, doing as little spoil and damage of ground as possible within the limits of the said tracts or districts, in searching for, winning, working, having, exercising and enjoying of the premises, and the several powers, liberties, and privileges hereby granted and demised, save and except, nevertheless, and reserving out of these presents unto our said sovereign lady the queen, her heirs and successors, and her or their lessees, of all or any of the mines, in, under, or upon any part of the said province, except the said tracts or districts hereinbefore described, but with such restrictions as hereinafter mentioned, full and free right and liberty to make, and to use when so made, such ways, roads, railways, and tramroads, through, across or over the said tracts or districts, or any of them, from and to any mine or mines, in, under, or upon any part of the said province, except the said tracts or districts, to and from such navigable water, as shall be considered by the lieutenant governor, for the time being, of the said province, or the lessees of the same mine or mines, most convenient and suitable for the shipment of coal and other minerals, in such places as shall be reasonable, and shall by such lieutenant governor, for the time being, or such lessees, be deemed best, and also, full and free right and liberty for the said lieutenant governor for the time being, or the lessees of such mine or mines, but with such restrictions as hereinafter mentioned, to erect on the said tracts or districts hereinbefore described, or any part thereof, and to use and enjoy when so erected any such works, buildings, wharves, or other establishments neces-

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sary or convenient for the working and winning of coal or other minerals, or the successful carrying on of any collieries or mining establishments, in, under, or upon any part of the said province, except the said tracts or districts hereinbefore described, but so as not to obstruct in any material degree, nor unless in case of absolute necessity, to interfere with the operations, from time to time, of the said association, and so that such lessees as aforesaid shall not have or be entitled to use or exercise any such rights or liberties as are hereby expressed to be excepted and reserved, save only when the same rights and liberties shall be specially granted in, and shall also be (as nearly as conveniently may be) particularly and precisely specified, limited and described as to position and dimensions and other material particulars in the leases under which such lessees shall claim or be entitled to the aforesaid mines or any of them, the said province or the lessees of such mines as aforesaid paying to the said association, their successors or assigns, a full and fair compensation in respect of the exercise of the said rights and privileges so excepted and reserved as aforesaid or any of them, the position and dimensions and other material particulars of the said ways, roads, railways and tramroads, works, buildings, wharves or other establishments, and the amount of the said compensation to be respectively determined, in case of difference, by the arbitration and award, in writing, of any two out of three indifferent persons to be appointed in the manner following, that is to say, one to be appointed, in writing, by the lieutenant governor for the time being, of the said province, or in case of a lease of any of the said mines by such lessees, as aforesaid, who may be interested in the question, another to be appointed, in writing, by the said association, their successors or assigns, or in case either of the said parties shall refuse or neglect to appoint an arbitrator for the space of one calendar month after being required in writing by the other party so to do, then both the said two indifferent persons to be appointed, in writing, by such other party, and the other of the said three indifferent persons to be appointed in writing, by the two indifferent persons to be first appointed, as aforesaid. To have and to hold the said beds and seams of coal, mines, powers, authorities, and all and singular other the premises hereby granted and demised, or expressed so to be, unto the said association, their successors and assigns, for and during and unto the full end and term of twenty-eight years, to commence and be computed from the 1st day of January, 1858, and also for such portion of the next succeeding year as shall elapse previously to the 25th day of August in the same year, being the year 1886, and fully to be complete and ended, yielding and rendering therefor unto our sovereign lady the queen, her heirs and successors, yearly and every year, on the 1st day

of March, during the continuance of this grant or demise, at Halifax, in the said province, or at such other place or places as the lieutenant governor, for the time being, of the said province, shall think fit, and by writing under his hand, appoint through the hands or by the receipt of the lieutenant governor, for the time being, of the said province of Nova Scotia, for the use of the said province, the rent or royalty of six pence, Halifax currency, for every ton of coal of 2240 lbs. (except coal now known in the said province as slack coal, and except coal to be used by the workmen of the said association, or to be used in carrying on the works or operations of the said association,) which shall, in any and each year, commencing with the said 1st day of January, 1858, and thenceforth during the continuance of this grant or demise, be wrought or gotten forth or out of the said beds or seams hereby granted and demised, or any of them, and sold up to and including the first 250,000 tons which shall be so wrought or gotten and sold in any and each year, and the rent or royalty of four-pence, Halifax currency, for every ton of coal of 2240 lbs., (except as aforesaid,) which shall in any and each year, commencing with the said 1st day of January, 1858, and during the continuance of this grant or demise, be wrought or gotten forth or out of the said beds or seams hereby granted or demised, or any of them, and sold over and above the first 250,000 tons, which shall be wrought or gotten and sold in such and the same year; the first payment of the said rents or royalties, hereby reserved, to be made on the 1st day of March, 1859, and the rents and royalties which shall be payable for or in respect of all coal which shall be wrought or gotten and sold during the portion of a year, commencing with the first day of January, 1886, and ending with the 25th day of August, 1886, to be paid on the 25th day of October in the same year, 1886. And the said association, for themselves, their successors and assigns, do covenant with our sovereign lady the queen, her heirs and successors, that the said association and their successors shall and will well and truly pay or cause to be paid unto our said sovereign lady the queen, her heirs and successors, through the hands or by the receipt of the lieutenant governor, for the time being, of the said province, at the times and in manner aforesaid, the said rents or royalties hereby reserved, or intended so to be. And that the said association, their successors and assigns, shall and will, during the continuance of this grant or demise, keep or cause to be kept, one or more book or books of account, wherein true entries shall be made of all such coal as shall from time to time be wrought or gotten forth or out of the said beds or seams hereby granted and demised and sold by the said association, their successors or assigns, or their workmen or servants, on and from the said 1st day of January, 1858, during the continuance

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of this grant or demise, distinguishing in such accounts large coal from the said slack coal. And that it shall be lawful for the lieutenant governor, for the time being, of the said province, or such person or persons as he shall appoint under his hand and seal from time to time, to have free access and liberty to inspect and take copies of the said books of account; and that the said association, their successors or assigns, shall and will on the 1st Monday in February, or within two calendar months afterwards in every year during the continuance of this grant or demise, deliver, or cause to be delivered, unto such lieutenant governor as aforesaid, or to such person or persons as he shall appoint in manner aforesaid, one or more affidavits, to be made by two or more credible persons principally employed in or about the working and management of the said beds or seams hereby granted and demised, that the entries which shall from time to time be made in such book or books of account, as aforesaid, do contain a full and true account of the quantities of all such coal as shall be wrought or gotten and sold in each and every year in all or any part of the premises, which affidavit or affidavits shall be duly sworn before the said lieutenant governor for the time being, or before some justice of the peace in the same province. And likewise that the said association, their successors or assigns, shall and will annually, during the continuance of this grant and demise, lay or cause to be laid before the said lieutenant governor for the time being, upon the oaths of two or more credible persons, principally employed in or about the working and management of the said mines, respectively, a full, true and particular account in writing of the numbers, names and situation of the said mines, respectively, and other competent and sufficient descriptions thereof, and also of the numbers, names, and situation, and other competent and sufficient descriptions of all and every the shafts, adits, levels, drains, and other works whatsoever belonging thereto respectively, and the several works thereof. And also a full, true and particular account, to be authenticated, as aforesaid, of the number on the average of the two preceding years of persons employed in and about the said mines, respectively, and the works thereof. And also that the said association, their successors or assigns, shall and will, during the continuance of this grant and demise, keep and have forthcoming, at all seasonable times, to the lieutenant-governor, for the time being, of the said province, or such person or persons as he shall in that behalf, by writing under his hand, appoint, with liberty to him and them to make copies of or extracts from the same, and at some convenient place, upon each of the said areas, the coal mines whereof are hereby granted or demised, or within two miles thereof, respectively, an accurate plan or plans of the mines

comprised in such area, and of the workings thereof, and of all the shafts, adits, levels, drains and other works whatsoever belonging thereto. And also that the said association, their successors or assigns, shall not nor will, at any time or times hereafter, during the term hereby granted, assign, transfer, or set over, or otherwise part with, the premises hereby granted and demised, or any part thereof, to any person or persons whomsoever, without the license, consent or approbation of our said sovereign lady the queen, her heirs or successors, first had and obtained for the doing thereof, to be signified under her or their signet, or sign manual, or under the sign manual of the lieutenant-governor for the time being, of the said province, or under the great seal of the united kingdom of Great Britain and Ireland, or of the said province. And also that it shall be lawful for any inspector or inspectors, viewer or viewers, agent or agents, to be by the said lieutenant-governor for the time being, appointed under his hand, at any time during the continuance of this present grant or demise, when, and as any of the shafts of the said mines are at work, to descend by the ropes, rollers, gins, or engines, or other utensils used at any of the said shafts, of or belonging, or which shall belong, to the said mines, respectively, or any of them, into the said mine, shafts or pits, or any of them, to plumbline, view and survey the works thereof, and to view and see that the same are regularly and fairly wrought and carried on, and by the same ways and means to ascend and come up the said mines, shafts or pits, or any of them, and shall and may in the doing thereof, have the help and assistance of the workmen and servants employed in the said mines, or of such other person or persons as he or they shall think fit. And also that the said association, their successors and assigns, shall and will, from time to time, and at all times during the continuance of this grant or demise, well and effectually maintain and support all and every the working pits, shafts, levels, drifts and watercourses of and belonging to the said respective mines, with all such timber and deals and other materials as shall be requisite or necessary for that purpose, and so as to prevent the same and the roofs of the said mines from falling in or being otherwise damaged, and shall and will, at the end or other sooner determination of the said term, peaceably and quietly yield and deliver unto such person or persons as our said sovereign lady the queen, her heirs or successors, shall appoint, under her or their signet, or sign manual, or under the sign manual of the lieutenant governor for the time being, of the said province, to receive and take possession thereof, all the said mines, and all and singular other the premises hereinbefore mentioned, except such furnaces, engines, mills, forges, foundries, railroads, implements, houses and buildings, as shall not be attached to the freehold, in such good order, pligh

CHAP. 27. and condition, as fair wrought mines ought to be left, with such timber, deals, and other materials as aforesaid, (such mines as, during the term hereby granted, shall be abandoned by reason of their being unproductive only excepted,) provided always, and it is hereby agreed and declared, and the said association, for themselves, their successors or assigns, do accept this grant or demise, under the condition that in case any default shall be made by the said association, their successors or assigns, in keeping such book or books of account, or in delivering such affidavit or affidavits as aforesaid, or in the payment of the said rents or royalties hereby reserved, for the space of forty-two days after the periods hereinbefore appointed for paying the same; or if the said association, their successors or assigns, shall omit or neglect, for the space of any one year during the continuance of this grant or demise, to lay before the said lieutenant governor, for the time being, such account or accounts in writing, as aforesaid, or to keep and have forthcoming, as aforesaid, such plan or plans, as aforesaid, or shall at any time or times assign, transfer, and set over, or otherwise part with the premises hereby granted, or any part or parcel thereof, to any person or persons, whomsoever, for the term above granted, without the license, assent or approbation of our said sovereign lady the queen, her heirs or successors, to be signified as aforesaid, contrary to the true intent and meaning of the said covenant or agreement in that behalf hereinbefore contained, then and in every or any of the said cases when the same shall have been adjudged and declared by any six or more of the privy council of our sovereign lady the queen, her heirs or successors, to have arisen or happened, these presents, and all and every the powers and privileges hereby granted, shall be utterly null and void, anything to the contrary thereof in these presents notwithstanding; and it is hereby agreed and declared, and our said sovereign lady the queen doth hereby grant, that during the continuance of the grant and demise hereby made, our said sovereign lady the queen, her heirs or successors, shall not, without the consent in writing of the said association, their successors or assigns, by lease, license, or otherwise, empower or allow any party or parties to work or get and enjoy or sell any coal whatsoever in the said province at a less rent or royalty, or on more favourable terms in any respect, than the rent or royalty and terms respectively reserved by and contained in these presents. And that the said province shall, before the first day of January, 1859, pass, and during the continuance of the said grant or demise hereby made, enforce, such legislative enactments, and take such measures, by the appointment of an inspector and otherwise as may be required, to prevent the working of any coal in the said province by unauthorised persons, and



to prevent the sale or export of coal, except the coal which may be sold or exported by the said association, their successors or assigns, by any party or parties, and except such as may be worked on payment of rent or royalty equivalent to the rent or royalty hereby reserved, and subject to terms not more favourable than the terms hereby granted to the said association, their successors and assigns. And further, that during the continuance of the grant or demise hereby made, the said province shall not, without the consent, in writing, of the said association, their successors or assigns, impose any duty on the export of coal.

In witness, &c.

And whereas in consequence of the grant and demise made by the crown to his late royal highness the duke of York and Albany, dated the twenty-fifth day of August in the year one thousand eight hundred and twenty-six, of mines and minerals in this province, the reservation of minerals in grants of land from the crown since that period have been more extensive than had previously been accustomed, and the said grant and demise having been surrendered for the benefit of this province, it is proper to confer upon the parties entitled to such lands more extended rights in respect of certain minerals therein; and whereas from general words used in the reservation of mines and minerals in the grants of land in this province passed previously to August in the year one thousand eight hundred and twenty-six, doubts may arise and a more extended operation be given to such reservations than is expedient and proper.

5. All letters patent under the great seal of this province for granting lands in this province in fee simple by the crown to any person or body corporate, shall, subject to the restriction in the seventh section, be construed and held as if the mines and minerals reserved in and by and excepted out of the operation of the said letters patent had been limited and confined to gold, silver, tin, lead, copper, coal, iron, and precious stones only, and all other mines, minerals, ores, and carths, including iron stones, lime stones, slate stone, slate rock, gypsum, and clay, contained in the lands granted by such letters patent, excepting only gold, silver, tin, lead, copper, coal, iron, and precious stones, shall, by virtue of this act, be held and taken to have passed in and with the said lands and as part thereof under the said letters patent.

6. All conveyances and dispositions of any such lands shall be construed and held to convey and dispose of the mines and minerals, the subject of and intended to be effected by the last section, and comprised within the lands conveyed or disposed of in the same manner as they would have done had those minerals originally passed to the grantees of such lands under the letters patent granting the same, unless that construction be inconsistent with the

Preamble.

Construction of grants as regards mines and minerals reserved in them.

Construction of conveyances of lands as regards mines, &c.

**CHAP. 28.** object and intention of the parties as plainly manifest on such conveyances and dispositions.

Application of sections 5 and 6.

7. Sections five and six shall apply to no mines or minerals which shall not by virtue of the surrender or otherwise be vested in the crown or be under the control of the legislature of this province, nor to any mines or minerals which shall be subject to any grant, sale, lease, or disposition thereof in force and subsisting at the time this act shall come into operation, and shall not effect the then existing rights of any person or body corporate.

Rights not affected.

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## CHAPTER 28.

### OF THE CROWN LANDS.

Title of commissioner.

1. The surveyor general and commissioner of crown lands shall hereafter be styled "commissioner of crown lands."

Duties of

2. It shall be the duty of the commissioner of crown lands, in addition to his present duties, when so required by the governor in council :

To cause a survey to be made of all the crown lands within ten miles on each side of any line of railroad which may be first put under contract in this province—such lands to be laid off in lots of one hundred acres each, except in the neighbourhood of any railway station, or other desirable locality, where town lots of smaller dimensions may be laid off.

To prepare and cause to be lithographed, plans or maps of such lands, with the lots numbered, and the course of the railroad, or of any streams or public roads running through the same, and the price of the lots clearly indicated thereon.

To sell, without reference or delay, where there is no adverse possession, at such price as may have been affixed by order of the governor in council, any such lot, to which the title of the crown is clear.

To forward to every emigrant agent in the united kingdom copies of such plans, with a public advertisement of the lands thus offered for sale.

To correspond with the commissioners of lands and emigration in the united kingdom, or other legally constituted authorities within the same, supplying them, from time to time, with information, and co-operating with them for the speedy sale and settlement of the public lands.

To collect, through the deputy surveyors in each county annual returns of the number of tradesmen, mechanics,

laborers, and apprentices, which the formed settlements in such counties would probably require. CHAP. 28.

To transmit copies of such returns to the commissioners of lands and emigration in December, in each year, and generally to superintend and facilitate the transmission and location of such immigrants as may land at any port within the province, of which he shall have due notice.

3. The governor in council may from time to time modify, alter or change the above regulations, such alterations to be published in the royal gazette, and laid before the legislature at the next ensuing session. Governor may modify regulations.

4. The commissioner of crown lands and any deputy surveyor who may be commissioned for the purpose by the governor shall be the legal guardian of such young persons as may be landed in the province under the authority and at the expense of the commissioners of lands and emigration or of any legally constituted board, having the sanction of her majesty's government—such officers having power to bind by indenture, such young persons until they are twenty-one years of age, and to protect them from ill treatment or neglect, by appeal to the ordinary tribunals, in as ample a manner as any other apprentices are now protected by law; but no greater number of such young persons shall be so protected than shall have been forwarded to the province on requisition from the commissioner of crown lands; and the expense of maintaining them after their arrival, and forwarding them to their destination, and of the requisite indentures, shall be paid or refunded by the persons to whom they are bound. Commissioner to be the guardian of young persons landed as immigrants.

5. The governor in council may direct the surveying and laying off in manner hereinbefore mentioned, of other lands than those mentioned in section two, and may direct plans thereof to be prepared, and such other steps taken in relation thereto, as may be deemed advisable. Governor to direct surveying of lands.

6. It shall be the duty of the deputy surveyors in the different counties: Duty of deputy surveyors.

To collect information within their counties relating to the ungranted lands therein, the quality, description, and value of the buildings on the occupied portions thereof, and the quality of the soil, and the quantity and quality of the timber thereon, and transmit the same to the commissioner of crown lands.

To receive and transmit to the crown lands office all applications for grants—the same, where no previous survey has been made, to be accompanied by a plan of the lands applied for upon a survey and running out thereof by the deputy surveyor, made at the expense of the applicant; and also by a report setting forth the quality, situation, and value of the land, and whether any, and what portion thereof has been occupied or improved, and by whom,—when a survey shall have been previously made to refer spe-

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cifically thereto, and to the number of the lot on any plan thereof, and the state of the land at the time of the application; and whether it has been occupied, and if so by whom, and what in his opinion is the then value of it—the value in either case if improved to be estimated as if in its original state, and separately taking into consideration such improvements.

Returns of deputy surveyors.

7. Every deputy surveyor at the expiration of each quarter of the year shall make and transmit with a return or list of surveys to the crown lands commissioner, and affidavit in the following form:

I ———, deputy surveyor for the county of ———, do swear, that the several lots of land described in the above list have been actually surveyed in accordance with the plans thereof, that all the corner bounds have been set up and that the lines have been well marked. So help me God.

Sworn to before me at [place] }  
this [date].

———— J. P. }

Price of un granted land.

8. The governor in council may, from time to time, subject to the previous provisions, settle the price to be paid for ungranted lands, and the manner of making application therefor.

Grants.

9. Any of her majesty's subjects may, upon due application to the commissioner of crown lands, subject to the operation of the previous provisions, become the purchaser of such lands as may be for sale, and he shall immediately pay the price and be entitled to possession, and to a grant in fee simple, subject to such reservations and conditions as may be deemed necessary.

When grants may be declared void.

10. If, at the time of any application, there was any dwelling house on the lands in which any person other than the applicant then and for a year previously had continually resided, or in case five acres at least of the land had been cleared or cultivated during such person's actual possession, and had been for at least one year in his constant use, then, unless such fact shall have been communicated to the commissioner before the passing of the grant, the governor in council may, within two years from the passing thereof, if it shall appear proper so to do, declare the grant to be vacated, and the same shall thereupon become void.

Governor may sell or lease lands.

11. The governor in council may, from time to time, sell or lease any lands, at such price, and for such tenure, time or use, either as regards the land, or timber, quarries, or mines thereon or other benefit to be derived therefrom, as may be deemed expedient.

Reservation of lands for Indians.

12. The governor in council may, reserve lands for the use of the Indians; may divide existing reservations, and vest in the commissioner of crown lands the title to such lands and the duty of protecting the rights of the aborigines who are disposed to settle thereupon.

13. All surveyors appointed by the commissioner of crown lands as his deputies shall administer an oath to their chainmen before they proceed upon any survey, that they will well and truly perform the service according to the best of their skill and judgement under the directions they shall receive from such deputy surveyors.

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Deputy surveyors empowered to administer oaths.

14. Any principal deputy surveyor or land surveyor authorized as mentioned in section twenty-nine of chapter one hundred and forty-seven when engaged in the performance of the duties of his profession, may pass over, measure along, trace, and ascertain the bearings of any township line, or the line of any grant or other governing or side line; and for such purposes may, with his assistants, pass over the lands of any person whomsoever, doing no actual damage to such lands; and no action shall lie against any such surveyor or authorized person for any act done under or by virtue of this section.

Surveyors may pass, &c. over any land.

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## TITLE VII.

### OF THE NATIONAL DEFENCE.

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#### CHAPTER 29.

##### OF THE MILITIA.

1. Every man of the age of sixteen, and not over sixty years of age shall be enrolled in the militia.

Persons liable to be enrolled.

2. The militia shall be formed into regiments by counties, and the regiments, where the counties are sufficiently populous, shall be divided into battalions, to consist of not less than three hundred nor more than eight hundred men.

Regiments how formed; may be divided into battalions.

3. For the purpose of conveniently assembling, the battalions shall be formed into companies, by districts of not less than thirty nor more than eighty men. For every company of not more than sixty men there shall be one captain and two subalterns, and every larger company may have an additional subaltern.

Battalions divided into companies; how officered.

4. The governor shall affix the limits comprising the regiments or battalions, and the field officers and captains shall regulate the limits of the districts of the companies, and the number of men to be enrolled in each company, whose names shall be registered by the clerk in a book to be kept by him for the purpose, which shall be ready at all times for the inspection of the officers.

Limits of districts of battalions and companies, how fixed.

5. A fit and proper person shall be appointed adjutant of every regiment, who shall attend meetings for drill or

Adjutants—appointment and duties of

**CHAP. 29.** training of his regiment, or of any company or detachment of such regiment then and there under the directions of the colonel of the regiment or commanding officer of such detachment, and shall inspect the arms, accoutrements and ammunition of the men, superintend their exercises and manœuvres, and introduce a proper system of discipline, agreeably to orders received from the colonel of the regiment, and perform all other duties appertaining to the office of adjutant, as the colonel of the regiment shall direct.

Remuneration of adjutants.

6. Every such adjutant shall receive ten shillings per day for his services for every day he shall be employed, but the whole sum to be received by any adjutant not on actual service shall not exceed ten pounds in any one year. The governor shall draw a warrant on the treasury for the amount due on the certificate of a colonel and the majority of the captains of the regiment that the adjutant is duly qualified, has attended all meetings of the regiment, and of the companies thereof, for training and discipline, distributed orders and made up returns, and in all other respects performed his duties.

Adjutant general—salary, exemptions.

7. The adjutant general shall receive a salary of eighty pounds, and the quarter master general a salary of forty pounds per annum. They shall be exempt from serving on juries and from serving in any civic office in Halifax, and their correspondence on militia duty shall be exempt from postage.

Governor empowered to provide fire arms, &c., on emergency.

8. The governor in council may, in case of any emergency, provide such additional number of fire arms and accoutrements for the use of the militia as shall be deemed advisable at the expense of the province.

Sale of unserviceable arms, &c.

9. The governor in council may cause so many of the rifles, muskets, and other arms and accoutrements of the militia throughout the province as shall be considered unserviceable, to be sold by public auction, in the respective counties where they are now deposited, and the net proceeds of such sales to be paid into the treasury.

Purchase of improved arms, &c.

10. A sum not exceeding two thousand pounds, may be expended by the governor in council, in the purchase and importation of improved arms and accoutrements for the use of the militia.

Small companies formed in certain cases.

11. In places where the men liable to serve are not sufficiently numerous to form a complete company, smaller companies may be formed; and where the number shall not exceed twenty, one officer, and exceeding twenty and not over thirty, two officers shall be appointed for the same.

Limits confirmed.

12. The limits already formed shall remain until altered.

Of flank companies.

13. Flank companies shall wholly consist of light infantry or riflemen, except where grenadiers are already formed, and shall contain such numbers as the governor may determine, and there shall not be more than two such companies to any one regiment.

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14. The governor may establish artillery companies and troops of cavalry, and limit the numbers of officers and men. Artillery companies now formed shall continue until otherwise ordered.

Of artillery companies and troops of cavalry.

15. No flank company shall be formed without the limits of the regiment, except in the first and second Halifax regiments, in which the men may reside within the limits of the city.

Flank companies without the limits of the regiment except in Halifax.

16. Every man enrolled in an artillery, grenadier, light infantry or rifle company, or troop of cavalry, shall continue in his company or troop for five years from the date of his enrolment, unless he shall remove from the district or be discharged by the captain, with the approbation of the colonel.

Enrolment; its continuance in certain cases.

17. The governor may invite the formation of artillery, grenadier, light infantry, or rifle companies, or troops of cavalry, to be composed of volunteers between the ages of eighteen and forty-five, in the several regiments or battalions, and to be commanded by officers appointed by the governor, upon a certificate being made by the commanding officer of the regiment or battalion, that such officers have been chosen and approved by the several companies, or a majority of them.

Formation of grenadier, light infantry, or rifle companies, and troops of cavalry.

18. In case of arms being distributed to the militia within any regiment or battalion, such volunteer companies as shall have been formed, shall be first furnished with arms.

Distribution of arms.

19. When the governor shall order any number of men for actual service, from any regiment or battalion, they shall be drafted from the volunteer companies, and where such volunteer companies shall have been formed, they shall, in all cases, be considered as the first class for actual service, and no drafts shall be made from other than volunteer companies, until the whole of such companies have been called into actual service.

Volunteer companies first for actual service.

20. The several provisions of this chapter shall extend to such companies in so far as they are applicable thereto.

Provisions of militia law extended to volunteer companies.

21. The dress of such companies, and the horses of such troops of cavalry, shall be provided by such volunteers at their own expense.

Dress—horses.

22. Volunteers serving in such companies shall be exempted from statute labor, except in respect of cattle and teams, and from serving on juries, or in the office of constable.

Volunteers—what exempted from.

23. No fees shall hereafter be demanded on militia commissions.

No fees on commissions.

24. Artillery, grenadier, light infantry and rifle companies, and troops of cavalry, at any meeting convened by the captain, of which three days' notice shall be given, may, by vote of the majority present, make rules for their government, dress, drilling and discipline, and may impose a fine

Artillery, grenadier, light infantry, and rifle companies to make rules for their government, &c.

- CHAP. 29.** not exceeding forty shillings for breach of any such rule, but no rule made under this section shall be acted upon till approved by the captain and the colonel.
- Horse not to be disposed of by troop.** 25. If any member of any troop shall dispose of his horse without the consent of the captain he shall forfeit ten pounds.
- Captain to enrol men, &c.** 26. The captain shall enrol every man residing within the limits of his company, who is liable to serve therein, and every man who shall not, within one month after his becoming liable to serve, give in his name and place of residence to the captain in order to be enrolled, shall forfeit ten shillings.
- Any man removing out of district to give in his name, &c.** 27. Any man removing without the limits of his company shall, within ten days thereafter, give in his name, age, and place of residence to the captain of the district into which he shall have removed for the purpose of being enrolled therein, under a penalty of ten shillings.
- Age disputed, by whom to be proved.** 28. If any difference shall arise between the captain and any man concerning his age, it shall be incumbent on the man to prove his age.
- Fine for non-attendance when not enrolled.** 29. If any man shall neglect to enrol himself, and shall in consequence be absent from any muster, then, in addition to the fine for not enrolling himself, he shall be liable to the fine for non-attendance at such muster.
- Halifax regiments in what company to do duty.** 30. Every man in the Halifax regiments shall be bound to do his duty in the company in which he was enrolled before the first day of October in every year, and shall be deemed to belong to that company for the year next following, notwithstanding any change of residence within the limits of his regiment.
- Men to give notice of removal.** 31. Any man in the Halifax regiments who shall move out of the limits of his company, shall, within one week, give notice of the same to the clerk of the company of his new place of residence, under a penalty of ten shillings.
- Clerks of companies, sergeants, &c., how appointed.** 32. The captain with the approbation of the colonel, shall appoint a clerk of the company, sergeants, corporals, drummers, and if necessary, buglers, and pipers, and any person refusing such appointment, or accepting and afterwards neglecting his duties therein, shall forfeit forty shillings.
- Not obliged to serve out of regimental limits.** 33. Any person having an appointment under the last preceding section shall continue therein notwithstanding his removal from the limits of his company, but he shall not be obliged to serve out of the limits of the regiment, within which he may reside, unless on actual service.
- Clerk's oath.** 34. Every clerk of a company shall make the following oath before a justice of the peace:—"I, A. B., do swear truly to perform the duties of my office as clerk of the \_\_\_\_\_ company of militia, under the command of \_\_\_\_\_, to the utmost of my skill."
- Clerk's exemption and duties.** 35. The clerk shall be exempt from draft for actual ser-



vice. He shall keep a register of his company, and furnish to the noncommissioned officers lists of men whom they are to warn for muster, and shall take lists of the company when required by the captain, and attend upon officers making inspection of arms, and shall attend the meetings of the company, and when ordered, prosecute for all fines in the name of the captain. CHAP. 29.

36. If a clerk shall neglect his duty, he shall forfeit not less than one nor more than five pounds for each offence, to be recovered in the name of the captain. Fine for neglect of duty.

37. The colonel of every regiment shall appoint a sergeant major, and a clerk for the same, and an additional clerk for every division thereof which cannot, from local circumstances, be assembled at the place of general rendezvous; but no more than one additional clerk shall be appointed in any one regiment. Sergeant major and clerk of regiment to be appointed; extra clerks.

38. The sergeant major and the regimental clerk shall be exempted from draft for actual service, and the clerk shall be sworn into office and be subject to the same liabilities as a clerk of a company, to be enforced by the colonel. Exemption from draft; clerk to be sworn.

39. Every captain shall before the first day of November in every year, and oftener if the colonel shall require it, make returns of the strength of the company and of the arms thereof; and the colonel shall before the first day of December, make out, for the adjutant general, a return of the strength of his regiment and of the arms, and the amount of fines collected, and the expenditure thereof, with vouchers. Returns by captains and colonels.

40. The returns shall be in the form prescribed by the adjutant general. Form of returns.

41. Any officer wilfully making a false return shall be cashiered by sentence of a general court martial, and shall pay a fine of twenty pounds. Fine for false returns.

42. Any colonel neglecting to make the return hereinbefore prescribed shall forfeit twenty pounds, and every captain neglecting to make such return shall forfeit five pounds. Fine for neglecting to make returns.

43. Every freholder of the age of twenty-one years enrolled in the militia shall after twenty days' notice, attend at the place of distribution of arms and accoutrements, when he shall receive a musket or rifle, and cartouche box capable of containing eighteen rounds of ball cartridge, and a bayonet or sword suitable for such musket or rifle, with proper belts for the same; such accoutrements to be of the same kind as used in her majesty's service. Arms to be distributed, how and to whom.

44. Upon receiving his arms and accoutrements, each man shall give a bond in the following form: Bond on receipt of arms; form.

"Know all men by these presents that we, A. B. and C. D., are held and firmly bound to our sovereign lady the queen in the sum of five pounds, to be paid to her majesty, her heirs or successors, for which payment, well and truly

CHAP. 29. to be made, we bind ourselves, and either of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

The condition of this obligation is such that if the above bounden A. B. shall at all times hereafter safely keep in good and serviceable order and condition, and have ready to return when called for by the commanding officer of the regiment, [*or battalion as the case may be, specifying the particular regiment or battalion to which such freeholder may belong*] one musket, &c., [*specifying the arms which may have been received by such freeholder*] which have been issued to him under the provincial laws regulating the militia, and shall in all things perform the provisions of such laws touching such arms and accoutrements, then this obligation shall be void.

Signed, sealed and delivered in the }  
presence of \_\_\_\_\_ }

A. B., (L. S.)  
C. D., (L. S.)”

Bond where lodged; penalty for not receiving arms.

45. All bonds given under the last preceding section shall be lodged with the captain, and any freeholder who shall not receive the arms and accoutrements and give such bond, or who shall not within the time limited provide himself therewith at his own expense, shall pay a fine of two pounds.

Fee on filling up bond.

46. Every freeholder giving such bond shall pay one shilling to the person who shall fill up the same.

Sureties to bonds.

47. Any man over twenty-one, not being a freeholder, shall receive arms and accoutrements upon giving bond, with one surety being a freeholder; and any man under twenty-one shall receive the same upon giving bond with two such sureties.

Arms to be returned when required by captain.

48. Every man when thereunto required by the captain, shall return his arms and accoutrements under a penalty of five pounds, and if the bond be not forthcoming the receipt of the captain shall be a discharge thereof.

Ammunition, &c., to be provided by men.

49. Every man when required by the order of the governor, shall, at his own expense, provide himself with a set of straps for carrying a great coat or blanket, a pricker and brush to clean the pan of his musket or rifle, also with a leathern or canvas knapsack with straps and buckles, three good flints, eighteen ball cartridges of a size to fit the musket or rifle, and forty buckshot, under a penalty of ten shillings.

Fine for appearance at muster unequal.

50. Any man appearing at a muster without his musket or rifle, shall forfeit ten shillings, and he shall further forfeit one shilling for every article enumerated in the last preceding section which he shall have omitted to bring,—flints, cartridges and buckshot to be respectively considered one article.

51. The captain shall prepare a list of the men in his company who are not obliged or able to give security, or to provide arms at their own expense, and shall receive the arms and accoutrements requisite for them, for the custody and return whereof he shall be responsible, and shall give receipts for them in duplicate, one to be entered in the orderly book and the other to be given to the adjutant general; and every captain who shall not within thirty days after public notice that such arms and accoutrements are to be distributed, prepare such list, receive such arms and accoutrements and sign receipts therefor, shall forfeit five pounds and be deprived of his commission.

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Arms for persons not giving security, how provided.

52. Colonels of regiments and captains of troops or artillery companies shall be responsible for arms and accoutrements delivered for them, for which they shall give a receipt to the quarter master general.

Colonels and captains when responsible for arms, &amp;c.

53. The arms shall be distinctly numbered and marked with a brand on the left side of the broad part of the butt with the county and number of the regiment, and with the letter M; the brand to be provided at the county expense and furnished to the colonel, who shall cause the arms to be branded as prescribed by this section before they are issued.

Arms how marked.

54. The captain shall lodge the arms and accoutrements in a suitable place to be delivered to the men as he shall order, and every man shall return such arms to the place of deposit within twenty-four hours after performance of the service for which he received the same, under a penalty of five shillings for every day's neglect.

Arms where to be lodged.

55. Every man who shall convey any such arms or accoutrements out of the limits of the regiment except when on duty, or shall dispose thereof, and any person who shall receive the same, shall forfeit five pounds for every musket or rifle and ten shillings for every article of accoutrement. And every person who, without authority, shall convey any such arms or accoutrements on board of any vessel to carry them out of the county, and any person who shall receive them for such purpose, shall forfeit ten pounds.

Fine for selling or receiving arms, &amp;c.

56. If information upon oath shall be given to any justice of the peace that a person offending under the foregoing section, who is not a freeholder, is about to remove out of the county with such arms or accoutrements, the justice may issue his warrant for the apprehension of such person to answer the offence.

Persons about to remove with arms, &amp;c., may be arrested.

57. Any person charged with disposing of or with receiving any arms or accoutrements, who shall immediately restore the same, shall be entitled to a remission of half the fine or term of imprisonment.

Persons restoring arms, &amp;c., entitled to a remission of half the penalty.

58. The colonel shall once in every year, and oftener if he shall think it necessary, order an inspection of the arms, accoutrements, and ammunition of the several companies under his command, to be made by one officer of each com-

Arms, &amp;c., to be inspected by colonel's order.

**CHAP. 29.** pany, attended by the clerk, calling at the abode of each man and making a return of their condition; and every man whose arms and accoutrements shall be in an unserviceable condition, or who shall be deficient in any of them, shall be subject to the like penalty for every such defect as if the same had occurred at a muster.

Arms, &c., to be returned before removal.

59. Before removing out of the limits of his company, every man shall return to the captain the arms and accoutrements which he shall have received in good and serviceable condition, under a penalty of five pounds.

Fine for arms, &c. being dirty.

60. If any man shall appear at a muster with his arms and accoutrements in a dirty or unserviceable condition, he shall pay not less than two shillings and six pence, nor more than ten shillings.

Arms subject to governor's order before distribution.

61. Until arms shall be ordered for distribution, the governor may make any order for storing and keeping them in order.

Drilling to be subject to governor's order.

62. The governor may make orders for the disciplining of the militia, prescribing the number of days for drill, not to exceed three days in the year, and the mode of assembling; and unless some exigency shall require, there shall be but one day's meeting for drill, at which the first class militia shall attend, and the governor may dispense with any meeting.

Fine on colonels and captains for neglecting to obey training orders.

63. Every colonel who shall neglect to give orders for the assembling of his regiment by companies, as required by the general orders, for training, shall forfeit twenty pounds; and every captain who shall neglect to obey the orders in this respect shall forfeit five pounds.

Fine for non-attendance and refusal by men to do duty.

64. Any man who shall, upon notice, neglect to attend without sufficient excuse, shall pay for the first offence ten shillings, for the second offence fifteen shillings, and for every subsequent offence one pound. Every man on parade refusing to perform the duty required of him, or departing from his company without leave from the colonel or captain, shall pay not less than five nor more than twenty shillings, to be imposed by the colonel or captain.

Clerk to give notice of sitting of board of appeal.

65. The clerk shall notify every person fined for non-attendance, either personally or by writing left at his last place of abode, that at a certain time, the same not to be less than four days after such notice, and at a place therein to be mentioned, a board of officers will hear appeals.

Boards how formed.

66. The colonel may form boards of officers to hear appeals, to consist of one field officer and two captains, or of three captains, or of two captains and three subalterns, or of one captain and four subalterns, and shall by regimental order appoint a day for the meeting, not to be longer than thirty days after musters, and every captain shall have notice thereof.

Power and duty of boards.

67. The board may remit any fine, on proof of sickness of the man or of one of his family requiring his attendance,

or of unavoidable accident rendering it impossible for him to reach the place of meeting, or the sudden occurrence of urgent business, the postponement of which would seriously have injured his affairs, but shall remit such fines upon no other grounds. All fines confirmed by the board shall be certified in a schedule to be signed by the president.

68. Every man shall receive at least three days' notice of the musters at which he shall be required to attend, to be given to him in person by any commissioned or non-commissioned officer, clerk, or private having the written orders of the captain, or if he cannot be found to be left at his abode; but in the latter case, if the man shall not receive the notice, he may prove his ignorance thereof either to the captain or to the board of appeal.

Notice of muster, where and how given,

69. The commanding officer at any muster may name another day for re-assembling, and his orders then given shall be a notice to every man who shall have been notified of the first day of meeting.

Notice of re-assembling how given.

70. When a captain shall accept of an excuse for non-attendance, he shall, if required by the colonel, make a written report thereof, and for neglecting to do so shall forfeit two pounds and ten shillings.

Captains to report excuse for non-attendance.

71. Any officer under the rank of a lieutenant colonel failing to attend a meeting without a reasonable excuse, shall, if a major, forfeit five pounds; if a captain, three pounds; and if a subaltern two pounds; and the adjutant shall receive one-fourth of the penalty for his trouble in collecting the same.

Fines for non-attendance of officers.

72. In case of invasion made or threatened, the governor may call into actual service the militia, and may order any part thereof to march from one part of the province to another.

In case of invasion, militia may be called into actual service.

73. The governor may accept the voluntary service of any of the embodied militia for the defence of New Brunswick against the common enemy; and while serving in that province they shall be governed by the laws made for the government of the militia of this province and by none other.

Of voluntary service for defence of New Brunswick.

74. In case of any sudden attack made or threatened, where the governor cannot be immediately consulted, the commanding officer shall, if he think it necessary, call out the militia for actual service. And if any invasion or attack shall be made or threatened in any place where the officer commanding in the county cannot be consulted, the militia may be called out by the officer in command there, and a report shall be made to the commanding officer in the county, who shall despatch an express to the governor notifying the danger, and strength and motions of the enemy; and the commanding officer may impress in such service, men, horses, boats and carriages, as the nature of the case may require, a reasonable compensation for which shall be

Sudden attacks how provided against.

**CHAP. 29.** made to the owners; and the governor in council, on the certificate of the commanding officer and any two captains, shall draw on the treasury for the amount.

Rosters in case of actual service

75. When any part of the militia shall be called into actual service, all duties, except in cases of great emergency, shall be regulated by rosters, to be framed as hereinafter directed.

Men to be classed for service.

76. The colonel of every regiment, under the orders of the governor, shall cause the captains to divide the men into two classes, the first to consist of all the able men from the ages of eighteen to forty-five, inclusive, which shall be the first for service; the second to consist of those over forty-five and under eighteen, which shall be considered the second for service.

If deficiency of arms first class to be first provided for.

77. In case a sufficiency of arms shall not be provided by the province for the whole of the militia, the whole of the first class shall be provided with arms and accoutrements before any of the second class.

Ballots for rosters; rosters how prepared.

78. The captain shall cause a ballot to be made of the first class for forming a roster or list, whereby the men may be called into actual service in manner following:

First—Each name shall be written on a piece of paper which shall be rolled up and put into a box or a hat, and well mixed; all pieces of paper so used to be of equal size and rolled up in the same manner.

Second—Pieces of paper of equal size rolled up in the same manner and numbered from one to the extent of the number of the men, shall be mixed together in another box or hat.

Third—Two persons, to be nominated by the captain, shall alternately, until the whole are drawn, publicly draw the names, and the clerk shall make a list of such names as they are drawn, and as each name is drawn shall put the number thereof opposite to such name, and from such list the clerk shall form a roster.

Cavalry and artillery troops drafted and classed.

79. Troops of cavalry and artillery companies shall be drafted and classed for actual service in the same manner.

Men for actual service how furnished and drawn.

80. When the governor shall order any number of men for actual service, they shall be furnished in as exact a proportion as possible to the number of effective men; and every company or troop shall furnish its proportion from the first class, according to the roster; and every man so liable to serve, unless prevented by sickness or other sufficient cause, shall go or find an approved substitute, and in default shall be liable to a penalty of ten pounds, and if the same shall not be paid, may, by the commanding officer, be imprisoned for three months, and the next man on the roster shall serve in his place, who shall have the whole of the fine if he shall go or find a substitute; but if he refuse or neglect to go, he shall be liable to the same fine and imprisonment, and the next man shall be called out, and he shall have the

last mentioned fine if he by himself or a substitute, shall serve, and so as often as such case shall happen; but no man shall receive more than one fine of ten pounds.

81. If any part of the company shall be called out oftener than once in four years, no man who has served shall be liable to serve again until all the effective men shall have served personally or by substitute.

Rotation of service.

82. No Quaker shall be subject to such fine; but in case he shall refuse to go or to find a substitute, the captain may procure a substitute for him, and the Quaker shall pay the expense thereof, the same not to exceed ten pounds.

Provision in case of Quakers.

83. When any man shall remove from the limits of the company to any place within the limits of another company, he shall fall in on the roster immediately before the man who has drawn the same number.

Cases of removal, regulation as to roster.

84. When there are two or more sons residing in the family of their father or mother for one year preceding who shall be liable to be ordered for service at the same time, one shall be excused, and the next on the list shall be called.

Exemptions for one where two or more sons liable to service.

85. If any person aged sixty years or upwards, or any widow, shall have a son, grandson, or apprentice, on whom he or she shall be dependant for support, living with him or her for twelve months preceding, he shall be exempted so long as he resides in the family and contributes to the support of the same.

Exemption in case of aged dependant persons.

86. Whenever a proportion of the militia of the city of Halifax shall be called into service, the colonel of the regiment to which clerks, storekeepers, mechanics or laborers belong, who are employed in any department of the army or navy, may apportion the number of drafts which they ought to furnish, and procure substitutes in their places on the most reasonable terms, and the expenses shall be assessed on them in proportion to their daily pay by the colonel with the assistance of the two captains.

Assessment upon persons in the army or navy employ in Halifax.

87. Every person assessed under the preceding section shall, on notice, pay the amount to the colonel, and on refusal any justice upon complaint of the commanding officer may issue his warrant of distress upon the offender's goods and sell the same, and for want of goods may commit him to jail until the amount assessed be paid; but any such person may procure a substitute or serve personally, and may, on receiving due notice of the duty required of him, declare such intention.

How levied.

88. Whenever any of the militia shall be ordered into actual service, any man who shall refuse or neglect to obey the order and shall not march and proceed to perform such service as may be required either by himself or his substitute, shall be confined by the commanding officer and be subject to a fine of ten pounds, and in default of payment to three months' imprisonment.

Fine for non-compliance with orders in case of actual service.

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Pay in case of actual service.

89. When on actual service the officers, non-commissioned officers, trumpeters, drummers, pipers, buglers, fifers and privates shall be entitled to the same pay, allowances and rations as her majesty's regular troops, to be reckoned from the day they march on actual service until dismissed by the governor, and at the time of their dismissal they shall be allowed a number of days' pay to defray their expenses to their usual places of abode, according to their distances, at the rate of fifteen miles a day.

Treasury liable when pay below a certain rate.

90. If the pay to persons under the rank of commissioned officers shall not amount to the rates following, clear of deductions, that is to say: to sergeants, two shillings per day—corporals, trumpeters, drummers, buglers pipers, or fifers, one shilling and six pence per day, and privates one shilling and three pence per day, the governor in council at the time of payment may draw on the treasury for the amount of the deficiency.

Watching and warding provided for.

91. The duties of watching and warding shall be equally distributed amongst able bodied men of the district as well officers and those exempted from muster as others, according to a roster to be kept by the captain of every company, and every person refusing to perform his turn of duty shall forfeit ten shillings.

Provision for pay for extra labor.

92. When by the direction of the governor guards shall be kept so that the watching and warding performed by any one man shall exceed six days or nights in one year, the governor may pay every such man for the excess over that time according to the rate hereinbefore mentioned upon certificate of the colonel.

Fine for false alarm.

93. Every person wilfully making a false alarm shall forfeit ten pounds.

Expense for defence of districts exposed to attacks by water, how provided.

94. In any district exposed to attack by water, the sessions, on presentment of the grand jury, may assess the sum necessary for providing armed boats for defence, to be under the direction of the commanding officer: and when no longer necessary they may be disposed of by the sessions.

Articles of war in case of invasion may be prescribed.

95. In case of an invasion or imminent danger thereof, when the militia shall be called out for actual service, such of the articles of war for the government of her majesty's forces as the governor in council shall consider applicable, and shall be made to conform to the provisions of this chapter, shall be prescribed for, and shall be binding upon the militia, and shall be judicially taken notice of by the courts.

Sentence of death by court martial only in certain cases.

96. No officer in her majesty's regular forces shall sit in any court martial in the militia service, nor shall any sentence of general court martial extend to death, unless for desertion to the enemy, for mutiny, traitorous correspondence with the enemy, or traitorously delivering up to the enemy any garrison, fortress, post, or guard.



97. No man serving in the militia shall be whipped, or otherwise corporally punished, in any case except by imprisonment. No sentence of any court martial shall be carried into execution until approved of by the governor.

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Corporal punishment forbidden; sentences of court martial to be approved by governor.

98. The governor may by warrant constitute general courts martial for the trial of all offences made cognizable therein by the law, or the articles of war applicable to the militia, to consist of not less than thirteen commissioned officers, the president to be a field officer.

General courts martial how constituted.

99. Every such officer, before any trial, shall take the following oath, to be administered by the judge advocate:

Oath of officer before trial.

"I, A. B., do swear that I will duly administer justice according to the laws for regulating the militia, without partiality, favor, or affection; and that I will not divulge the sentence of this court until it shall be approved by the governor, and that I will not disclose the vote or opinion of any particular member of the court martial, unless required to give evidence thereof, as a witness, by a court of justice.

No sentence of death except twelve officers concur.

100. No sentence of death shall be given against any offender by such general court martial, unless twelve officers shall concur therein.

101. The governor may appoint any justice of the peace, or other fit person, to be judge advocate at any such general court martial, who shall, previously to any proceeding being taken by the court, take the following oath, to be administered by the president:

Judge advocate how appointed; oath of office.

"I, A. B., do swear that I will not disclose the vote or opinion of any particular member of this court martial, unless required to give evidence thereof, as a witness, by a court of justice."

102. No sentence of death passed by such general court martial shall be executed until the order of the governor, by warrant under his hand and seal, shall be given, which warrant shall direct the time and place and the manner of executing the sentence.

Governor's warrant on sentence of death.

103. All sentences of death shall be executed by hanging or shooting the offender, as the warrant shall direct.

Sentence how executed.

104. The governor's warrant shall be a sufficient authority for executing any sentence of death, and such warrant shall be read aloud in the presence of the bystanders before such execution at the time and place fixed for the same.

Warrant to be read at the execution.

105. No officer under the rank of a captain shall sit on a court martial for the trial of a field officer.

Field officer's trial, who shall sit upon.

106. General courts martial, upon appeal being made from any regimental court martial, may inquire into and confirm or annul the sentence.

General court martial a court of appeal.

107. If in the opinion of the general court martial any such appeal shall be made without sufficient cause, they may increase the appellant's punishment by imprisonment where he resides for a term not exceeding thirty days.

Powers of general court martial on appeal.

## CHAP. 29.

Regimental court martial, who may order, how constituted.

Powers of court to sentence.

Sentence how approved.

Manner of proceeding, and power of court in cases of contempt.

Relations not to sit on court.

Accuser shall not sit.

Expenses of military courts, how defrayed.

In cases of emergency colonels of regiments may be required to furnish drafts.

Officers, how selected; orders for regiment.

Provision in case of disability of men.

108. Any officer not under the rank of a captain, commanding a regiment, battalion, or detachment, may order a regimental court martial for the trial of any offence cognizable thereby; the court to consist of at least five members, and the president not to be under the rank of captain.

109. Such courts martial may fine any offender in a sum not exceeding five pounds, or may imprison him for a term not exceeding thirty days.

110. No such sentence shall be carried into effect until approved in writing by the officer in command of the regiment, battalion, or detachment.

111. All courts martial under this chapter may administer oaths to witnesses in the same manner as is the custom in courts martial in the British army, and they may punish for contempt of court, either by disobedience of its orders or abuse of the court in its presence, by a fine not exceeding five pounds, or imprisonment not exceeding twenty days.

112. No person shall sit on a court martial who shall be related to the prosecutor or person accused within the fourth degree.

113. The accuser shall not sit as a member of the court martial for trial of the person by him accused.

114. The governor may draw upon the treasury for the sums necessary to defray the expenses of militia courts of inquiry.

115. If upon any emergency arising from invasion made or threatened upon this province, or the province of New Brunswick, it shall be necessary to call into actual service any of the militia, the governor may order the colonel of any regiment to furnish two hundred men for every six hundred men of the first class, or the like proportion for any greater or less number; such men to be furnished either from drafts of the regiments or by volunteers.

116. The governor may select from the regiments to which they belong, captains and subalterns to command the men furnished under the last section; and may form any number of the men furnished by the different regiments into a regiment or battalion for actual service, and appoint field and staff officers, and an adjutant for the same, and order such regiment or battalion into barracks or camp, and adopt measures to render them efficient for actual service.

117. Upon calling out any body of the militia into actual service, the governor may direct the necessary measures to be adopted to ascertain the ability of every man to perform his duty; and if any man shall be found unable to serve, his place shall be supplied by the colonel, and if such man shall be a substitute the person in whose stead he served shall procure another substitute, under the same penalty as for refusing to go into actual service or find a substitute, or if the man has been originally drafted for the regiment the colonel shall take the next man standing for

actual service in the same company, who shall go or find a substitute under the same penalty. CHAP. 29.

118. Every man called into actual service shall supply himself with such necessaries as the governor shall direct, and appear with them where he shall be ordered; and if upon the certificate of the captain, approved by the colonel, it shall appear that any man is not able to supply himself, the proper officer shall furnish him with the same at the public cost, not exceeding fifty shillings, and the amount shall be stopped from his pay by gradual deductions. Necessaries, when and how provided.

119. The colonel may prosecute, either in the supreme court or before any two justices of the peace, any person who shall abet the desertion of a man on actual service under his command, or harbor or assist a deserter, knowing him to be such, and if convicted before the supreme court the offender shall pay twenty pounds or be imprisoned for three months, or if convicted before the two justices he shall pay five pounds, or be imprisoned for twenty days; such imprisonments, however, to terminate in either case upon payment of the penalty. Desertion how prevented and punished.

120. The governor may order the drafts to be selected and the names returned to him, and the men to be drilled and disciplined without calling them into actual service, and may select officers to command such men, and may direct the measures to be adopted and make such orders as may be necessary for that purpose, but the number of days drill shall not exceed fifteen in any one year. Power of governor to order drafts, &c. when not for actual service; number of days' drill.

121. No man shall be required to attend drill at any squad drill for more than three hours in one day, nor to travel more than four miles from his home to attend such drill, nor to attend any company drill for more than four hours in one day, nor to travel more than twelve miles from his home to attend such company drill. Of drills, and travel to attend.

122. If any man, being duly notified, shall not attend any squad drill and shall not have a reasonable excuse, to be adjudged of by his captain, he shall be fined in a sum not exceeding ten shillings. Fine for non-attendance.

123. If any man shall misbehave at any meeting, or while engaged in militia duty, the commanding officer may impose a fine of not less than five nor more than twenty shillings, or commit him to jail for not more than three days, and shall send with him the following warrant: Fine for misbehaviour; commitment and form.

"To the sheriff or keeper of the jail for the county of ——. You are hereby required to receive C. D. of my ———, who was guilty of [*state the offence.*] on the ——— day of ———, while engaged in militia duty under my command, and him closely confine in your jail for the space of ——— from the time of his being delivered into your custody, and at the expiration thereof you are to release the said C. D. on his paying your fees, and this shall be your sufficient warrant.

Given under my hand this ——— day of ———, 18—."

## CHAP. 29.

Fine for refusal to convey offender to jail; other fines and penalties.

124. If any non-commissioned officer ordered to escort such man to jail, shall neglect to do so, he shall forfeit forty shillings and be reduced to the ranks; and any private who shall neglect to perform such duty shall pay ten shillings; and any sheriff or jailor who shall refuse to receive and detain him for the time specified in the warrant shall forfeit five pounds.

Fees for commitment; imprisonment.

125. The non-commissioned officers shall receive three pence per mile for conveying the offender to jail, to be paid by the offender before he shall be discharged, and if unable to pay, he shall be detained in jail for twenty-four hours for every five shillings of the amount; and in that case the quarter-master shall pay the non-commissioned officer his fee out of the fines.

Confinement and fine for interrupting military duty.

126. The commanding officer may confine any person interrupting militia men when on duty, until the duty shall be performed, and the offender shall pay ten shillings for each offence.

Ferriage free to militia; freedom from arrest.

127. Militia men going to and returning from duty shall be entitled to a free passage across any licensed ferry; and shall be free from arrest under civil process, and any officer arresting them shall be liable to an action for damages.

Persons exempt from enrolment.

128. Clergymen, members of the executive council, judges of the supreme court, the receiver general, the financial secretary, and the provincial secretary, shall not be liable to be enrolled in the militia.

Persons exempt from musters.

129. The following persons shall be exempted from attending all musters, unless they hold commissions, viz: the members of the legislative council, the members of the house of assembly, the attorney general and the solicitor general, justices of the peace, high sheriffs, coroners, the commissioner of crown lands, officers of the customs, officers of the colonial revenue, physicians and surgeons, all clerks, storekeepers, mechanics, laborers and others employed in the civil and military departments, of the army and navy who may be exempted by the governor, one miller to every grist mill, licensed ferrymen, the post-master general and the clerks in his office, the deputy post masters and all mail couriers, all firemen and engine men, quakers certified by their society, and all teachers of academies and licensed school masters. But whenever arms and accoutrements shall be distributed, they shall be compelled under the penalties provided for default, unless exempted from enrolment, to provide for themselves the required arms and keep them in order; and shall be liable to be called out and to perform the duties of militia men when called into actual service, or find substitutes.

Sickness to exempt from duty.

130. When any man shall complain that by reason of sickness or infirmity he is unable to perform the duties required, the colonel shall order a board of one field officer and two captains, or of three captains to inquire into the

complaint; and the court shall cause the man to apply to a physician or surgeon for his certificate, which shall be given without fee under a penalty of forty shillings; and if the board shall report that such man is unable to perform his duty, the colonel shall exempt him therefrom until his disability shall cease. CHAP. 29.

131. Any medical man giving a false certificate under the preceding section shall forfeit ten pounds. Fine for false certificates by medical men.

132. The quarter-master shall give bond, with two sureties, to the colonel for the faithful discharge of his duties, and for accounting for and applying all monies and stores he may receive, and he shall receive ten per cent. upon all fines received by him. Quarter-master's bonds and commissions.

133. The quarter-master shall annually, at the general meeting of the officers, and also upon three other occasions in the year if required by the colonel, exhibit his accounts. Shall exhibit his accounts.

134. The quarter-master, with the approbation of the colonel, may appoint a quarter-master-sergeant, for whom he shall be responsible. May appoint a quarter-master sergeant.

135. Once in every year, and oftener on the advice of three captains if he shall think fit, the colonel shall require the officers to meet at such time and place as he shall appoint, and there confer with him for the better regulation of their companies, for establishing the limits of the company districts, and prescribing the number of men in each company—for appropriating fines, and making such rules as the major part may deem proper for the promotion of military discipline. Meetings to be called by colonel for making regulations &c.

136. All officers shall yield obedience to the commands of their superior officers, and shall observe the written regulations made at the meetings mentioned in the foregoing section under a penalty of five pounds, to be adjudged at the next meeting; but no officer shall be bound by any regulation concerning his dress or appointment unless two-thirds of the officers of his regiment shall have concurred therein. Obedience enjoined upon officers by fine.

137. An account of all fines, with their appropriation, shall be rendered to the secretary's office by the colonel, under the like penalty for default as in the preceding section. Accounts of fines and their appropriation provided for.

138. No rule shall be in force until it shall receive the governor's sanction, except such as relate to the limits of districts, the number of men in a company, and the appropriation of fines. What rules shall require the governor's sanction.

139. If any officer shall neglect to attend any board or meeting ordered by the colonel under this chapter, without a reasonable excuse, he shall forfeit, if a field officer, five pounds; if a captain, three pounds; and if a subaltern, two pounds. Fines on officers for neglecting to attend meetings.

140. Every field officer who shall remove from the district, or who from other causes is not attached to any regiment, but retains a commission in the militia, shall be Field officers removing or unattached, liable to duty.

**CHAP. 29.** liable to sit on courts martial and to perform the other duties of his rank when required by his superior officer, and may, in case of necessity or vacancy, be ordered to take his station in the regiment of the district where he resides; and in case of his neglect to obey such orders may be tried by a general court martial and deprived of his commission.

Officers cashiered, resigning or dismissed, lose rank, &c.,

141. No officer cashiered by the sentence of a general court martial, or who may resign his commission, or who has been dismissed from her majesty's service, or who shall neglect within six months to qualify himself for the duties of his station, and shall on that account upon the representation of the colonel be deprived of his commission by the governor, shall be entitled to any rank or privilege from having held such commission, or be exempted from enrolment or from the performance of the duties of a private.

Officers neglecting to take out commissions liable to be superseded, &c.,

142. Any officer who, having been appointed to a commission and notified thereof, shall neglect for three months to take out his commission shall be liable to be superseded, or shall only take rank from the day on which such commission shall be taken, and which day shall be inserted in the commission as the date thereof.

Inspecting officers may be appointed.

143. The governor may appoint officers to inspect and command all or any of the regiments of militia throughout the province, and such officers, when commissioned and published in general orders to the militia, shall be obeyed in all things lawful by all persons who shall be so placed under their respective commands.

Adj. genl., qtr. mr. genl. not to serve as jurors.

144. The adjutant general and quartermaster general shall be exempt from serving on any jury.

Persons of color may be formed into companies.

145. People of color shall be set apart by the colonel and formed into companies or bands of pioneers, as their numbers may admit, and may be commanded by a non-commissioned officer of color, or otherwise, as the colonel shall appoint, and they shall assemble and train under such officer, but no greater degree of duty shall be imposed upon them than upon other militia men.

Provision for persons wounded in actual service.

146. If any person in actual service be wounded or disabled while on duty, he shall be supported out of the public funds of the province as long as the disability shall continue.

Widows and families of persons killed, how provided for.

147. In case of the loss of any officer or man while on actual service, provision shall be made for the widow and family out of the public funds.

Fines, how recovered and enforced.

148. All fines, unless otherwise directed, when not exceeding three pounds, shall be recovered before one justice, and when above three pounds before two justices; and if payable by a militia man may be recovered in the name of the officer commanding the company, and the clerk shall be a competent witness; and if payable from an officer in the name of the adjutant; and the amount in either case may be levied with costs by distress, and for want of goods

the offender shall be committed to jail for the term prescribed for the offence, and if no term shall be prescribed he shall be committed for two days for every five shillings of the penalty.

149. No justice of the peace shall take any fee for any service performed under this chapter.

Justices not entitled to fees.

150. Any process for the recovery of a fine under this chapter may be amended until final judgment.

Amendment of process provided for.

151. All fines not otherwise appropriated shall, after deducting one fourth for collecting, be paid to the quartermaster, to be applied under the direction of the colonel towards defraying the expenses of the regiment.

Appropriation of fines.

152. The fees received on militia commissions, issued since the first day of January in the year one thousand eight hundred and fifty-three shall be refunded to the parties who paid the same, on their making application therefor, and on receiving from the provincial secretary's office a memorandum of the amount paid by them respectively.

Fees on commissions to be refunded.

153. All actions for anything done under this chapter shall be commenced within three months after the cause of action arose, and the defendant may plead and give this chapter and the special matter in evidence.

Limitation of actions.

154. The following terms and expressions, when used in this chapter shall have the interpretations following, that is to say:

Definition of terms.

"Regiment," any regiment or battalion of the militia; "colonel," the colonel, lieutenant-colonel, or the commanding officer of any regiment or battalion; "captain," the captain or commanding officer of any company; "clerk," the clerk, or any person performing the duties of clerk of a company; and "man," any person enrolled or liable to be enrolled in the militia under the rank of a commissioned officer.

155. This chapter shall continue in force until the seventh day of May one thousand eight hundred and sixty-three, and from thence to the end of the then next session of the general assembly.

Limitation of chapter.

156. The governor in council may cause all the old arms and accoutrements of the militia to be sold by public auction, in the respective counties in which they are now deposited; and the nett proceeds of such sales shall be paid into the treasury.

Old arms &c., may be sold.

157. Nothing herein contained shall be construed to authorize the payment of any money out of the treasury under the provisions of this chapter for any services performed after the first day of August one thousand eight hundred and fifty-seven, except for the purchase of new arms to replace those to be sold as hereinbefore directed, such purchase not to exceed the nett proceeds of the sale of old arms, unless the governor in consequence of an invasion made or threatened, or of some pressing emergency, shall issue a proclamation for the enrolment of the militia:

No money to be paid out except for the purchase of arms.

CHAP. 30.

## CHAPTER 30.

## OF BILLETING THE TROOPS AND MILITIA.

Troops and Militia, how billeted.

1. Whenever any detachment of her majesty's forces or of the militia shall be ordered to march in this province, the justices of the peace shall billet them in inns and licensed taverns, or in the houses of persons who have within one month previously kept an inn or licensed tavern; and the persons on whom they are billeted shall furnish such troops or militia with lodging and with provisions, consisting of bread, flesh and vegetables, and the officer commanding them shall give certificates of the number of meals and nights' lodging, which shall entitle the person supplying the same to one shilling and three pence for each meal, and for every nights' lodging three pence.

Fine for false certificates.

2. If any militia officer shall give a false certificate, he shall be cashiered by a general court martial, and shall also forfeit fifty pounds, to be recovered in the supreme court, one half thereof to be paid to the informer, and the remaining half into the treasury.

Expenses how provided for and drawn.

3. The governor may draw warrants on the treasury in favor of the parties entitled thereto under such certificates for all sums payable for the billeting of the militia, and also for the billeting of regular troops when on a march under a route granted by the governor on their removal from one part in the province to another, but no greater sum shall be drawn in any one year under this section than five hundred pounds.

Certificates under first section how payable.

4. The certificates of the number of meals and nights' lodging furnished to any of her majesty's troops under the first section, and for which payment is not provided under the last section, shall entitle the person who furnished the same to receive payment from the officer granting the certificate, or from the officer appointed by the commander-in-chief to pay the same.

Further provisions for billeting troops in certain cases.

5. Where the houses specified in the first section shall not be sufficient to billet the whole regiment or detachment, part of them may be billeted on other housekeepers, in the discretion of the justices; and any person who shall refuse to receive troops or militia so billeted upon him shall forfeit five pounds.

Baggage conveyances provided; rates of charges.

6. Two justices may, upon the application of the commanding officer, and on production of a route, signed by the commander-in-chief, order a suitable number of carts or waggons, and horses, to be furnished for conveying the baggage of the regiment or detachment, and the owners shall receive from the officer commanding the detachment



at the rate of one shilling a mile for one horse, cart and driver to carry five hundred gross weight for twenty miles, and for every additional horse nine pence a mile, but the additional load for each horse shall not exceed five hundred gross weight. When ordered to halt, two shillings and six pence an hour shall be paid while the detention shall last, and the commanding officer shall make out certificates of the weights, distances, time and cause of detention, and take receipts thereon for payments.

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7. Any person refusing to furnish horses and carts, or waggons, when ordered, without a reasonable excuse, shall forfeit forty shillings.

Fines for refusal to furnish conveyances.

8. If any commanding officer shall constrain any cart to travel more than twenty miles, or shall refuse to discharge it in due time to return home, or shall overload it either by permitting soldiers or others to ride thereon, or otherwise, or shall force carts or horses from the owners thereof, he shall forfeit forty shillings.

Fines on officers for illegal conduct in regard to conveyances.

9. No loaded cart passing from town to town, nor any horse travelling for the owner, shall be taken for the purpose of transporting baggage.

Horses and carts exempted when actually employed.

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## CHAPTER 31.

### OF PUBLIC FORTIFICATIONS.

1. When the commander-in-chief of her majesty's troops shall judge it necessary to erect fortifications on private property, or to apply the same for other military purposes, he shall apply to the supreme court of the county where the lands are situate, and on notice given to the owners a jury of twenty-four freeholders shall be summoned, who, after being sworn, shall view the premises and ascertain to whom the lands belong, and the value of the land of each proprietor separately, and shall return their verdict to the supreme court in writing, under the hands and seals of at least thirteen of them, which shall be filed and become a record of the court.

Private property, how appropriated for fortifications.

2. The amount of such verdict shall be paid to the respective proprietors named therein, and if any of them shall refuse to accept the same, the money shall be paid into court for their use, and such lands shall thereupon become vested in her majesty forever. If any proprietor be a minor, the value of his land shall be paid to his guardian.

Value, when found, how, and to whom paid.

3. If the sheriff shall neglect to summon a jury, he shall forfeit twenty pounds; and in case any of the jury shall

Fines on Sheriff and jury neglecting duty.

CHAP. 32. not attend, or shall refuse to be sworn, each offender shall forfeit five pounds.

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## TITLE VIII.

### CHAPTER 32.

#### OF THE NATURALIZATION AND PRIVILEGES OF ALIENS.

Aliens naturalized by act of assembly.

1. Aliens may be naturalized by an act of the assembly in conformity with the act of the imperial parliament, 10th and 11th Victoria, chapter eighty-three, and shall take and subscribe in duplicate the oath of allegiance before a judge of the supreme court in open court, who shall attest the same.

Copy and duplicate of oath where filed; fees of officer.

2. One copy of the oath shall be filed by the officer of the court, who shall receive therefor, and for making the duplicate, twenty shillings; and he shall forthwith transmit the duplicate, certified under his hand and the seal of the court, to be filed in the provincial secretary's office.

Certificate to be given; contents evidence; fee therefor.

3. The officer shall also give a certificate under his hand and the seal of the court that the oath of allegiance has been taken, which certificate shall be evidence of its contents; and therefor he shall be entitled to ten shillings.

Aliens may hold and convey real estate.

4. Aliens may take, hold, convey, and transmit real estate.

Titles not invalid on account of alienage.

5. No title to real estate shall be invalid on account of the alienage of any former owner or holder thereof.

Foregoing provisions not retrospective.

6. Nothing in this chapter shall have the effect of confirming or rendering valid the title or claim of any alien invalid or incapable of being enforced on account of alienage, on the thirty-first day of March, one thousand eight hundred and fifty-four.

## TITLE IX.

## CHAPTER 33.

## OF THE CENSUS AND STATISTICAL INFORMATION.

1. Two members of the executive council to be appointed by the governor in council, shall, together with the financial secretary for the time being, constitute a board of statistics.

Board of statistics, how appointed.

2. The board shall prepare and cause to be printed and circulated, as hereinafter provided, all such forms as to them shall seem best adapted for the purposes of this chapter, and such instructions as they shall deem necessary for the guidance of the persons appointed to take the census hereinafter provided for; and shall cause a sufficient supply of such forms and instructions to be forwarded to the several clerks of the peace on or before the first day of September previous to every year appointed for taking the census. The tables to be issued shall be in the form in the schedule, with such additional inquiries as to the board shall seem requisite, and they may strike out any, which, in practice, may be found inconvenient.

Forms to be prepared by the board.

3. The board shall have the general supervision of the statistics of the province, and shall cause to be prepared annually, and laid before the legislature at an early period of the session, a general report of such statistics, to comprehend the returns of deaths, marriages, baptisms and births, of coroners inquests, and convictions, fines and forfeitures required to be made to them by law. The report shall also contain such information relative to the trade, manufactures, agriculture, and population of the province, as they shall be able to obtain.

Duty of board.

4. The governor in council may appoint the clerk of the board of revenue to be the secretary of the board, or assign the duties of that office to any of the clerks in the office of the financial secretary, the provincial secretary, or receiver general.

Secretary of board how appointed.

5. The first general census shall be taken between the months of June and December in the present year, and a like general census shall be taken between the same months in every fifth year hereafter.

First and succeeding general census when to be taken.

6. As soon as the tables and instructions shall be issued by the board, the sessions shall set off the several counties into different sections, following the divisions of electoral districts, but with power to unite districts; and shall appoint enumerators for the different sections, who shall be resident therein; and they shall also appoint two justices to act

Counties how divided into districts; appointment of enumerators; of abstracts and returns.

**CHAP. 33.** along with the clerk of the peace in preparing the abstract of the returns as hereinafter provided: of all which the clerk of the peace shall make a return to the board.

Enumerators to be sworn.

7. Enumerators, before entering upon the duties of their office, shall be sworn into office before a justice of the peace, who shall administer the oath without charge.

Their duty.

8. The enumerators shall visit every house within their section, and take an account in writing, according to the forms to be provided for that purpose by the board, of everything specified in the forms.

Their powers; penalty for obstructing.

9. The enumerators may demand from the head of every family residing within their respective sections, or from any member of the family being more than twenty-one years of age, and from the owners or managers of factories and agents of companies, or from others having knowledge of the matters inquired into and not being minors, true answers to all questions necessary for the purpose of taking such accounts; and any such person who shall not answer, or shall wilfully give a false answer to any such question, and also every person who shall in any way wilfully obstruct an enumerator in the execution of his duties, shall for every such offence, forfeit not less than ten nor more than fifty shillings.

Returns how prepared and filed.

10. The enumerators shall sign their returns, and certify thereon, that the same have been truly and faithfully taken by them, and that the same are correct, so far as they can ascertain, and shall lodge the same in the office of the clerk of the peace within one month next after the account shall have been taken.

Clerk of the peace, with justices, to examine and correct returns, if necessary, and prepare abstracts for the legislature.

11. The clerk of the peace, together with the two justices, shall examine the returns made by the enumerators, and cause any defect or inaccuracy that may be discovered therein, to be supplied or corrected by the enumerators, as far as possible, and shall make therefrom an abstract in such form as may be required by the board, and shall transmit triplicate copies of the abstract to the board within one month next after receipt of the returns; and copies thereof shall be laid before the two houses of the legislature within the first ten days of the session then next ensuing, and the original returns shall be kept as records of the county in the office of the clerk of the peace.

Remuneration of enumerators.

12. There shall be allowed out of the provincial treasury for each of the enumerators who shall make and transmit to the clerk of the peace faithful returns of the forms issued by the board within the time limited for that purpose, such sums of money as shall be agreed upon by the sessions and enumerators; and if the service shall be agreed to be done by days' work no greater sum shall be paid than six shillings and three pence per day for every day that every such enumerator has been diligently and in good faith engaged in the performance of his duties; and the sessions

shall cause an account of such expense to be prepared and signed by the clerk of the peace, and by him returned to the board. CHAP. 33.

13. Clerks of the peace shall, in full for all their services under this chapter, receive from the provincial treasury seven pounds and ten shillings, to be paid after the taking of every census, on the certificate of the board that the services have been faithfully performed. Remuneration of clerks of the peace.

14. Any enumerator who shall not perform the duties required of him by this chapter shall, for every offence, forfeit not less than five nor more than ten pounds. Fine upon enumerators.

15. Any person who shall not comply with the requirements of this chapter in any matter for which no punishment is herein specially provided, shall be guilty of a misdemeanor. Offences not specially provided against to be punished as misdemeanors.

## SCHEDULE.—QUESTIONS.

Schedule.

*Buildings.*

1. How many inhabited houses.
2. By how many families inhabited.
3. Houses now building.
4. Uninhabited houses.
5. Stores, barns and outhouses.

*Inhabitants of various ages.*

6. Number of males under ten years of age.
7. Number of females under ten.
8. Number of males from ten to twenty.
9. Number of females from ten to twenty.
10. Number of males from twenty to thirty.
11. Number of females from twenty to thirty.
12. Number of males from thirty to forty.
13. Number of females from thirty to forty.
14. Number of males from forty to fifty.
15. Number of females from forty to fifty.
16. Number of males above fifty.
17. Number of females above fifty.

*Married.*

18. Number of married persons of both sexes.

*Widowers.*

19. Number of widowers.

*Widows.*

20. Number of widows.

*Rate payers.*

21. Number of rate payers.

CHAP. 33.*Paupers.*

22. Number of paupers.

*Deaf and Dumb.*

23. Number of males deaf and dumb.  
24. Number of females deaf and dumb.

*Blind.*

25. Number of males blind.  
26. Number of females blind.

*Lunatics.*

27. Number of male lunatics.  
28. Number of female lunatics.

*Idiots.*

29. Number of male idiots.  
30. Number of female idiots.

*Indians.*

31. Number of male indians, including children.  
32. Number of female indians, including children.

*Colored persons.*

33. Number of colored males, including children.  
34. Number of colored females, including children.

*Assessments.*

35. Amount of assessments for county rates.  
36. Amount of assessments for poor rates.  
37. Highest rate for poor in the county.  
38. Lowest rate for poor in the county.

*Value of property.*

39. Assessed value of real estate,  
40. Probable value of real estate.  
41. Assessed value of personal estate.

*Births, deaths, and marriages.*

42. Number of births the preceding year.  
43. Number of deaths the preceding year.  
44. Number of marriages the preceding year.

*Numbers engaged in various occupations.*

45. Number of clergymen or ministers.  
46. Number of doctors.  
47. Number of farmers.  
48. Number of mechanics.  
49. Number of merchants and traders.

50. Number of persons engaged in the fisheries.
51. Number of seamen registered.
52. Number of persons employed at sea.
53. Number of persons engaged in lumbering.

*Places of worship.*

54. Number of churches and places of worship of each denomination.

*Schools and pupils.*

55. Number of schools in district.
56. Number of children attending school.

*Numbers of various religious denominations.*

57. Number of church of England.
58. Number of Catholics.
59. Number of kirk of Scotland.
60. Number of free church.
61. Number of presbyterian church of Nova Scotia.
62. Number of baptists.
63. Number of methodists.
64. Number of congregationalists.
65. Number of universalists.
66. Number of Lutherans, sandimanians, quakers, and other denominations.

*Improved land.*

67. Number of acres of dike land, and average value.
68. Number of acres of other improved land.

*Agricultural produce.*

69. Number of tons of hay cut.
70. Number of bushels of wheat raised.
71. Number of bushels of barley raised.
72. Number of bushels of rye raised.
73. Number of bushels of oats raised.
74. Number of bushels of buckwheat raised.
75. Number of bushels of Indian corn raised.
76. Number of bushels of peas and beans raised.
77. Quantity of timothy and clover seed raised.
78. Number of bushels of potatoes raised.
79. Number of bushels of turnips raised.
80. Number of bushels of other root crops raised.

*Agricultural stock.*

81. Number of neat cattle.
82. Number of milch cows.
83. Number of horses.
84. Number of sheep.
85. Number of swine.

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*Fisheries.*

86. Number of vessels engaged in fisheries, and men on board.
87. Amount of tonnage engaged in fisheries.
88. Number of boats engaged in fisheries, and men on board.
89. Number of nets and seines.
90. Quantity of dry fish cured.
91. Quantity of salmon caught and cured.
92. Quantity of mackerel caught and cured.
93. Quantity of shad caught and cured.
94. Quantity of herrings caught and cured.
95. Quantity of smoked herrings cured.
96. Quantities and value of other fish cured.
97. Quantity and value of fish oil.

*Mills and factories.*

98. Number and value of saw mills, and number of hands employed.
99. Number and value of grist mills, and number of hands employed.
100. Number and value of tanneries, and number of hands employed.
101. Number and value of foundries and number of hands employed.
102. Number and value of weaving and carding establishments, and number of hands employed.
103. Number and value of breweries and distilleries, and number of hands employed.
104. Number and value of hand-loom.
105. Number and value of factories other than the above, and number of hands employed.
106. Number of steam mills or factories.

*Articles manufactured.*

107. Number of yards of fulled cloth manufactured last year.
108. Number of yards of cloth not fulled.
109. Number of yards of flannel.
110. Value of boots and shoes manufactured.
111. Value of leather manufactured.
112. Value of candles manufactured.
113. Value of soap manufactured.
114. Value of agricultural implements manufactured.
115. Value of chairs and cabinet ware manufactured.
116. Value of carriages manufactured.
117. Value of wooden ware other than the above manufactured.
118. Value of iron castings manufactured.
119. Quantity of coal raised.



120. Quantity of iron smelted, and value.  
 121. Number of gallons of malt liquor manufactured.  
 122. Number of gallons of distilled liquor manufactured.  
 123. Casks of lime burnt, and value.  
 124. Quantity of bricks manufactured, and value.  
 125. Number and value of grindstones quarried.  
 126. Tons and value of gypsum quarried.  
 127. Quantity of maple sugar manufactured.  
 128. Quantity of butter manufactured.  
 129. Quantity of cheese manufactured.  
 130. Number of vessels built, and tonnage.  
 131. Number of boats built.  
 132. Quantity of deal made.  
 133. Quantity of pine boards made.  
 134. Quantity of spruce boards made.  
 135. Quantity of squared timber made.  
 136. Quantity of staves manufactured.

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## TITLE X.

OF CERTAIN PUBLIC OFFICERS.

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### CHAPTER 34.

OF THE SALARIES OF CERTAIN PUBLIC OFFICERS AND CERTAIN PENSIONS.

1. There shall be allowed to the several officers hereafter mentioned, to be paid quarterly out of the public funds income and general revenue, the following salaries in sterling money, to wit: Salaries of public officers.

To the governor, three thousand pounds.

To the present chief justice, during his incumbency, one thousand pounds.

To any future chief justice, six hundred and forty pounds.

To the honorable W. B. Bliss, one of the assistant justices of the supreme court, during his incumbency, six hundred and fifty pounds.

To the other assistant justices, now or hereafter to be appointed, five hundred and sixty pounds.

To the provincial secretary, five hundred and sixty pounds.

To the attorney general four hundred pounds.

To the solicitor general, one hundred pounds.

To the receiver general, four hundred and eighty pounds.

**CHAP. 34.** To the financial secretary four hundred and eighty pounds.

Fees disallowed; what salaries are independent of expenses.

2. The salaries of the chief justice, assistant justices, and provincial secretary, to be without any fees of office whatsoever; and those of the receiver general, and the provincial and financial secretaries to be clear of all deductions for the necessary expenses of their departments.

Salaries, the duration of which are specifically limited

3. The salaries of the governor, chief justice, assistant justices, provincial secretary, attorney general, and solicitor general, are to be continued until eighteen months after the demise of her present majesty; but the following sums in sterling money being in whole or in part of the salaries granted to the different officers, by the first section are made chargeable upon the general revenues of this province, viz:

Salaries made chargeable on general revenues.

Governor two thousand pounds.

The assistant justices, four hundred and eighty pounds, leaving the remainder of such salaries determinable upon the contingency mentioned in this section.

Retiring pensions.

4. There shall be paid quarterly to the several persons hereafter mentioned, for their respective lives, out of the public funds income and general revenue, the following pensions in sterling money, to wit:

John G. Marshall, esquire, two hundred and forty pounds.

William Q. Sawers, esquire, two hundred and forty pounds.

Henry W. Crawley, esquire, two hundred and forty pounds.

Miss Cox, one hundred pounds.

John Spry Morris, esquire, two hundred and forty pounds.

The honorable Alexander Stewart, three hundred and twenty pounds.

Nathaniel W. White, esquire, one hundred pounds.

When pensions to cease.

5. The pensions to John G. Marshall, William Q. Sawers, Henry Crawley, and John Spry Morris, shall cease upon their respectively accepting an office under government of equal or greater value.

Duration of certain pensions.

6. The pensions to the honorable Alexander Stewart, and Nathaniel W. White, esquire, shall cease respectively upon their respectively accepting an office under the provincial government of equal or greater value to, or than the pension hereby allowed to them respectively.

7. The pension to Miss Cox shall cease eighteen months after the demise of her present majesty, if not sooner determined.

Travelling expenses of judges.

8. The chief justice and assistant justices on circuit, shall be severally allowed one pound three shillings and four pence currency a day for their travelling expenses, to commence on the day of leaving their respective homes or places of abode, and to end four days after the adjournment of the court at the termination of the circuit.

Conveyance for judges on Cape Breton circuit.

9. It shall and may be lawful for the governor, upon the application of the judge going the Cape Breton circuit, to

procure such necessary and comfortable conveyance for the purpose, as he shall think fit and proper. CHAP. 35.

10. The act forty-six, George the third, chapter thirteen, is hereby repealed. 46, Geo. 3, chap 13, repealed.

## CHAPTER 35.

### OF THE QUALIFICATIONS, APPOINTMENT, AND TENURE OF OFFICE OF THE PRINCIPAL JUDICIAL OFFICERS.

1. No person shall be appointed a judge of the supreme court, unless he shall have been a barrister of this province for ten years, and shall have been practising as such for five years next before such appointment. Qualification of judges.

2. The judges of the supreme court shall hold no other office under government except that of judge of the admiralty, and that of vice president of the court of marriage and divorce. Judges not to enjoy a plurality of offices.

3. The judges of the supreme court shall hold their offices during good behaviour, notwithstanding the demise of her majesty. Tenure of judges' office.

4. Provided always, that it may be lawful for the governor to remove any judge of the supreme court upon the address of the legislative council and house of assembly, and in case any judge so removed shall think himself aggrieved thereby, it shall be lawful for him within six months to appeal to her majesty in her privy council, and such motion shall not be final until determined by her majesty in her privy council. Removal of judges, how effected.

5. When any judge of the supreme court shall die or resign his office, or be removed in the manner authorized by the preceding section, it shall be lawful for the governor to appoint by commission, under the great seal of this province, some fit and proper person to hold the said office until the royal pleasure shall be made known, and such appointment shall be held to be superseded by the issuing of a commission under the great seal of this province to the same person or such other person as her majesty shall appoint in the place of any judge who has died or resigned, or been removed in the manner authorised by the preceding section, or by signification, within the province, of the royal decision in the privy council, restoring to his office any judge who may have been so removed. Appointment of judges.

## CHAP. 36.

## CHAPTER 36.

## OF THE OFFICES OF RECEIVER GENERAL AND FINANCIAL SECRETARY, AND THE RENDERING AND AUDIT OF THE PUBLIC ACCOUNTS.

Receiver general's bonds and tenure of office.

1. The receiver general shall give bond in four thousand pounds, with four sureties in one thousand pounds each, for the faithful discharge of his duties, and shall hold office during pleasure.

Clerk; his duty, bonds, and salary.

2. He shall have a principal clerk to assist him in the business of his office, who shall be the cashier of the savings' bank, and shall give bond in one thousand pounds, with two sureties in five hundred pounds each, for the faithful discharge of his duties, and shall be entitled to a salary of two hundred and fifty pounds, payable quarterly, such clerk to be appointed by the governor in council, and to hold office during pleasure.

Financial secretary's bonds and tenure of office.

3. The financial secretary shall give bond in two thousand pounds, with two sureties in one thousand pounds each, for the faithful discharge of his duties, and shall hold office during pleasure.

Clerk; his duty, bonds, and salary.

4. He shall have a principal clerk to assist him in the business of his office, who shall give a bond in one thousand pounds, with two sureties in five hundred pounds each, for the faithful discharge of his duties, and shall be entitled to a salary of two hundred pounds, payable quarterly, such clerk to be appointed by the governor in council, and to hold office during pleasure.

Recr. gen'l. and fin. sec'y. members of the administration.

5. The receiver general and financial secretary shall be members of the provincial administration for the time being.

Recr. general's official duties.

6. The receiver general shall receive, and on the warrant of the governor pay, all public monies, and it shall be competent for the governor in council to direct from time to time which of the public accounts shall be filed in his office, and in what form the books to be opened thereat shall be kept; but one general cash book shall be kept by him, in which there shall be entered, from day to day, all monies received and paid, with the names of the parties who received or paid the same, and which book shall be open at all times to the inspection of the members of the executive government, or of any member of the legislature.

Rec. gen'l. manager of treasury notes, funded debt, and savings' bank.

7. The receiver general shall manage or superintend the treasury notes, the funded debt, and the savings' bank, as hereafter provided for.

Financial secretary's official duties.

8. It shall be the duty of the financial secretary to examine and check from time to time, as they shall come in, all accounts of public receipts and expenditure of every kind and description. The accounts of the revenue officers and

## CHAP. 37.

collectors of light duties at Halifax and in the outports shall regularly pass under his supervision, and any error or mistake therein be immediately pointed out and rectified, and the attention of the governor in council if necessary directed thereto; and no account of any public expenditure whatsoever for road work, public buildings, light houses, education, or otherwise, shall be paid by the receiver general until the same shall have been carefully examined and certified to be correct, or any mistake or error therein pointed out and rectified by the financial secretary, or, in case of his absence or indisposition, by his principal clerk.

9. Such accounts, so examined and certified under the hand of the financial secretary, or in case of his absence or indisposition under the hand of his principal clerk, shall be necessary vouchers previous to the issue of a warrant for the payment of the sums therein expressed, or for the payment thereof under any general warrant previously issued therefor.

Warrants drawn only upon accounts duly vouched.

10. The principal revenue officer at Halifax and the receiver general shall furnish quarterly accounts of all sums received and paid by them respectively, to be examined and checked by the financial secretary; and such quarterly accounts shall be collected and formed into one general account, to be presented by the principal revenue officer and the receiver general to the general assembly in every year within the first ten days of each session and to be examined and audited by a joint committee drawn from the legislative council and house of assembly as heretofore.

Quarterly accounts to be rendered to the financial secretary's office, and presented to the assembly annually.

11. It shall be competent for the governor in council to direct from time to time which of the public accounts shall be filed in the office of the financial secretary, and in what form the books to be opened thereat shall be kept, and also, from time to time, on the report of the financial secretary to issue such orders for the more economical expending of the public monies, by the taking of contracts after due advertisement, or by such other guards and provisions as may appear most judicious for the checking of any abuse and the more vigilant and faithful husbanding of the public monies.

Governor may give directions for the management of the office.

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## CHAPTER 37.

### OF THE OFFICES OF SURVEYOR GENERAL AND COMMISSIONER OF CROWN LANDS.

1. The offices of surveyor general and commissioner of crown lands for the whole province shall be united in one person, who shall hold office during pleasure.

Surveyor general and commissioner of crown lands' offices united.

**CHAP. 38.** 2. The salaries and other expenses of the crown land office shall be as follows:

Salaries, &c., of the crown land office.

Salary of commissioner of crown lands, five hundred pounds; salary of first clerk, two hundred and fifty pounds; additional clerks, three hundred pounds; contingencies, fifty pounds.

Salaries to be currency.

3. The before named salaries are current money of Nova Scotia, and not sterling.

## TITLE XI.

### CHAPTER 38.

#### OF TREASURY NOTES, THE FUNDED DEBT, AND THE SAVINGS' BANK.

Commissioners of treasury notes, how appointed.

1. The governor in council shall appoint three commissioners of treasury notes, who shall hold office during pleasure and be sworn before a judge of the supreme court to the faithful discharge of their duties. Any vacancy to be filled up by a similar appointment.

Form and mode of issue provided for.

2. The form of treasury notes now in use, and the mode of issuing, shall be continued; and all impressions taken from the plate now in the custody of the provincial secretary shall be securely kept in his office till required by the commissioners, or any two of them, at the instance of the governor in council.

Old notes replaced.

3. The commissioners shall from time to time deliver to the receiver general as many new treasury notes as may be required to replace the old, and such new notes shall be immediately signed by the receiver general.

Notes dated previously to 1846, how disposed of.

4. Treasury notes issued previous to one thousand eight hundred and forty-six, as they come into the treasury shall be delivered to the commissioners to be defaced, and shall be lodged in the provincial secretary's office in sealed packets, which the committee of public accounts shall examine and destroy.

Warrants, how paid.

5. The receiver general shall pay all warrants in gold or silver, if in the treasury, or in treasury notes issued since one thousand eight hundred and forty-six, which notes shall be again received at the treasury and in payment of duties at their specified value.

Torn and defaced notes provided for; issue limited.

6. Treasury notes issued since one thousand eight hundred and forty-six, when torn or defaced, shall be replaced by new notes, and shall be dealt with as in the fourth pre-

ceding section. The whole amount to be issued shall never exceed the amount now issued.

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7. The governor in council may direct such portion of the funded debt, not due to the savings' bank, to be paid off from time to time as they shall think prudent.

Funded debt, payment of how provided.

8. Loan certificates for the funded debt shall be issued when required in the form now in use, and shall be transferable by endorsement.

Loan certificates may issue; their form, &c.,

9. The interest thereon shall be payable to the holders at the treasury on the first days of January and July in every year, when the certificates must be produced.

Interest on, when and how payable.

10. The receiver general shall superintend the savings' bank, and shall see that the same is conducted by the cashier in accordance with instructions issued by the governor in council. The receiver general shall personally superintend the weekly payments and receipts of the cashier, and shall examine his accounts and vouchers every month and certify them to be correct. And the cashier shall prepare at the end of every year a full abstract of the accounts and proceedings, and a report of the state of the bank, to be certified by the receiver general and laid before the legislature.

Savings' bank, how managed.

11. Depositors in the bank shall be paid four per cent. interest; and no person shall be allowed to be a depositor of more than two hundred pounds; and not more than fifty pounds shall be received from any depositor in any one year, and monies deposited under this chapter shall be applied by the governor in council, from time to time, for such uses as shall have been approved of, and sanctioned by the general assembly. The amount of deposits in the bank shall not exceed one hundred and twenty-five thousand pounds.

Depositors to be paid interest—amount of deposit limited, &c.

12. The accounts between the bank and the treasury shall be kept as heretofore; and if at any time there shall be a demand upon the bank which the cashier cannot meet, the governor in council shall order the same to be paid out of the treasury, and if necessary shall open a cash account with any of the banks in order to meet such demands, and on such terms as may be deemed most advantageous.

Manner of keeping accounts; demands how provided for.

Whereas acts passed during the session of the legislature in 1854 to authorize and to provide funds for the construction of railways in this province, and it was necessary to enlarge the amount of circulating currency by a further issue of treasury notes, for twenty shillings each, to an amount not exceeding fifty thousand pounds, and a further issue of fifty thousand pounds was authorized by an act passed on the 18th day of April, 1856, such treasury notes were to be in the form, and issued in the mode, then in use, and the same were to be received at the treasury and in payment of duties at their specified value:

P 1c.

Further issue of treasury notes authorized.

Form, issue, and mode of receipt at treasury.

13. The holders of such notes shall be paid the full amount thereof at the treasury, in gold or silver money on demand.

Payable in gold or silver.

## CHAP. 39.

## TITLE XII.

## OF COUNTIES AND COUNTY OFFICERS.

## CHAPTER 39.

## OF THE BOUNDARIES OF COUNTIES.

Boundary lines confirmed.

1. The boundary lines of counties, and of the district of Saint Mary's, are confirmed as at present established.

County dividing lines, provisions for running.

2. The sessions for any county may choose a surveyor to run a dividing line, or a part thereof, between that and an adjoining county, and shall appoint a day and place for the purpose subsequent to the next term of the sessions of such adjoining county, notice of which shall be transmitted by the clerk of the peace to such sessions at or before their next sittings.

Directions to adjoining county.

3. The sessions of the adjoining county may then nominate a surveyor to meet the other. These two, or in case of neglect of the sessions of the adjoining county to make an appointment, the surveyor first appointed shall run and mark the dividing line or such part thereof, and make return of the proceedings, with a plan annexed, to the clerk of the peace for each of the counties; and the line, or portion thereof, so surveyed, shall be the boundary between the counties.

Disagreement of surveyors provided against.

4. If the surveyors disagree, each shall make return of his proceedings, with a plan annexed, to the clerk of the peace of the county for which he was appointed, to be transmitted to the provincial secretary's office, and the same shall be laid before the governor in council, who, with or without further evidence, may determine upon a line, a plan whereof shall be sent to the clerk of the peace for each county, and the expense shall be equally divided between the counties and form a county charge.

## CHAPTER 40.

## OF SHERIFFS.

Mode of selecting and pricking sheriffs: bonds given before commission.

1. The chief justice, and a judge of the supreme court selected by him, or, in the absence of the chief justice any two judges selected by the senior judge, together, in either case, with two members of the executive council, shall meet in Halifax during Michaelmas term in each year, and select



three persons for sheriffs for each county, out of whom the governor in council shall prick one to serve for the ensuing year, who shall reside in his county, and who, upon giving security by bond as hereinafter mentioned, shall receive his commission and be invested with the powers of office. CHAP. 40.

2. A sheriff may receive his commission before his bond is approved in case the late sheriff has misconducted himself or any of his sureties have become insolvent, or in case of the decease of a sheriff; but such new sheriff must find approved security within one month, to commence from the date of the commission. Commission may issue before bonds given in certain cases.

3. If any person appointed shall refuse to accept the office, he shall forfeit fifty pounds, and the governor shall prick another from the list. Fine for refusing to accept office.

4. The name of a person serving the year previous in any county may be again returned, unless a representation by a majority of the justices in session against him be filed in the supreme court in Halifax before Michaelmas term. Sheriff re-eligible unless objected to by sessions.

5. If a sheriff die whilst in office his deputy shall act till another be appointed, and the sureties of the sheriff so dying shall be liable for such deputy as if the sheriff were living. If there be no deputy the governor in council may commission a sheriff for the remainder of the year, who shall file security as other sheriffs. Death of sheriff provided against.

6. Every sheriff shall deposit in the provincial secretary's office a bond for the discharge of the duties of office, to be made to her majesty: himself in one thousand pounds, with two sureties each in five hundred pounds, and the bonds when approved shall be registered in the provincial secretary's office, on the oath of a subscribing witness. Where bonds are lost, certified copies shall be receivable in evidence. Bonds how given and registered.

7. Such bonds when received by the provincial secretary shall forthwith be laid before the governor in council, who shall approve or disallow the same within twenty days. Any sheriff whose bond has been disallowed and not giving a satisfactory bond after reasonable notice. may be removed by the governor in council, and the sheriff for the preceding year shall continue in office, his sureties remaining liable. If he be the same person he shall act under his former appointment, and his former sureties shall continue until he find approved security or be removed from office. Allowance of bonds; provisions in case of disallowance.

8. The sureties shall be responsible for the performance of the sheriff's duty until the approval of new security. They may at any time pray the governor to relieve them, and if, upon being required, the sheriff shall fail to substitute other approved sureties within one month, the governor in council shall remove him from office. Responsibilities of sureties, and substitution of others.

9. Before entering upon his duty, every sheriff shall subscribe the following oath: Sheriff's oath.

"I, A. B., do solemnly swear that I will truly serve the

**CHAP. 41.** queen in the office of sheriff for the county of \_\_\_\_\_, and promote her majesty's profit in all things which belong to my office, as far as I legally can. I will truly, to the best my skill and judgment, execute the laws and statutes of the province, and in all things will act uprightly in my office for the honor of the queen and the good of her subjects."

Fine for neglecting to return accounts of forfeitures.

10. If any sheriff delay more than two months after his year of office expire to render an account on oath to the provincial secretary of all forfeitures and debts of the crown levied by him, with the names of parties paying, he shall forfeit twenty pounds to the use of the crown.

Suits upon sheriffs' bonds, how brought.

11. Any person injured by any act or omission of a sheriff, may sue on his bond in the name of the queen, and be entitled to the proceeds with costs. The defendant shall be entitled to costs if judgment be given in his favor, but no action shall be brought upon the bond until judgment shall first have been recovered against the sheriff.

Damages regulated in suits for escapes.

12. In an action brought against a sheriff, jailer, or other officer for an escape under an execution in a civil suit, the jury shall not be bound to find for the whole amount for which the prisoner was committed, but they shall find a verdict for the plaintiff for such sum only as they shall think right and proper under all the circumstances of the case, unless it shall appear on the trial that the escape was connived at, or the officer guilty of gross negligence, and in no case shall they find for more than the amount for which the prisoner was committed.

Writs returned to be endorsed with items of fees.

13. Sheriffs shall return all writs to them directed with the amount of their fees thereon endorsed, and the several items thereof specifically set forth, otherwise the same shall not be taxed or recoverable. Sheriffs shall indorse upon every writ returned by them an account of their doings thereon, and when and how executed, and the amount collected on all writs of execution.

Limitation of actions.

14. All actions against sheriffs must be brought within three years from the accruing thereof.

## CHAPTER 41.

### OF CORONERS.

Coroners. how appointed and sworn.

1. Coroners may be appointed by the governor in council, and shall be sworn into office before a judge of the supreme court or the custos of the county.

Inquisitions. when and how returned.

2. Coroners shall return their inquisitions to the clerk of the crown for the county at or before the then next sit-

tings of the supreme court. The clerk shall file the same without fee, and give the coroner a certificate containing the date of the inquisition and the date of filing. CHAP. 42.

3. Coroners shall either personally or by a constable, furnished by them with a precept, summon a jury of the inhabitants of the county to attend inquisitions when requisite at a time and place appointed, and, if necessary, may hold inquests on a Sunday. Juries how summoned; inquisitions may be on Sunday.

4. Upon the certificate of such clerk of the crown being filed with the provincial secretary, the governor may draw a warrant on the receiver general in favor of the coroner for fifty shillings in full for each inquisition, twelve shillings thereof to be paid to the jury and two shillings and six pence to the constables, for their fees. Fee for inquisition, how drawn and appropriated.

5. If there be any further necessary or extraordinary charge on an inquest or burial, besides those mentioned in the first four sections of this chapter they shall be defrayed by the county. Extra charge, how defrayed.

6. If any grand jury neglect or refuse to make a presentment for the amount of expense so incurred, the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for that purpose. Justices may amerce.

7. Any person aggrieved by the assessment, may appeal, as in case of ordinary county rates. Appeal.

8. In the absence of the coroner, an inquisition may be held before a justice, who shall be entitled in such case to the same fees as a coroner. Justices to act in absence of coroner.

9. Coroners shall return lists in triplicate of the inquests held by them, together with the findings of the juries, to the board of statistics, on or before the tenth day of January in every year, under a penalty of five pounds. Returns to board of statistics.

## CHAPTER 42.

### OF CLERKS OF THE PEACE.

1. Clerks of the peace shall be appointed by the custos of the county or district during pleasure, and shall be sworn into office by the custos or a judge of the supreme court. Clerks of peace, how appointed and sworn.

2. Upon the death or removal of the custos, and also upon the vote of a majority of the sessions, the office of the clerk of the peace shall become vacant; but clerks of the peace shall continue to hold office until their successors are appointed. Vacancies, provisions for and how filled.  
Duration of office.

3. Every clerk of the peace shall cause to be engrossed in a book kept for that purpose only, and properly indexed, all rules, regulations and orders of the sessions in force, or Book of rules and orders of session.

**CHAP. 43.** such as may be made, with their dates respectively, which book shall be open for inspection at all reasonable times.

Returns to board of statistics.

4. Every clerk of the peace shall, annually, on or before the tenth day of January, return in triplicate to the board of statistics a list of all convictions had, and of all fines and penalties imposed by the sessions, the amount of fines and penalties collected and how appropriated, with the names of all offenders, under a penalty of five pounds.

Fees forbidden except in cases of license.

5. No clerk of the peace shall receive any fee for the duties of office except in cases of licenses only.

Deputies to have same powers &c. as principals who are responsible for their deputies.

6. The clerks of the peace in the several counties or districts, with the consent of the custos, may appoint deputies to act for them in case of sickness or temporary absence; for whose conduct the principal shall be responsible; and all deputies so appointed shall have the same powers vested in them for the time being, as by law are vested in the principal, and their acts shall be equally valid.

## CHAPTER 43.

### OF PROTHONOTARIES AND CLERKS OF THE CROWN.

Office of prothonotary and clerk of the crown for the province abolished.

1. The office of prothonotary of the supreme court and also the office of clerk of the crown for the whole province, are respectively abolished.

J. W. Nutting to continue to hold those offices for Halifax.

2. James W. Nutting, esquire, may continue to hold the office of prothonotary and clerk of the crown for the county of Halifax, in the same manner as he held the office of prothonotary and clerk of the crown for the whole province under his patent.

A prothonotary to be appointed for each county.

3. The governor in council shall appoint and commission one person to be prothonotary of the supreme court and clerk of the crown in every other county, except Halifax, and in Halifax when a vacancy shall occur, and every such prothonotary and clerk of the crown shall, within and for the county for which he may be appointed, have, and exercise, and be liable and subject to all the same duties, rules, enactments, powers, and regulations as were respectively had and exercised by the prothonotary of the supreme court and clerk of the crown, and his deputies, or to which he or they is or are, now subject and liable.

Prothonotaries to make a return of fees, and to pay over one-third thereof to the receiver general, to be paid over to J. W. Nutting.

4. The prothonotaries in the different counties shall, on or before the first day of February, in every year, so long as James W. Nutting, esquire, shall hold the office of prothonotary and clerk of the crown for the county of Halifax, make a return, under oath, into the receiver general's office of the fees received by them; and the prothonotaries of

the several counties, Halifax excepted, shall, at the same time pay over one-third of such fees to the receiver general, who shall pay over the same to the said James W. Nutting—provided no greater sum shall be paid out of the sums so paid in any one year, than will, together with the fees of the prothonotary, and the emoluments of the clerk of the crown in Halifax, amount to five hundred pounds, and if in any one year such fees and emoluments shall not amount to five hundred pounds, he shall receive the deficiency from the receiver general, if there should be at any time a sufficient balance in the treasury of funds paid in under this chapter.

CHAP. 43.

Proviso.

Section 4 explained.

5. The proviso in the fourth section is hereby declared not to have any reference to the sum of eighty pounds, sterling, annually granted to the clerk of the crown at Halifax, for his services in that capacity, and the sum of five hundred pounds payable to Mr. Nutting, under such section, is hereby declared to be receivable by him thereunder, exclusive of such annual grant.

Prothonotaries and clerks of the crown to give bonds.

6. The prothonotaries and clerks of the crown to be appointed as aforesaid, shall give bonds in such sums and with such securities as may be directed by the governor in council, conditioned for the performance of the duties of their office, and for the payment of the monies hereinbefore directed to be paid to the receiver general.

Prothonotaries—duties of.

7. The prothonotaries throughout the province shall issue subpoenas in crown cases, and perform all such other duties as appertain to the office of clerks of the crown.

Compensation—how obtained.

8. The prothonotaries as a compensation for such services may retain out of the proportion of fees required to be paid into the treasury, by section fourth, a sum not exceeding ten pounds, for each year, and out of any sums by them heretofore paid into the treasury they may receive the same allowance as if such sums had not been paid in.

Monies paid into treasury by prothonotaries in Cape Breton; to whom paid.

9. The monies paid into the treasury, by virtue of such fourth section, by the prothonotaries in the island of Cape Breton, shall be paid to Charles E. Leonard, esquire, prothonotary at Sydney, instead of being paid to James W. Nutting, esquire, as directed by such section.

Salary of J. W. Nutting not diminished.

10. The salary, or emoluments of James W. Nutting, esquire, shall not be diminished on account of the monies retained by, or paid to the prothonotaries, under the seventh and eighth sections of this chapter, but the amount of such sums shall be paid to him out of the treasury.

CHAP. 44.**CHAPTER 44.**

## OF THE TIMES AND PLACES OF HOLDING THE SESSIONS.

Halifax sessions when held; grand jury to attend.

Colchester, Cumberland, Pictou, Hants, Kings, Annapolis, Digby, Lunenburg, Queens, Shelburne, Yarmouth, Sydney, Guysborough, Cape Breton, Victoria, Inverness, Richmond; grand jury's attendance when required.

1. The general sessions of the peace for the county of Halifax shall be held on the first Tuesdays of March, June, September and December, respectively, and the grand jury are required to give their attendance thereat.

2. The general sessions of the peace in the other counties shall be held as follows:

For Colchester, on the second Tuesday of January.

Cumberland, first Tuesday of January.

Pictou, first Tuesday of February and first Tuesday of July.

Hants, first Tuesday of October.

Kings, last Tuesday of April and last Tuesday of October.

Annapolis, third Tuesday of April and last Tuesday of

October.

Digby, at the sessions house at Clare, last Tuesday of April; at Digby, first Tuesday of November. The grand jury shall attend each sitting.

Lunenburg, second Monday of April.

Queens, second Tuesday of January.

Shelburne: at Barrington, on the Monday next after the fourth Tuesday of April; at Shelburne on the Monday next after the last Tuesday of September. The grand jury shall attend each sitting.

Yarmouth: at Tusket Village on the last Tuesday of April; at Yarmouth, the third Tuesday of September.

Sydney, second Tuesday of January.

Guysborough: at Guysborough on the third Tuesday of January and first Tuesday of May; and at St. Mary's on the first Tuesday of October. The grand jury shall attend in January and October.

Cape Breton, first Tuesday of March and second Tuesday of July. The grand Jury shall attend in March.

Victoria, third Tuesday of March, and third Tuesday of July.

Inverness, second Tuesday of March, and first Tuesday of October. The grand jury shall attend in March.

Richmond, second Tuesday of February.

In counties where two terms are held, except as above provided, the grand jury shall attend only at the fall or winter term. In all counties where there is a single session for the year, the grand jury shall attend.

Duration of the sittings of sessions; of adjournments.

3. The general sessions may be kept open in the county of Halifax fourteen days, but in other counties not more than ten days, and they may be adjourned from time to time during term as occasion shall require.

4. Bills of indictment may be preferred, found, and tried, and judgment thereon given in the general sessions of the peace for the county of Halifax as heretofore, and persons convicted thereat may be sentenced to confinement in the provincial penitentiary, in the same manner as if tried and sentenced in the supreme court. CHAP. 45.  
Indictments  
may be found  
and tried in Ha-  
lifax sessions.

5. When a question of law shall arise, and the sessions desire the opinion of the supreme court thereon, the clerk of the peace may be ordered to prepare a case, to be signed by the custos or the presiding justice, which may be filed and entered by either party interested therein, or by the clerk of the peace with the prothonotary, for argument at the next sitting of the supreme court in the county. Cases may be  
prepared for  
supreme court.

6. The presiding judge may order the case to be sent back to be amended if he shall see fit. He may hear and determine the same, or he may, if he think the matter more fit for the determination of the whole court, grant a rule *nisi*, returnable at Halifax, to be argued and disposed of as other rules are. The judgment of the supreme court, whether in the county or at Halifax, shall be embodied in a rule and returned to the court of sessions by the prothonotary, and shall be final. Amendments;  
adjudication  
provided for.

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## CHAPTER 45.

### OF SPECIAL SESSIONS.

1. The custos of his own authority may, and upon the written requisition of three justices specifying the particular objects thereof shall, call special sessions for the transaction of any business which may be legally transacted thereat, and he shall in all cases direct the clerk of the peace to convene the same, giving him at the same time the necessary information as to the objects thereof, and the clerk of the peace shall forthwith post up advertisements in at least five of the most public places in the township or settlement interested in the business to be transacted at such sessions, and if there shall be any business affecting the interests of the county or district generally, then advertisements shall be posted in at least three of the most public places in each township of such county or district, and all such advertisements shall be posted up at least five days before the meeting of the sessions, and shall mention the particular business to be transacted thereat, and a copy of the notice shall be filed by the clerk of the peace, and no business shall be transacted at such sessions other than that contained in the advertisement. In case of the absence from the county, or illness of the custos, any three justices Special sessions  
how called;  
what business  
transacted.

**CHAP. 46.** may direct the clerk of the peace to call such special sessions.

Number of justices necessary; records to be made and filed.

2. Every special session, unless otherwise prescribed, shall be composed of five or more justices and the clerk of the peace, or in his absence, a fit person to be named by the justices present shall attend and make a record of such sessions and of all proceedings had thereat, to be filed in the office of the clerk of the peace.

## CHAPTER 46.

### OF COUNTY ASSESSMENTS.

County treasurer, how appointed.

1. The grand jury shall annually at the general sessions present the names of three persons, being residents in the county, one of whom shall be appointed by the court, treasurer for the county, who shall give bond to her majesty, with sureties to be approved of by the custos, in a sum to be named by the sessions, for the performance of the duties of his office, and shall be sworn into office; and such treasurer shall continue to hold office until a successor be appointed.

Presentments for general purposes.

2. The grand jury, on their own knowledge, the recommendation of the court, or the representation of three or more freeholders of such county, shall present any sums of money necessary in their judgment, for any public purpose within the county; the same to be confirmed by the sessions, and they may include for their own remuneration while actually attending the court of sessions, such sum as they may judge necessary, so as the same shall not exceed two shillings and six pence per day for each juror actually attending, and six pence per mile travelling expenses, the distance to be counted from the residence of the juror to the place where the court is held.

Remuneration to grand jurors.

Presentments, for local and for special purposes.

3. Upon the petition of twenty freeholders of any township or place, certified to be such by a justice of the peace, the grand jury may present any sums necessary for the erection or repairs of lock-up-houses, and the payment of keepers thereof; for the purchase, the erection, hiring, or repairing of market or town houses, for the providing of hay scales, weights, and appurtenances, for sets of weights and scales and for measures, long, liquid, and dry, for any township or place, and such sums when confirmed by the sessions shall be added to the apportioned assessment upon such township or place, and assessed and levied exclusively thereon. The sessions may make regulations for the use and management of such buildings and public property, and may appoint keepers thereof.



4. If any grand jury neglect or refuse to make a presentment when necessary for any of the following purposes, that is to say: for the building or repairing a jail or the appurtenances thereof, a court house or sessions house, and for fuel for the use of the same; for erecting and repairing pounds, and providing bolts, bars and shackles; also for conveying persons accused of crimes to jail when the distance shall be three miles or upwards, at a rate not over six pence per mile; for the decent support of poor criminals, or poor debtors in jail, for the salary to the treasurer of the county, for a salary to the clerk of the peace of not less than twenty pounds, for the maintenance of a jailer, for the paying of criers for the several courts, for defraying the expenses of poor witnesses on the trial of persons accused of any criminal offence, for defraying the charges of public executions and of conveying criminals under sentence to their places of confinement, for defraying the expenses of persons sentenced to confinement and labor within the county, and procuring materials for such labor; for paying extraordinary expenses ordered by the sessions to constables and incurred in execution of their duty in cases of riot or felony; for paying allowances to special constables ordered by the sessions about executing or assisting, or trying to execute warrants for felony or misdemeanor; for expenses incurred or necessary to be raised about repairing bridges within the county, for expenses incurred about removing county rates by certiorari or otherwise, or in prosecuting or defending any action or proceeding at law respecting such county affairs; the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for any such purpose.

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Amercements, for necessary and specific objects in cases of grand jury's neglect.

5. So soon as the amount to be raised in the county shall be determined, the sessions shall ascertain what portion each township and place shall contribute.

Apportionment of county assessment upon towns and places.

6. The amount to be assessed upon the city of Halifax being so ascertained, shall be furnished by the clerk of the peace to the city clerk, and thereupon it shall be assessed upon the city, and collected at the same time and in the same manner as other city rates. The amount so collected shall be held payable to the order of the sessions. The city of Halifax is exempted from the operation of sections 7, 8, 9, and the sections from 48 to 66 inclusive.

Apportionment upon Halifax city, how assessed and payable.

7. When any presentment shall be made, the grand jury shall furnish to the court the names of such number of persons of the county as the court shall direct, to be assessors and collectors respectively for the several townships and places in such county, and the court shall appoint not less than half the persons named.

Assessors and collectors, how appointed.

8. In case of amercement where no assessors or collectors shall have been appointed, the sessions shall appoint the necessary number, being persons resident within the county.

Apportionment in cases of amercement.

## CHAP. 46.

Assessors to be notified of appointment; fine for refusal to act.

Compensation for assessors.

Persons liable to taxation.

"Land" and "real estate,"—meaning of words.

Personal estate and personal property—what they include.

Property exempt from taxation.

Poll tax—in what proportion, and upon whom.

9. The clerk of the peace for the county shall in all cases notify the assessors of their appointment, and they shall be sworn into office; and in case of refusal to act, such assessors shall forfeit five pounds.

10. Assessors shall return with the assessment roll a statement of the time spent by them in such duties; and such compensation for their services, not to exceed five shillings per day for each assessor, as shall be presented by the grand jury and confirmed by the court of sessions, shall be a county charge, and be added to the amount to be assessed upon the county.

11. For all purposes for which local and direct taxes are and shall be levied by authority of law, unless otherwise specially provided for by law, all land and all such personal property as is hereinafter defined, whether owned by individuals, co-partners, or corporations, shall be liable to taxation, subject to the exceptions hereinafter specified; and the occupant of any crown land shall be liable to taxation for the land so occupied, but such land shall not be chargeable for the same.

12. The term "land," as used in this chapter, shall be held to include the land itself, and all buildings and other things erected and fixed upon the same, and all mines, minerals, quarries, and fossils, in and under the same; and the term "real estate" in this chapter, shall be construed as having the same meaning.

13. The words "personal estate," and "personal property," when they occur in this chapter, shall be understood to include all such goods, chattels, and other property as are enumerated in schedule A. hereto annexed, and no other; and the term "property," shall include both real and personal property as above defined.

14. The following property shall be exempted from taxation, viz: *First*,—lands belonging to her majesty, or held in trust for her majesty for the public uses, of the province. *Secondly*,—every place of worship, every church yard or burial ground, the real estate of every college, academy, or other seminary of learning, every public school house, town hall, court house, lock-up house, temperance hall, all public landings, public breakwaters and public wharves, all school lands, and the property of every township or town, city, or county, if occupied for the purposes thereof, or if unoccupied. *Thirdly*,—the provincial penitentiary, and the land attached thereto; the provincial lunatic asylum, and the land attached thereto; the provincial railway, rolling stock, and railway stations, and lands attached thereto, or to the railway. *Fourthly*,—lands belonging to any widow or minor when of less value than one hundred pounds currency. *Fifthly*,—funds invested in provincial debentures.

15. One fourth and no more of all local and direct taxes shall be levied and assessed by an equal rate, as a poll tax,

on all male persons living within the district, of the age of twenty-one years, and not being paupers, and the other three-fourths shall be levied and assessed upon the whole taxable real and personal property of the locality, to be taxed in proportion to the assessed value thereof, and not upon any one or more kinds or species of property in particular, provided that such poll tax shall not exceed the sum of one shilling and sixpence on any individual. CHAP. 46.

16. In making up the assessment roll, the assessors shall be governed by the following rules: Assessment roll—rules for.

I. Where the owner or occupier is resident within the county, the assessors for the district within which he resides shall include in the roll the whole of his assessable property. To include all assessable property of residents.

II. If such property be situate in different districts of the county, it shall be so discriminated in the assessment roll, as to shew for what amount he is assessable in each district. Where property in different districts.

III. Where the owner or occupier is not resident within the county, or is unknown, and the lands are unoccupied, the lands shall be assessed as lands of non-residents, in each separate district in which they lie. Non-residents.

IV. Where the owner of lands which are occupied by another party as tenant for any period less than one year, resides within the county, the lands shall be estimated as property of the owner, saving his recourse against the occupier; and where the owner of the lands is not resident within the county, they shall be estimated as the property of the occupier. Tenants.

17. Between the first day of November and the first day of December in each year, the assessors appointed by the grand jury and court of sessions for each township or district, shall proceed to ascertain, by diligent enquiry, the names of all the taxable inhabitants within the same, and also all the taxable property within the same, its extent, amount, and nature. They shall then prepare an assessment roll, in which shall be set down in separate columns, and according to the best information in their power, the names of all taxable parties in the township or district, with the extent or amount of property assessable against each, under the provisions of this chapter, and containing the particulars mentioned in schedule B. for each of the items of which the assessment roll shall contain a separate column. Time in which assessment roll to be made.

18. The lands of non-residents shall be designated in the assessment roll, but in a separate part of it, under the head of "assessment roll of non-residents' lands," and shall contain the several particulars specified in that part of schedule B. which refers to such lands. Lands of non-residents.

19. All real and personal property liable to taxation shall be estimated by the assessors at its full value, in the same manner in which they would appraise the same in payment of a debt due from a solvent debtor. Value of property—how estimated.

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Completion of roll.

Certificate.

Roll to be forwarded to clerk of peace, and posted up.

County rates.

Residents.

Poor rates.

Non-residents.

Clerk of peace to make out county rate.

Shall transmit to clerk of poor district part of roll applicable to poor rate.

Clerk of district to make poor rate.

Assessment roll.

20. The assessors shall complete the rolls on or before the tenth day of January in each year, and they, or a majority of them, shall forthwith thereafter sign the same, first attaching thereto a certificate in the following form:

"We do severally certify that we have set out in the above assessment roll, all the real and personal property within the county, owned or occupied by persons residing within our district; and all the real and personal property within our district owned or occupied by persons not residing within the county, liable to taxation within our district, and the actual value thereof in each case, according to our best information and judgment. We further certify that we have in such roll set down the names of all the inhabitants within such district subject to a poll tax."

21. The roll thus certified shall be forthwith forwarded to the clerk of the peace for the county, and a true copy thereof similarly certified, to be made by the assessors, shall be forthwith posted up by them in some public and conspicuous place within the township or district for which they are assessors, for the information of all parties concerned.

22. From such roll the county rates and poor rates shall be made as follows:

I. Any party residing within the county shall be taxed for his county rate in one sum, which shall be collected by the collector of the district where he resides.

II. Such party shall be taxed for his poor rate in each district where his taxable property lies, and the same shall be collected by the several collectors of the poor rates in the several districts.

III. Where the party taxable is a non-resident or unknown, his property shall be taxable for both poor and county rates in the district where such property lies.

23. The clerk of the peace shall on or before the first day of April in every year make out from such roll the county rate for each township or district, containing the particulars mentioned in schedule C. or other particulars to the like effect.

24. Such clerk shall also, on or before the first day of January in each year, transmit to the clerk of each poor district, to be appointed as hereinafter mentioned, so much of such roll as may be necessary to make out the poor rate for such district.

25. From the roll so transmitted, the clerk of the poor district shall make out the poor rate for his district, containing the same particulars as the county rate collectors roll, making allowance for necessary differences.

26. On the assessment roll, whether of county or poor rates, shall be set down the name of each party assessed, the amount of his poll tax, the correct assessed value of the real and personal property of each party for which such

party is taxable; and there shall also be put down on such roll the true valuation of the lands of non-residents opposite to the names of such non-residents, and also the amount chargeable upon such lands. CHAP. 46.

27. The clerk of the peace shall deliver the roll so to be made by him to the collectors appointed by the court and jury for each township or district. To be delivered to collectors by clerk of the peace.

28. The town clerk or clerk of the poor district shall deliver the collector's roll of poor rates so to be made by him to the collectors who shall be appointed as hereinafter mentioned. Collector's roll of poor rates.

29. At any meeting held under the fifteenth section of chapter 89, the inhabitants shall choose so many collectors as they may deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk, to be called the clerk of such poor district, who shall act as clerk to the overseers of the poor for the district; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting, and added to the amount to be assessed on the district. Meetings under sec. 15, cap. 89.

30. It shall be the duty of the collector of either poor or county rates, to receive the taxes assessed upon the property of non-residents, if the same be tendered within the time of his collection. Duty of collector of poor or county rates.

31. As regards the lands of non-resident owners named in the collector's roll, it shall be the duty of such collector, where the owner is known to him, to transmit by post, a statement and demand of the charges taxed against him in the roll. Regarding non-resident owners.

32. If the taxes be not paid within twenty days thereafter, the collector may apply to two justices of the peace, and upon affidavit being made of such statement, and demand having been duly mailed by the collector, and that the taxes are unpaid, and upon their being satisfied that there can be found on the lands sufficient timber, wood, poles, or other materials to defray such taxes and expenses, such justices shall issue a warrant authorising the collector to sell so much of such timber, wood, poles, or other materials, as may be necessary to pay such taxes and expenses. Unpaid taxes—warrants issued on affidavit of collector.

33. Where the owner is unknown to the collector, affidavit of that fact shall supercede the necessity of the affidavit of mailing a notice and demand, and in such case the warrant shall issue as provided in last section. Unknown owners.

34. If the justices, on application of the collector, shall be satisfied that no timber, wood, poles, or other materials can be found on the land sufficient to satisfy the warrant, they shall give him a certificate to that effect, which shall be his authority for taking no further steps to collect the rate to which such certificate applies. Where no property exists to satisfy collector, justices to certify the fact.

35. It shall be the duty of the collector to levy any war- Levy of warrants.

**CHAP. 46.** rant issued by such two justices, by selling so much of the timber, wood poles, or other materials on the land, as will be sufficient to pay the amount of such rates and the expenses connected therewith; and in making such sale, he shall sell only so much and such part thereof as shall be sufficient to satisfy such rates and the expenses connected therewith—first selling such part thereof as he shall consider most for the advantage of the owner of the land to have sold.

Purchasers have a right of entry to remove materials.

36. A purchaser under such sale shall be entitled to a right of entry upon the lands to remove the timber, wood, poles or other materials purchased by him at any time within one year after the sale; and to any other incidents that may be necessary to render his right available to him, but shall have no further right, privilege or easement whatever, in respect thereof.

Sale—public notice of, and description of property, &c.

37. The collector shall give public notice of the day of the sale, of the description of the property, and (when known) the name of the owner, and the amount of taxes rated on the property, which notice shall be given at least ten days previously to the sale, by handbills posted up in at least five public places in the township near to the lands in question, and the sale shall be made at public auction.

Surplus money—to whom paid.

38. If the amount realized by such sale shall be greater than the amount due for the taxes and expenses, and the cost of such sale, (the same being regulated by the amounts paid on constable's sales, under executions issued from justices,) the surplus shall be paid over to the county treasurer, who shall enter the same as surplus funds in the book to be kept by him as hereinafter mentioned.

Warrant to be returned, when, &c.,

39. In case the collector shall be unable under such warrant to collect the amount by sale as aforesaid, then it shall be his duty to return such warrant, with a statement of his doings thereon to the county treasurer, within ten days after the day named in his advertisement, for the sale thereunder.

Assessment roll—how much of, and when to be returned, and to whom.

40. Every collector shall at the expiration of the time limited by his roll, return to the county treasurer so much of the assessment roll touching the lands of non-residents as relates to those lands in respect of which the taxes remaining unpaid, or in respect of which surplus shall arise in all cases where sales under warrant shall have taken place, and shall also return as aforesaid any certificate given to him under the 34th section.

Records, &c. to be kept by county treasurer.

41. The county treasurer shall record in a book to be kept by him for that purpose, the description of all such lands, and shall minute opposite thereto, the taxes and costs chargeable thereon, and the proceedings had in respect thereof; and such taxes and costs shall be a privileged lien upon the lands, bearing interest at ten per cent. for the first year, increasing annually by two per cent. additional until payment.

42. It shall be the duty of the county treasurer to lay every year before the court of sessions for each county, the book containing such entries, and such court shall have the power, in case they see fit so to do, to award a warrant to the sheriff of the county for the sale of so much of such lands as may be necessary to pay and discharge the amount of the lien thereon with costs of sale; provided always, that no warrant shall issue for the sale of any lands until after the rates due thereon, or some part thereof, shall have been unpaid at least three years.

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Warrants, by whom awarded, and when.

43. When the court shall have ordered a sale, the clerk of the peace shall issue a warrant addressed to the sheriff of the county where the lands lie, ordering him to make sale of so much of the lands as may be necessary to pay the charges against the same.

Sale—when ordered by court; proceedings thereupon.

44. The sheriff shall thereupon sell by public auction, so much of the lands as shall be sufficient to discharge such taxes and expenses, and the charges of sale, selling first in preference such part of the lands as he may consider to be the least to the injury of the owner, and in all other respects, as to notices and other preliminaries of sale, conducting the same agreeably to the forms prescribed on sales under judgments of the supreme court, and within one month after sale he shall return his warrant to the county treasurer, and pay over to him the proceeds of such sale, deducting such costs as he would have been entitled to under judgment sales. The sheriff's deed, which shall be in the form E. annexed hereto, or to that effect, shall be considered *prima facie* evidence of the title of the lands being conveyed to the grantee.

Sheriff's sale; how much to be sold.

45. The county treasurer shall note in the book to be kept by him, any surplus monies, arising by constables' or sheriffs' sales, opposite the record of the description of the lands, and any such surplus shall in the meantime be added to the general county fund and be paid to the order of such person or persons as shall prove to the satisfaction of the court of sessions his or their right to the same as owners of the lands in respect of which the sale occurred.

Surplus—how disposed of.

46. The county treasurer, on receipt of the taxes on lands of non-residents, shall pay over, as soon as reasonably may be, to the overseers of the poor of any district, so much of those monies as belongs to the poor rates of the district.

The poor rates on lands of non-residents to be paid over.

47. After the assessment roll shall have been made up in pursuance of this chapter, no assessor of poor rates shall be chosen.

Assessors of poor rates.

48. The collectors shall pay over the monies received without delay to the treasurer, who, if necessary, may maintain an action therefor, as for money had and received to the use of such treasurer; and such action, whatever may be the amount claimed, may be brought before any two justices

To pay over to treasurer; general return of defaulters.

**CHAP. 46.** of the peace for the county, subject to appeal as in ordinary cases; and every collector shall make a general return to a justice within the township or place, or if none reside there, to any justice of the county, of every person who, after demand made, shall not have paid his rate; and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that demand has been made, and what portion of the rate is unpaid.

General warrant of distress may issue; constables' fees.

49. Such justice shall thereupon forthwith issue a general warrant of distress against the several defaulters in the form in the schedule directed to a constable not being such collector, commanding him to levy from the goods of each person named in the warrant the sum due by such person, with constable and justice's fees. The justice's fee for such warrant shall be three shillings and sixpence, and the constable's fee for each person in the warrant shall be one shilling, but the constable shall have no travelling fees or poundage, and the justice's fee shall be apportioned among the several persons, if more than one, in the warrant; and no suit shall be brought against such defaulters before any justice.

Constables' duty on warrant.

50. The constable shall forthwith execute such warrant, and pay over the amount collected thereunder to the collector for such township or place, who shall thereupon pay the same to the county treasurer.

Commissions to collectors.

51. The rate of commission to collectors shall not be more than five per cent, but the sessions shall have power to fix a smaller rate.

Collectors' duties, fine for neglect.

52. Every person appointed a collector who shall neglect to be sworn into office, or who shall not perform the duties thereof, shall forfeit forty shillings recoverable in the name of the county treasurer, as other debts of the like amount are, which sum, when collected, shall be paid into the county fund.

Amercements by supreme court on neglect of sessions.

53. If the sessions shall neglect to make presentment as herein directed, the supreme court shall amerce the county in such sum as shall appear to them upon affidavit of a ratepayer to be necessary for the purpose of the fourth section, which sum shall be assessed upon the inhabitants of the county, collected, paid to the treasurer, and accounted for as other rates.

Treasurer to receive and pay all county money.

54. All monies belonging to or due the county shall be paid to the treasurer thereof, and all money due from the county shall be paid by him on the order of the sessions.

Treasurer's accounts to be prepared annually or oftener, and audited.

55. The treasurer shall once in every year make up his account and send the same to the clerk of the peace to be filed, and the same shall be laid before the justices and grand jury on the first day of the next sessions, to be audited; but the justices, either in general or special sessions, may at any time before the sessions, if they see fit, order



the county treasurer to make out and render his account up to any period named in such order. CHAP. 46.

56. The accounts for Halifax county shall be laid before the December sessions, and after they have been audited shall be published in the royal gazette. Halifax accounts to be published in the royal gazette.

57. There shall be allowed to the treasurer five per cent on all monies received by him. Commissions to county treasurers.

58. Any person aggrieved by the assessment or the levy may appeal to the next sessions held in such county, or to any special sessions to be held for hearing appeals, giving at least eight days' notice to the clerk of the peace of such appeal who is required to appear in support of the assessment or rate; and the court of appeal, without prejudice to the whole or any part of the assessment, may either set aside or lower the rate on such person, or finally determine the appeal as they shall see fit. Appeals, when and how prosecuted.

59. If any money has been paid by the appellant, and the sessions adjudge that the same or any part thereof be returned, the same shall by order of the sessions be repaid by the treasurer out of any money received from the general assessment of the county; but no appeal shall delay the collection or recovery of the sum assessed upon the appellant. Repayment provided when so ordered by sessions; appeal not to delay collection.

60. Every person appointed by any presentment and order thereon, or by any amercement, to be an overseer of work or distributor of money so raised, shall at the next sessions, and within a reasonable time, by the sessions to be appointed, produce his account on oath if required, with vouchers, that the money by him received has been expended according to law; and if upon account made he shall be found to have money on hand, he shall forthwith pay the same to such person as the sessions shall appoint, and in default of such account or payment he shall by warrant of the sessions be committed to jail, there to remain in close confinement for three months, or until such account be made, and the balance be paid with costs, or sufficient security be given for the same. Overseers of works to render accounts with vouchers; proceedings for default.

61. The sessions, out of the money assessed, shall from time to time order a reasonable compensation to overseers, distributors of money, and constables employed under this chapter. Compensation to overseers, constables, &c.

62. Forfeitures and penalties hereby imposed, the collection of which is not otherwise provided for, shall be sued for by the clerk of the peace, by direction of two justices, and collected as other debts of like amount, with costs; but no suit shall be brought before a justice who shall have directed the same; and forfeitures and penalties when recovered shall be paid to the treasurer for county purposes. Forfeitures and penalties, how collected and disposed of.

63. No action shall be commenced for any thing done in pursuance of this chapter after six months from the date Limitation of action and venue.

**CHAP. 46.** of the act complained of; and every such action shall be laid where the cause of action arose.

**Certiorari, when allowed and how obtained; rates, when quashed.**

64. No certiorari to remove rates or orders, or other proceedings of the sessions touching rates, shall be granted but upon motion in the first week of the next term in the county after the time of appeal has expired; and upon it being made to appear by affidavit that the merits of the question on such appeal or orders will by such removal come properly in judgment; and no certiorari shall be allowed till a bond, with one surety to be approved by the treasurer, be given to him in ten pounds to prosecute the same with effect, and pay the costs if the rates or orders be confirmed; nor shall any rates or orders be quashed for matter of form only, nor any general rate for any illegality in the rates of individuals, except as to such individuals.

**Overpayments not recoverable from collectors.**

65. No action shall be brought against a collector or receiver of money on a rate subsequently quashed on a certiorari or otherwise, but the person who has overpaid shall have the amount refunded by the treasurer on the order of the sessions.

**County to mean district in certain cases.**

66. The word "county" in this chapter shall include a district wherever a county has been, or hereafter may be, divided into districts.

**Meaning of words "court of sessions," &c. used in this chapter.**

67. Where the word "court of sessions" and "grand jury," or other words to that effect are used in this chapter, the same shall, in counties or districts incorporated, be construed to mean the municipal council of such county or district.

**Halifax—how far exempted.**

68. The city of Halifax shall, so far as regards any rates which under the authority of law the corporation has the power to enforce, be exempted from the operation of all the sections of this chapter from 11 to 47 inclusive.

**Proceedings when amount to be contributed by each district shall have been ascertained.**

69. After the sessions of the county of Halifax shall have ascertained what portion of the county rates shall be contributed by each district and place in the county, out of the city of Halifax, the clerk of the peace shall send to the senior or some other justice of the peace resident in each district, or to such other justice as the custos shall direct, the amount of the county rates to be borne by such district, and the justice to whom the same shall be sent shall, within twenty days after receiving the same, call a public meeting of the inhabitants, by notice posted up in four or more of the most public places therein for at least seven days before such meeting, at which meeting he shall preside, and the majority of the persons present shall choose three or more competent persons as assessors, and one competent person as collector of county rates for such district.

**In case inhabitants refuse to appoint assessors, &c., or do not meet.**

70. If the inhabitants of such district do not meet at the time and place appointed, or if in attendance they decline to appoint such assessors and collector, within one hour after the time named for holding such meeting, the justice appointed

to preside thereat shall himself appoint the required assessors and collector.

CHAP. 46.

71. The assessors and collector in each district shall be notified of their appointment by the justice appointed to preside, and after being sworn into office they shall proceed to assess and collect the proportion of the rate to be contributed by the inhabitants of such district respectively, and the said justice shall transmit a copy of this act, with the notice of appointment, to each assessor and collector.

Duty, &c., of assessors and collectors.

72. The assessors in each district shall make their assessment within twenty days after being notified of their appointment, and they shall, within twenty-five days from such notification, furnish the assessment roll to the collector, who shall forthwith proceed to collect from every person therein named the amount assessed upon him.

Time in which assessment must be made.

73. In case any of the parties assessed do not, within thirty days after they have been notified by the collector of the amount of their assessment, pay the same to the collector, any justice of the peace before whom the collector shall make oath that such notice has been duly given, and that the amount has not been paid, shall issue a general warrant of distress against such defaulter, directed to some one of the constables in the county, who shall collect the amount of assessment due by each party named therein, together with ten per cent. on the amount of such assessment and his fees, and shall make a return of his doings thereon to the collector within seven days.

Proceedings in case of non-payment of assessment.

74. In case of neglect or refusal by the justice to call the meeting or to preside thereat, or to appoint assessors or collector, as required by the second section of this chapter, or to notify the assessors and collector, or to swear them if required, he shall pay a fine of twenty pounds, to be recovered in the supreme court in the name of the queen.

Justices, penalty for neglect, &c.

75. Each of the said justices shall make a return of his proceedings under this chapter to the first general quarter sessions at Halifax, and in default thereof he shall pay a fine of ten pounds, to be recovered in the supreme court in the name of the queen.

Return of proceedings—penalty for not making one.

Recovery of.

76. In case of neglect or refusal of any of the assessors or collectors to fulfil the duties of their respective offices, or to qualify themselves by repairing to the residence of the justices appointed to preside at their district meeting, or to any other place appointed by him within the district, and requiring him to administer the oath of office, and taking the same before him, they shall each pay a fine of ten pounds, to be recovered before any two justices of the county by the clerk of the peace in his own name.

Assessors and collectors—penalty for neglect, refusal, &c.

Recovery of.

77. Appraisement rolls, apportionment of assessments, and descriptions defining the limits of the districts and places, and six copies of sections from 69 to 87, both inclusive, of this chapter, shall be transmitted by the clerk of the peace

Appraisement roll, &c., to be sent to justices by clerk of the peace, &c.

**CHAP. 46.** to the justices appointed to preside at each district meeting, by mail, within one month after the seventh day of May, 1858, and after that year within one month after the apportionment shall have been made, and proof that the documents have been mailed at the post office in Halifax shall be *prima facie* evidence of their having been received by the justice to whom the same were addressed.

Return of collectors.

78. The collectors after finishing the collection shall return the assessment rolls for their respective districts to the clerk of the peace, with their doings thereon, on or before the first day of December in each year.

Appointment of assessors and collectors in case those first appointed refuse to act.

79. In case any of the assessors or collectors shall neglect to take upon themselves the duties of their office, or to qualify themselves after having received five days notice of their appointment, the justice appointed to preside at the meeting shall appoint others in their stead, who shall be liable to the same penalty for neglect or refusal to do the duties of the said offices.

Balance of assessment if not all collected to be added to the next year.

80. If the whole assessment to be contributed in any one year by a district be not collected and paid over to the county treasurer, the amount remaining unpaid shall be added to the next year's assessment of such district, and collected from such district, with and in addition to such next year's assessment.

If no assessment be made or collected.

81. In case from any cause the assessment be not made in any district and paid over to the county treasurer, either from no meeting having been held or from no assessors or collectors having been appointed, or from any other cause, the amounts of assessments to be contributed by the said district, and all the expenses incurred, by calling the meeting or otherwise, shall be added to the next year's assessment in such district, and collected therewith; or the sessions may send assessors and collectors from any other district within the county, who shall be authorized to make and collect from the inhabitants of the district, the amount of assessment to be contributed by them, and all the expense incurred thereby, whether by sending assessors or collectors, or otherwise, shall be added to the next year's assessment on such district, and collected therewith.

Payment of assessors and by whom.

82. The sessions shall be authorized to pay out of the county funds a reasonable remuneration for the services of the collectors and assessors sent by them to assess and collect the assessment of any district in which the portion of county rate, payable therein, shall not have been assessed or collected.

Compensation for collectors.

83. All collectors appointed under the 69th section shall, in addition to the five per cent hereinbefore provided, receive such further sum for their trouble as the grand jury and sessions shall think reasonable, but no account shall be received by the grand jury and sessions for such extra services unless it be duly certified by the justice appointed

to preside at the district meeting to be just and reasonable. CHAP. 46.

84. All travelling and other expenses incurred by justices in the discharge of their appointed duties under the last fourteen sections shall be paid by the county, subject to the approval of the grand jury and sessions. Expenses of justices.

85. All penalties incurred under the said fourteen sections shall, when recovered, be paid over to the county treasurer for county purposes. Penalties—disposed of.

86. The clerk of the peace shall, when any fine or penalty is incurred, cause proceedings to be instituted to enforce the payment thereof, for the breach of any of the provisions of the last sixteen sections, and if he shall neglect to do so within ten days after he shall have been required by the custos or the court of sessions, he shall pay a fine of twenty pounds, to be recovered in the supreme court in the name of the queen, and in case the clerk of the peace shall neglect to fulfil any of the other duties imposed upon him by the same sections, he shall pay a penalty of ten pounds to be recovered as aforesaid. Clerk of the peace must enforce payment of penalties.  
  
Penalty for neglect, &c.

87. The last seventeen sections shall only apply to the county of Halifax, and shall not apply to the city of Halifax. Application of sections.

88. It shall be lawful for the general sessions of any county, on presentment from the grand jury recommending the same, instead of appointing assessors for separate townships and places, to appoint in the same manner as other county officers are appointed, two assessors for each electoral district within the county, who shall be called local assessors, and also to appoint for the whole county three assessors, to be called general assessors; and thereafter the assessment roll for each electoral district in any such county shall be made up by the three general assessors and the two local assessors of the district, acting as a board of assessment for such district. Assessors, local and general—appointment of.

89. In such case the clerk of the peace shall duly notify the local assessors of the days and places that shall be appointed by the general assessors, for holding a meeting of the assessors in each electoral district; and it shall be the duty of the general assessors and local assessors to meet at the time and place named in such notification, for the purpose of making up the assessment roll. Meeting—notification of.

#### SCHEDULE.

##### A.

All personal chattels of every kind and description at their actual cash value, except as qualified beneath.

The average stock of goods on hand of every merchant, trader, or dealer, manufacturer, tradesman, or mechanic, such average stock to be considered the mean between the

CHAP. 46. highest and the lowest amount of goods on hand at any time during the year, and to be estimated at cost price.

One half the value of ships afloat, whether in the province or elsewhere.

## B.

Assessment roll for the township [*or district*] of ———.

Name of taxable party.	Value of real estate within the county.	Value of personal estate within the county.	Whole taxable property.	District in which property is.	Amount assessed in different townships
A. B.	£600	£200	£800	Township of A	£250 0 0
C. D.	100	300	400	B	350 0 0
E. F.		200	200	C	200 0 0
G. H.		50	50		
Non residents land within the township [ <i>or district</i> ], per list.			1500		

Assessment Roll of non-residents lands within the township [*or district*] of ———.

Name of taxable party if known.	Number of acres or thereabout.	Description of lot sufficient to identify it.	Value of land.
J. R.	500	A lot of land situate to the west of ——— river, bounding thereon on the east [ <i>or such other description as may identify it.</i> ]	£200
Unknown.	300	A lot of land originally granted to A. B., [ <i>or such description as may identify it.</i> ]	1300

## C.

Collector's roll for county rates for the township  
[or district] of ———.

Name of taxable party.	Poll tax.	Taxable property.	Rate payable thereon.	Total tax.
A. B.	1s. 3d.	£800 0 0	8s.	9s. 3d.
C. D.	1s. 3d.	400 0 0	4s.	5s. 3d.
E. F.	1s. 3d.	200 0 0	2s.	3s. 3d.
G. H.	1s. 3d.	50 0 0	0s. 6d.	1s. 9d.
Non-residents land.		1500 0 0	15s.	15s.

Collector's roll for county rates for the township  
[or district] of ———.

Name of taxable party if known.	No. of acres.	Description of lot sufficient to identify it.	Value of land.	Total levy.
J. R.	500	(Copy the description from the certified roll, or give other sufficient description of it.)	£200 0 0	2s.
Unknown.	300	(Copy as above.)	1300 0 0	13s.

You are hereby required to collect 15s., the tax as specified in the within roll, and to pay over the same to the county treasurer, within ——— days herefrom.

A. B., clerk of the peace.

To C. D., collector of county rates for above district.

## E.

To all to whom these presents may come :

I, A. B., sheriff of the county of ———, send greeting :  
Whereas, C. D., of ———, in the county of ———, on the day of the date hereof, bought for the sum of ——— the lands hereinafter described, at a public auction held at ———, under the provisions of chapter forty-six ; and whereas upon such sale the said C. D. paid the purchase money.

Now know ye, that I, the said sheriff, in consideration of the sum of ———, so paid to me as aforesaid, have granted and conveyed, and by these presents do grant and convey

CHAP. 46. to the said C. D., his heirs and assigns, all that [*here describe the land.*] In witness whereof, I have hereto subscribed my hand and seal at ——— this ——— day of ———, A. D., 18—.

## F.

Form of general  
warrant.

*Form of general warrant of distress.*

County of } To A. B. one of the constables of the  
———— } township of ———.

Whereas by a rate and assessment made in conformity with law, the persons named in the schedule hereunto annexed have been assessed for county rates for the year ending the ———; and whereas it appears to me, one of the justices of the peace for such county upon the oath of C. D., one of the collectors for such township, that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in such schedule remain unpaid: these are therefore to require you forthwith to make distress of the goods and chattels of the persons mentioned in the schedule; and if within the space of five days next after such distress by you taken the sums in the schedule set opposite their respective names, being the sums rated on them respectively, together with their proportion of justice's and constable's fees and the necessary charges of taking and keeping the distress be not paid by each of them respectively, that then you do sell the goods and chattels of such of them as shall not have paid such sums with fees as above mentioned, and out of the monies arising from such sale you do forthwith pay over the sums so due by them respectively to the said C. D., the collector, together with the justice's and constable's fees, if any, by him paid; and that you do render to the owners of the goods respectively upon demand the surplus remaining from such sale, the necessary charges of taking, keeping and selling the distress, being first deducted, and if no such distress can be made, that then you certify the same to me.

Given under my hand and seal the ——— day of ———

A. D. 18—

(Signed) ——— J. P. (seal)



## CHAPTER 47.

## OF JAILS AND OTHER COUNTY BUILDINGS.

1. County or district jails, court houses and session's houses, may be erected and repaired by order of the grand juries and sessions in the respective counties and districts. Jails, court houses and sessions houses, how erected and repaired.
2. If a jailer or other person shall sell or deliver, or permit any person to sell or deliver to any prisoner or other person any spirituous liquors in any jail or jail yard, or within the limits of any jail, or in any room or part of a house or building where a jail is kept, or shall bring or suffer such liquors to be brought therein to be used by any prisoner there, such person shall forfeit a sum not exceeding three pounds. Spirituous liquors forbidden within jail limits.
3. Every jailer on a second conviction therefor, shall, in addition to paying a second fine, be disqualified for office, and be forthwith dismissed. Penalties for a second conviction.
4. Prosecutions shall be in the name of the clerk of the licenses for the county or district, and on information given him it shall be imperative upon him to sue for such fine. Prosecutions to be by clerk of license.
5. Nothing herein contained shall prevent the introduction of liquors for sick persons being in jail when prescribed in writing by a physician. Liquors when prescribed medically may be furnished.
6. If the limits of a jail extend beyond the jail yard, and include any house or building other than the jail, nothing herein contained shall extend to such limits unless as respects delivering or carrying such spirituous liquors to prisoners confined within such jail or the limits thereof. Exceptions where houses within the limits.
7. The supreme court in the different counties shall from time to time make and publish rules and orders for fixing and ascertaining the limits and boundaries of jail yards, and for directing and controlling the conduct of sheriffs, jailers and officers having the charge or custody of prisoners, and for their safe keeping and protection. Jail limits and yards, as well as the conduct of sheriffs and officers, to be regulated by supreme court.
8. The justices in sessions may make orders for the regulation of county buildings and for the internal regulation of jails, for the guidance of jailers and other subordinate prison officers, and for the comfort and control of prisoners; but the same shall not extend to interfere with or affect the security of prisoners there confined, nor the custody or control of the sheriff over his prisoners, nor to lessen his responsibility for their safe keeping. Order touching county buildings, affecting jails, jailers, and prisoners, made by sessions in certain cases.
9. The justices in session, with the assent of the grand jury, may regulate the salary of jailers and subordinate prison officers, and may regulate or abolish the payment by prisoners of fees. Jailer's salary, how regulated; fees may be abolished.

**CHAP. 48.**

Sessions orders to be submitted to the supreme court for allowance.

Jail regulations to be posted in the building.

10. Certified copies of all such orders shall forthwith thereafter be furnished by the clerk of the peace to the prothonotary of the county, and thereupon the supreme court at its next term may alter, disallow or confirm the same. If not altered or disallowed at the next term, they shall immediately thereafter be in force.

11. Every sheriff and every jailer shall keep a copy of the jail regulations posted in some conspicuous part of the building, and the clerk of the peace shall furnish him therewith upon demand.

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## TITLE XIII.

### OF TOWNSHIPS AND TOWNSHIP AND PEACE OFFICERS.

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#### CHAPTER 48.

##### OF TOWNSHIPS, THEIR POWERS AND DUTIES, AND THE APPOINTMENT, QUALIFICATION, AND DUTIES OF TOWNSHIP OFFICERS.

Boundaries of townships confirmed.

Surveyors of township lines appointed; their duties.

Town officers, how nominated and appointed.

Surveyors of highways, how appointed in cases of omission of sessions.

Officers to be sworn in; fines for certain of fences.

1. The boundary lines of townships, wherever the same have been established, are confirmed.

2. The grand jury for each county, when required by the court of general sessions, shall nominate out of the respective townships within the county, or any of them, six persons, out of whom the justices shall appoint three to be surveyors of lines and bounds of such townships, who shall survey, examine, and ascertain the lines and bounds of such townships, in such manner as the sessions shall direct; and the lines of townships so surveyed, when confirmed by the sessions, shall be binding.

3. The grand juries in the several sessions of the peace shall annually nominate such number of persons for town officers, as the justices shall direct, out of whom the justices shall appoint such number as may be deemed expedient.

4. If the grand jury and sessions shall not appoint a surveyor of highways for any particular district, any two justices of the peace of the township or settlement may make such appointment.

5. The officers so appointed shall be respectively sworn to the faithful discharge of their duty before a justice, before entering thereon; and upon refusal to accept office or neglect to be sworn in within fourteen days, or misbehaviour therein, every such officer for each offence shall forfeit forty shillings.

6. If the surveyor of highways shall in any respect neglect or refuse to fulfil the duties required of him by law, the clerk of the peace, when so directed by the court of sessions, shall sue for the penalty incurred by such surveyor at the risk the county.

## CHAP. 48.

Penalty against surveyor of highways—how sued.

7. In any action instituted against a surveyor of highways for neglect of duty, it shall be sufficient to produce proof of his appointment as such surveyor, and a certificate under the hand of the clerk of the peace shall be *prima facie* evidence of such appointment, and it shall be no bar to such action that such surveyor may have neglected to qualify himself by being sworn into office.

Proof of appointment.

Neglect to qualify no bar to action.

8. Persons over sixty years of age shall be exempt from performing the duties of surveyors of highways, but it shall be incumbent on such persons to prove their age.

Persons exempted from being surveyors, &c.

9. If any person so appointed shall die or leave the township during his term of office, or shall not perform the duties thereof, any two justices of the township or settlement may appoint a successor until another person shall be appointed by the grand jury and sessions at their next meeting.

Provisions in case of death, absence, &c. for a successor.

10. All plans, grants, title deeds and conveyances, belonging to any township, or in which the proprietors have a common interest, shall be kept in the custody of the clerk of such township, who may recover possession thereof in an action in his own name, and such documents shall be open for inspection to all persons on payment of a fee of sixpence.

Custody of town plans, grants, &c. provided; fee for inspection.

11. The sessions for the county of Halifax are authorized upon the recommendation of the grand jury, to appoint constables to attend upon the sessions and the supreme court within the county, in the same manner as other town officers are appointed.

Constables—how appointed.

12. In case of riot, tumult, or disturbance, or illegal acts of any kind, accompanied with force or violence, or of a just apprehension thereof, if in the city of Halifax, the mayor and any three of the aldermen; and if elsewhere in the province, any three of her majesty's justices of the peace, may, by writing under their hands, appoint any number of special constables to assist in preserving peace and order.

Special constables—when to be appointed, and how.

13. Such special constables, shall, within the city, be under the direction of the mayor or presiding alderman; and if elsewhere, under the direction of the senior magistrate who has signed their appointment.

By whom directed and controlled.

14. In the city, the mayor or any alderman, and elsewhere any justice of the peace, may swear in such special constables to the faithful discharge of their duty.

By whom to be sworn.

15. The appointment of such special constables shall continue in force for the period of fourteen days from the date of such appointment, unless sooner revoked by the mayor, aldermen, or justices by whom they were appointed.

Duration of appointment.

## CHAP. 49.

Disorder or disturbance, or apprehension of, at public meetings.

16. In case of disorder or disturbance which may occur at any public meeting or assemblage of persons, the mayor or any alderman if in the city, or any justice of the peace if elsewhere, upon the request of the chairman of such meeting, or of three or more freeholders, may verbally appoint and swear in special constables who shall aid in restoring and preserving order and peace at such meeting or assemblage.

Constables—refusing to serve.

17. Any person who may be appointed a special constable under the last five sections, and shall neglect or refuse to be sworn into office, shall be liable to a penalty of two pounds.

Appointment and pay of police constables.

18. The grand jury and sessions may appoint one or more police constables, to act for the preservation of the public peace and order, and for the enforcement of the laws against crime, vice, and immorality, in such townships or other districts as they shall see fit, and may make regulations as to the duties to be performed by them, and may provide for their remuneration by salary or otherwise.

Funds, how raised.

19. The funds necessary for such purpose shall be raised by assessment, upon the districts wherein such officers are appointed, in the same manner as poor and county rates.

Protection of

20. Any person who shall by force resist any constable or special constable in the execution of his duty, shall be subject to a penalty of not less than ten shillings and not more than five pounds, to be recovered, if in the city, on conviction in the police court, and if elsewhere, before any two justices of the peace, and on non-payment the offender shall be committed to the jail of the county for a period not exceeding thirty days.

## CHAPTER 49.

## OF FENCES AND FENCE VIEWERS, AND IMPOUNDING OF CATTLE.

Fences of enclosed lands, how constructed.

1. All fences of enclosed lands shall be built of stones, pickets, boards, logs, poles, brush, or posts and rails, unless the lands are bounded by ponds, unfordable rivers, or the sea, or surrounded by sufficient hedges.

Height of fences

2. Such fences shall be at least four feet and a half high, except stone walls and picket and board fences, which shall be at least four feet.

Damages by cattle, by and from whom recoverable.

3. If any damage be done by horses, sheep, goats, swine or cattle, breaking into and destroying the product of such enclosures, the same being enclosed at the time with a sufficient fence in the judgment of the fence viewer, the owner of the animals trespassing shall pay to the party injured the value of such damages.

4. The damages shall be ascertained by an appraisement of three persons living in the neighborhood, being first sworn before a justice, truly to value the same.

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Of the appraisement.

5. If the owner refuse to pay the amount appraised, upon notice thereof, the party injured may maintain an action therefor as for any other debt.

Damages recoverable after notice as a debt.

6. The proprietor of a field adjoining another enclosed and improved, shall build and maintain his proportion of fencing on that part of such land which adjoins his own, and in case of neglect so to do, after three days' notice to that effect, any fence viewer may forthwith cause such deficient fence to be made or repaired, as the case may be, and the person so neglecting shall pay double the expenses of making or repairing such fence, to be recovered by the fence viewer, with costs, as any other debt. If adjoining proprietors differ as to the part or proportion of a new division fence to be made by each, the nearest fence viewer shall decide the same.

Partition fences, how erected; differences, how adjusted.

7. No fence viewer shall be allowed more than three shillings per day for his own trouble and time; and for each neglect of duty, when notified, he shall forfeit forty shillings.

Fence viewers' charges; fine for neglect of duty.

8. Where the owner of land, improved or cultivated, shall have made, or hereafter shall make, his proportion or one-half part of the fence separating his land from the improved or cultivated land of the adjoining proprietor, of permanent or durable materials or growth, to be determined as hereinafter provided, he shall not, nor shall any person claiming under him, be required to erect or repair the fence in any other place as between his land and that of such adjoining proprietor, or any person claiming under him, in case of sale or change of occupancy of any part of the land of the latter so long as such portion of fence of the kind above mentioned shall be maintained by the person first above referred to or some person claiming under him.

Obligation of owners of land adjoining improved lands.

9. Any two justices of the peace of the county in which the lands referred to lie (due notice in writing for at least three days being first given to the proprietor of the adjoining land) may repair to the land and examine the fence, and pronounce the same by any instrument in writing under their hands to be made of permanent or durable materials or growth within the meaning of this chapter, and such instrument in writing shall thereupon be deposited with the clerk of the peace of the county, in memorial and as evidence of the matters therein stated.

Sufficiency of fences—how determined.

10. Any person feeling aggrieved by the decision of the justices may appeal to the next general court of sessions for the county, whose decision, affirming or reversing the decision of such justices, shall be final.

Appeal.

11. Nothing in the three preceding sections contained shall be construed to affect the title to the lands on which the fences are erected.

Titles to lands not affected by this act.

## CHAP. 49.

Unimproved land, owner not liable to fence.

Cattle, &c. trespassing on enclosures liable to be impounded.

Pound-keepers duty in such case.

His fees and the mode of recovery.

Fines for rescue and pound breach; how recovered and appropriated.

Rivers, creeks, &c., when deemed lawful fences.

Appeals from judgment of fence viewers.

12. No owner or proprietor of wood, or barren or burnt lands, not under improvements, shall be compelled to make any part of a fence against or on the same.

13. If any damage shall be done by horses, sheep, goats, swine or cattle breaking into and destroying the product of any enclosures, the persons whose fences have been broken and enclosures damaged, may impound the cattle so trespassing till the owner shall claim the same.

14. The pound keeper shall thereupon as soon as may be, advertise the same in three of the most public places in the settlement where the trespass has been committed, in order that the person injured may proceed against the owner of such animals refusing to pay the damages done thereby.

15. The owner of such animals shall pay to the pound-keeper above the damages adjudged, one shilling for every horse or head of cattle, and six pence for every sheep, goat or swine, for each day the same shall have been impounded, for their support; and in case of refusal to pay the same within eight days after being impounded, with the charge of advertising, the animals shall be publicly sold; and the proceeds, after deducting the pound-keeper's charge for supporting them, and the damages, shall be paid to the owner if he appear within thirty days; if not, then to the overseers of the poor of the place where the trespass was committed.

16. If any person shall rescue any animals from the person driving them to the pound, he shall forfeit to the party aggrieved twenty shillings above all damages sustained by the trespass committed by such animals. And if any person break any pound or by indirect means deliver any animals therefrom, he shall forfeit five pounds to any person who will sue for the same; which penalty and damages or penalty as the case may be, shall be sued for and recovered with costs, as if the same were a private debt, and the penalties for such pound breach, after deducting any expenses of repairing such breach of the pound, shall be paid to the overseers of the poor for the place where the offence shall have been committed.

17. Such rivers, creeks, bays, harbours, and inlets of the sea only shall be deemed lawful fences, as in the judgment of the fence viewers of the township or place where such lands lie, shall be sufficiently deep and inaccessible to prevent the passing of cattle.

18. If any person feel aggrieved by the judgment of the fence viewers as to the lawfulness of such last mentioned fence, or desire the decision of the court of sessions instead, such person may apply to the sessions, who shall inquire into the matter, and upon hearing the parties and their witnesses may make an order which shall be binding on all fence viewers and others interested.

19. In every case where damage shall be done to the enclosed lands of any person by any of the animals hereinbefore mentioned, breaking the fences enclosing the same, the owner of such animal shall be liable for the damage, if that part of the fence broken by such animal were lawful although other parts of the enclosing fence may not be lawful.

**CHAP. 50.**  
Damages recoverable if the portion of fence broken were lawful.

20. The owner of any of the animals hereinbefore mentioned breaking through a division fence which such person is bound to repair and keep up, shall be liable for any damage done by such animal upon the land of another person enclosed or partly enclosed by such division fence, although the same may not be a lawful fence.

Owner liable for damage, if his cattle break through his own portion of dividing fence.

21. If any person shall destroy or injure any railing, stone wall or fence of any kind, placed on the side of any public square, bridge or causeway, he shall forfeit for each offence not less than five or more than forty shillings in addition to any private damage sustained.

Penalty for destroying railings, walls, and fences on sides of public grounds, bridges, &c.,

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## TITLE XIV.

### OF THE SUPPORT OF PUBLIC WORSHIP.

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#### CHAPTER 50.

##### OF THE CHURCH OF ENGLAND.

1. No minister of the church of England shall officiate as a clergyman of that church but such as shall be duly licensed by the bishop, and shall conform to the orders and constitution of the church of England, whereupon he shall be inducted into any parish which may make presentation of him.

Licensed clergymen only to officiate.

2. No license shall be refused without the causes therefor being signified in writing and delivered to the applicant.

Licenses not to be refused without cause shewn in writing.

3. The parishes already established shall remain as heretofore, and when any church shall be erected for divine service according to the rites of the church of England, the bishop of the diocese may allot a district which shall be the parish of such church, and may divide and subdivide any parish now established or hereafter to be allotted; but no parish shall be divided or subdivided by the bishop unless on the application of a majority of the parishioners of the parish proposed to be divided or subdivided, or by a major-

Parishes established; mode of allotting, dividing and establishing future parishes.

## CHAP. 50.

rity of parishioners expressed at any public meeting of the parish called for the consideration of such a measure.

Of the election of churchwardens and vestry, and their power.

4. The church wardens and parishioners of every parish shall meet annually on Monday next after Easter-day, notice of the hour and place of meeting having been first given by the rector or officiating minister, at which meeting the parishioners shall choose two churchwardens and twelve vestry men, to whom the clergyman officiating as rector in the parish shall be added; and such churchwardens and vestry in all matters connected with the church, and persons usually attending its services and ordinances within their respective parishes shall have the like powers as they have heretofore exercised in this province.

To be bodies corporate for purposes specified.

5. Churchwardens and vestries are hereby constituted within their respective parishes bodies corporate, with power to sue and be sued, to receive grants of real and personal estate for the use of the church and all parish purposes, to improve the same and receive the rents thereof for the like use, and, with the approval of the bishop, to sell and convey such real and personal property, and to have a common seal, and to make bye-laws and regulations consistent with the laws of the province for the management of the temporalities of their church and the due and orderly conducting of their affairs.

Of parishioners: their power of granting money; mode of assessment and collection.

6. The parishioners shall consist of pew holders and others accustomed to attend upon the services of the church; and such parishioners who have previously paid up their pew rents and assessments, or the accustomed contributions to the church, may, if they think fit at their annual meeting by a majority of those present, grant money for the support of their ministers, and all other expenses which shall be required for the payment of such officers as may be found necessary, and for repairs and other services, which shall be assessed by the churchwardens and vestry in just proportions upon such parishioners being persons usually attending the services and ordinances of the church according to their respective abilities, and shall be collected in the name of the clerk of the vestry for the use of the parish as an ordinary debt; but no act of the churchwardens and vestry shall be valid unless it be agreed upon by seven of their members, nor shall the assessment be valid unless it be subscribed by that number at least; and the parishioners at their annual meeting shall appoint three of their number, by whom the churchwardens and vestry shall be assessed.

Power of church wardens and vestry over assessments.

7. The churchwardens and vestry shall have power to abate any individual assessment if it should appear unequal, and to compromise the same for prompt payment or otherwise as it may be for the interest of the church, without affecting the general rate.

Meetings for business when and how called.

8. The churchwardens and vestry may meet for the transaction of business as often as occasion may require;



and the churchwardens, vestry and parishioners may assemble for all business connected with the parish except the choice of officers or making assessments as often as it may be considered necessary, either upon the application of the rector, the churchwardens or the parishioners, provided that ten at least of the latter sign a requisition to that effect, notice of such meeting and of the business to be transacted thereat having been given by the minister of the parish during divine service in the church on some Sunday at least three days previously.

CHAP. 51.

9. In case of refusal to act by persons nominated as churchwardens and vestry, the parishioners shall proceed to nominate others in their place until a sufficient number shall accept office.

Churchwardens &c., refusing to act, others to be appointed.

10. No conveyance by lease or otherwise of any parsonage or glebe held by a minister of the church of England shall be valid for a longer period than his own incumbency unless with the concurrence of the churchwardens and vestry expressed in writing under their common seal, and in no case for a longer period than twenty-one years; but with the concurrence of the bishop, the rector and the churchwardens and vestry, absolute sale may be made of any glebe lands or other real estate belonging to the parish if the same be thought for the interests of the church.

Glebe lands how sold or leased.

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## CHAPTER 51.

### OF RELIGIOUS CONGREGATIONS AND SOCIETIES.

1. When any number of persons, not less than twenty, capable of contracting, desire to form themselves into a congregation of christians for the public worship of God according to their peculiar rites and ceremonies, they may by deed, by them executed in the presence of two or more witnesses, which shall be recorded in a book kept for that purpose, constitute themselves such congregations, and adopt a suitable name therefor, and declare the place where the same is established, and the particular denomination of christians with whose doctrines such congregation is connected; and they may name two or more persons of the congregation to be trustees thereof and give them a name of office, and describe in such deed by bounds the particular situation of all lands conveyed to or in trust for the congregation for all purposes connected therewith: and they may also set forth in such deed the constitution of the congregation, the mode of admission of future members, by whom the right of voting at meetings shall be enjoyed, how the votes

Congregations formed by deed; trustees named; other particulars provided.

**CHAP. 51.** shall be ascertained and given, the manner in which vacancies in the trust shall be supplied, and such other particulars as they may think proper.

Deed to be registered; property how vested.

2. The deed shall be duly registered in the office of the registrar of deeds for the county or district where the congregation is established; and after its registry all the lands described therein and all real and personal estate granted to the congregation, or to their use, shall be vested in the trustees named in the deed for the use of the congregation, and after the death or removal of any trustee or his becoming incapable to act shall vest in the succeeding trustees subject to the same trust without any assignment or conveyance except the transfer of stock and securities in the public funds; and shall also in any suit at law or in equity, or in any criminal prosecution, be deemed the property of the trustees.

Trustees to sue and be sued.

3. Such trustees in all cases concerning the real and personal estate of the congregation, may sue and be sued, by their name of office, and no action shall abate by the removal or death of the trustees or any of them, but shall be proceeded in by or against the succeeding trustees, who shall pay or receive the like monies and costs as if the action had been prosecuted in their names, for the benefit of, or to be reimbursed from, the funds of the congregation.

Amount of real and personal estate to be held.

4. Every congregation established under these provisions, may hold in the name of their trustees, real estate not exceeding the yearly value of two thousand pounds, and personal property not exceeding in the whole at any one time ten thousand pounds: and may use and dispose of such real and personal estate as the congregation shall deem expedient.

Meetings how held; bye-laws may be made thereat; proceedings to be recorded.

5. The members of every such congregation may meet when they shall think proper, and at such meetings by the votes of the majority of the members present, may make and put in execution such regulations not being contrary to the laws of this province, nor to any rule or regulation embodied in the deed under which the congregation or society may be constituted, as the majority shall deem necessary for the government of the congregation, and such regulations may change as they may think proper; and such majority may also choose trustees to supply any vacancy in the trust, and may remove from office any of the trustees for the time being, and manage and superintend the affairs of the congregation; the time and place of meeting, shall be duly notified as prescribed by rules therefor, and some fit person shall be chosen chairman at every meeting, and all proceedings thereat shall be entered in the books of the congregation, and signed by the chairman and clerk of the meeting, and proof of such entry so signed shall be deemed sufficient evidence of such proceedings, and of the regularity of the meetings.

6. Every person admitted a member of the congregation after the registry of the deed shall execute the same in the presence of two witnesses before he shall be deemed a member. CHAP. 51.  
Membership how regulated.

7. All real estate which at the formation of any congregation under this chapter shall be held therefor by any trustees not appointed under any act or deed of incorporation, shall, by such trustees or their survivors, or by such of them as then remain in this province, be conveyed unto the new trustees named in the deed by their name of office, and upon the conveyance being made and registered all the estate and interest of the original trustees or the survivors of them and their heirs, shall be vested in the new trustees to the use of the congregation as effectually as if all the original trustees had joined in the conveyance. Real estate held before deed executed; how conveyed to new trustees.

8. Religious societies or congregations incorporated by special act of incorporation, or by deed under the provisions of the act heretofore in force for such purpose, may avail themselves of the provisions of this chapter, provided the parties executing the deed comprise two thirds at least of the members of the former corporation who at the time form a part of the congregation, and also by two thirds at least of the persons actually exercising the functions of trustees by their individual names as such trustees, and upon the new deed being registered the former act or deed of incorporation shall from thenceforth cease to be in operation, and the property held thereunder shall vest in the new trustees in accordance with the terms of the deed; but nothing herein contained shall affect the legality of any proceedings regularly had under the former act or deed of incorporation. Provisions for enabling congregations incorporated by special acts to avail themselves of this chapter.

9. By the vote of the majority of the members of any congregation present at any regular meeting of the congregation, the trustees for the time being shall sell, mortgage, lease, or convey any real estate of the congregation for such estate, and on such terms as the meeting shall direct; and every conveyance thereof executed by the trustees for the time being, and signed by the chairman of the meeting which shall order such disposal, shall be valid in law to convey such estate in the lands therein described. Real estate how sold or disposed of.

10. Whenever the congregation using any building for the purpose of public worship, may wish to dispose thereof on account of the same having become dilapidated, or otherwise, and shall not have legal power to do so, the proprietors of such building, at a meeting held for the purpose, after public notice thereof, given in at least three of the most public places within the settlement wherein the building is situate, at least ten days previously, may by a vote of three-fifths of the proprietors present at such meeting, appoint a committee of three of their number, to make sale of such building, and the committee shall sell the same Sale of building used for public worship, &c.

- CHAP. 51.** conformably to the instructions given at the meeting, and cause the removal thereof, and shall apply the proceeds of the sale as directed by the meeting; but no meeting shall be valid for such purpose unless a majority of the proprietors are present.
- Proviso.**
- When vested in trustees.** 11. In case the building shall be vested in trustees who shall not have legal power to sell the building, the same may be disposed of by a meeting of the persons for whose benefit such building is held, called and constituted, as directed in the preceding section, and a majority of three-fifths of the persons so interested, present at the meeting, may empower the trustees, or a committee, to sell the building and apply the proceeds.
- Sale of land not authorized.** 12. Nothing herein shall authorize the sale of the land on which any building, so to be disposed of, shall be situated.
- Clergymen or ministers by whom engaged.** 13. Under the order of any such meeting, or of a meeting of the church members, when by the provisions of the deed of constitution or by the regulations of the congregation the choice of a minister shall be vested in the church members, the trustees may enter into agreements in writing with any clergyman or minister whom the congregation or church shall appoint to their spiritual charge, for such periods and salary as shall be agreed upon.
- Agreement to be entered in congregation's books.** 14. The trustees having agreed with any minister or clergyman, shall, without delay, cause the agreement to be entered at length in the books of the congregation.
- Funds how provided in case of deficiency to meet engagements.** 15. The trustees for the time being, by the vote of the majority of the members of the congregation at any such meeting shall, in cases where the funds at their disposal are inadequate to the discharge of the claims upon them, sue for and recover from members a rateable share, to be fixed according to the rules of the congregation, of such amount or deficiency, by separate suit for their respective rateable proportion of the whole amount against the respective surviving and solvent members of the congregation, or the representatives of deceased members liable to such payment.
- Church of England excepted; limitation of provisions as regards church discipline.** 16. Nothing in this chapter shall extend to the church of England or to the parishes thereof, or shall affect the rights of its clergy men, officers, and parishioners, nor shall interfere with the spiritual government and discipline of any church further than may be provided for in the deed under which the society or congregation is constituted.

## CHAPTER 52.

## OF ASSESSMENTS FOR THE REPAIRS OF MEETING HOUSES.

1. When funds are required for repairing, finishing, or painting any meeting house or church, the proprietors thereof, at a public meeting whereof notice shall have been previously given during the time of divine service at such meeting-house or church, on three several Sundays, may by vote of three-fifths of the proprietors present at such meeting declare what repairs are necessary, and the amount required therefor, and may also nominate three or more persons a committee to assess and apportion the sum so voted on the several pews of the meeting-house or church according to the relative size and value of such pews at an equitable rate, of which assessment and apportionment public notice shall be given by putting up the same in some conspicuous place in the meeting-house or church, and also on the door thereof for three successive Sundays on which divine service shall be performed thereat, next after the making thereof.

Repairs of meeting houses provided for by assessment.

2. If after such notice the persons interested in any of the pews shall not pay the sums assessed on such pews within three months thereafter, the committee after notice having been given on the previous Sunday immediately after divine service, may proceed to let such pews at auction for such period, not exceeding ten years, as may be sufficient to pay the sums so assessed thereon respectively; or they may, on giving the like notice, let such pews from year to year, until the rate or assessment be fully paid, so that such letting shall not extend beyond the term of ten years.

Where assessment not paid, pews may be let for a limited time.

3. The persons who shall so lease the pews shall be put in possession thereof by the committee, and shall have the exclusive occupation thereof during the term of their lease, and the committee may sue for and recover the rent.

Possession, how given; rent recoverable.

4. If the money arising from the leasing of the pews shall not amount to the assessment thereon, the committee may make a new assessment in the same way as the original amount is hereby directed to be assessed.

A second assessment may be made if necessary.

5. Nothing in this chapter shall extend to any church or chapel belonging to or connected with the church of England, or to any meeting-house belonging solely to the denomination of christians called Wesleyan methodists.

Places of worship of the church of England and Wesleyan methodists excepted.

## CHAP. 53.

**TITLE XV.**  
OF THE PUBLIC HEALTH.

**CHAPTER 53.**

OF QUARANTINE.

Quarantine orders to be made by the governor in council.

1. The governor in council may from time to time make quarantine orders, applicable to vessels, goods, persons, and things being within the province or expected hither from abroad, and may revoke, vary, or amend the same, and may affix penalties, forfeitures, and punishments for the breach thereof, which orders shall be notified by proclamation or be published in the royal gazette, and the production of any such proclamation or publication shall be evidence of the making, date, and contents of such orders.

Disobedience thereto a misdemeanor, in addition to any forfeiture prescribed.

2. Persons disobeying any such orders may be prosecuted for a misdemeanor, punishable by fine or imprisonment, or both, as the court may direct; or otherwise such persons may be sued for the penalties contained in the order.

**CHAPTER 54.**

OF BOARDS OF HEALTH AND INFECTIOUS DISEASE.

Sanitary orders to be made by the governor in council.

1. The governor in council may from time to time make sanitary orders, and the same revoke, renew, alter, or vary for the prevention of infectious or contagious diseases, for the relief of persons suffering thereunder, and for the interment of persons who may have died thereof, and such orders may be enforced by penalties therein expressed, not to exceed one hundred pounds for any one offence, and shall be notified by proclamation or be published in the royal gazette, and the production of any such proclamation or publication shall be evidence of the making, date, and contents of such order.

Health officers and boards of health, how appointed; their duties.

2. The governor in council may appoint persons at the several ports of this province to act as health officers therefor, may establish in any place a board of health for carrying such sanitary orders into effect, and may prescribe the duties of such health officer and boards of health, and in case of vacancies may supply the same by new appointments.

3. No vessel subject by such sanitary orders to be examined shall be admitted to entry inwards at any custom house or office of entry until a certificate of such examination, signed by the health officer, shall be exhibited, nor shall such vessel be admitted to entry or clearance until the master, owner, or consignee shall have first paid to the officer appointed in that behalf all fees and charges authorised by such sanitary orders, to be duly accounted for and paid over as therein directed.

CHAP. 54.

Vessels liable to such orders, how entered and cleared.

4. The city council for the city of Halifax, and the courts of general or special sessions in other places, may from time to time appoint health wardens for the several townships or districts who may in the day time enter and examine all houses, buildings, and places, and all vessels and boats, and report their condition as required by any sanitary order in that behalf, they shall give directions to health inspectors for cleansing any house, building, place, vessel or boat, and generally for the preservation of public health, the maintenance of cleanliness, and the prevention of contagion and infection.

Health wardens how appointed; their powers and duties.

5. The wardens, or any two of them, may by order in writing cause any house, building, place, vessel or boat, to be whitewashed, fumigated, or otherwise purified, and may cause any thing dangerous to the public health to be removed therefrom or destroyed.

Their powers to make written orders.

6. Every violation of this chapter, or disobedience of any sanitary order duly made thereunder, shall be deemed a misdemeanor, and every person guilty thereof shall incur a penalty not exceeding one hundred pounds.

Violation of orders a misdemeanor; penalty.

7. If any health warden, upon being notified of his appointment, shall refuse to accept the office, or when accepted, shall refuse to discharge the duties thereof, or to comply with any sanitary orders to him communicated, he shall forfeit five pounds, and another shall immediately be appointed in his place; but no appointment of health warden shall continue for more than one year, nor shall any party be bound to serve oftener than once in four years.

Fine for warden's refusal to accept office; and for misconduct; duration of appointment, &c.

8. If any infectious plague, disease, or distemper shall have been introduced, or there shall be imminent danger of its introduction into any port or place, the board of health, or if there be no board of health, the general sessions, if then sitting, and if not, a special sessions of the peace may assemble and make sanitary orders, as occasion may require, with penalties as in the first section above mentioned, and may appoint persons to enforce the same; and thereupon, copies of such orders shall be forthwith transmitted to the provincial secretary's office, and the same, until altered or amended by the governor in council, shall continue in force.

Cases of plague or imminent danger, how provided against.

9. Any board of health or health wardens, or where none exist any general or special sessions, may order to be removed from any dwelling house or place, or from any vessel or boat approaching near to or within any place or port,

Power of removal of persons sick of infectious disease, and of vacating houses when necessary.

**CHAP. 55.** any person sick with any contagious or infectious disease, to any hospital, house, or place proper for that purpose; it being first certified in writing by two or more physicians of the port or place, or if there be but one there resident, then by him, that such removal is necessary for the public health; —and if any person be sick with infectious or contagious disease in any house or place, and such person cannot in the opinion of such physicians be removed, then the board or health wardens, or justices in session, as the case may be, may cause such house or place, or any contiguous house or place, to be vacated by other occupants for such time as the safety of the inhabitants shall require.

General vaccinations how ordered and provided for.

10. The general or any special sessions, consisting of not less than seven magistrates, on requisition from the board of health, or whenever they think it necessary, may order a general vaccination in any county or any part thereof, and may make orders for providing for the expense of the vaccination of such poor and indigent persons as are unable to pay therefor.

Returns of poor persons vaccinated; remuneration.

11. All persons who shall vaccinate the poor and indigent, as above, shall return to the grand jury and sessions, along with the particulars of their accounts duly attested to, the names and ages of the persons vaccinated, and the date of their vaccination, and such accounts when examined and allowed shall be assessed for and paid as other county charges are.

Fish market may be opened.

12. Subject to the provisions of this chapter any corporation or individual may open a fish market, and sell fish in any part of the province.

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## CHAPTER 55.

### OF RABID ANIMALS.

Sessions to make orders for preventing danger from rabid animals.

1. The justices in general or special sessions may from time to time make orders for the protection of persons from the bite of dogs or other rabid or diseased animals, for the destruction of all animals, rabid or supposed to be rabid and running at large; and for the prohibition of the sale of the flesh of any animal affected by the symptoms usually attendant on canine madness, or otherwise diseased, and affix penalties for the breach thereof, not to exceed ten pounds for any one offence.

Rabid animals at large may be killed; if suspected may be confined.

2. Any person may kill or destroy any dog or other rabid animal found at large, and may secure and place in confinement all dogs or other animals at large and appearing to be rabid, or exhibiting symptoms of canine madness.



## CHAPTER 56.

## OF NUISANCES.

1. The general or any special sessions may by order appoint health inspectors and define the limits of their respective jurisdictions, and may fix the time, not to exceed one year, for which such appointment shall be in force; within the limits of the jurisdiction of commissioners of streets, the commissioners shall exercise such powers instead of the sessions; all such inspectors shall be sworn into office. Health inspectors how appointed; duration of office; limits of jurisdiction.
2. Every board of health, and in places where none exist, three or more health wardens, and where neither exist, a general or special session shall constitute a court under this chapter, and all orders by the court shall be forthwith executed, notwithstanding any appeal therefrom. Court, how constituted.
3. Health inspectors for the purposes of this chapter shall have charge of all streets, highways, passages, vessels, wharves, docks, wells, markets and market places, common sewers, drains, vaults, privies, and other places, and shall cause all nuisances and filth to be removed therefrom or destroyed, and may open and enter all places where noxious substances, dangerous to the public health, may be reasonably suspected to exist, subject, nevertheless, to the control of the commissioners of streets, if any there be, in all things relating to public streets, sewers, and drains within their jurisdiction, and to the control of the special court in all other matters. Powers of inspectors.
4. Health inspectors shall execute and enforce all sanitary orders to them directed under this chapter, or the several chapters relating to infectious diseases and rabid animals. Duties of inspectors.
5. Every health inspector shall be entitled to such adequate compensation for his services, and for charges incurred about his duties, as the justices in session or special court shall allow, and after deducting any sum collected and received under this chapter, the balance, if any due him, together with all other necessary charges and expenses, incurred under this chapter shall be added to the apportioned assessment upon such district or place, and assessed and levied thereon exclusively, and collected as the county rates now are. Their compensation, and how provided.
6. Every dwelling house within the city of Halifax, or elsewhere within the limits of a health inspector, shall be furnished with a suitable underground drain for carrying off waste water; also with a suitable privy and underground vault attached thereto; and the owner of such dwelling house who shall neglect to provide the same shall forfeit a sum not exceeding five pounds. Dwelling houses and their conveniences; penalty for not providing.

## CHAP. 56.

Privies and vaults, how to be constructed.

7. All privies and vaults shall be built so that the inside shall be at least two feet from the line of the adjoining lot, unless by consent of the owner thereof in writing, and shall be at least two feet distant from every street, lane, court, square, public place, or public or private passage way. There shall be no communication between a privy and any public sewer or drain. Every vault shall be tight, and the contents shall not be allowed to be within two feet of the surface of the ground. But the special court may give other directions relative to their construction.

Privies and vaults, how cleansed when offensive.

8. When any privy or vault shall be reported offensive by the health inspector, the same, within a reasonable time after notice in writing to that effect given to the owner or his agent, or the occupant of the land where situate, may be ordered by the special court or health warden to be cleansed and disinfected at the expense of the owner, agent or occupant; and in case of neglect, the same shall be done under the orders of the health inspector, who shall recover double the expense from the owner, agent, or occupant, as a private debt.

Privies and vaults, how and when to be emptied.

9. No vault or privy shall be emptied without a permit from the health inspector, where such is appointed, and in no case between the fifteenth day of June and the fifteenth day of September, unless by order of the special court, and then only in cases where it is absolutely necessary.

Waste water to be disposed of as inspector shall appoint.

10. All waste water shall be conveyed through drains under ground to a common sewer, or to such reservoir as the health inspector shall appoint.

Dwelling houses how vacated when public health endangered.

11. When it shall appear to the special court that any tenement used as a dwelling house is so unfit for that purpose that the public health is endangered thereby, the court may make an order in writing for its being vacated within a reasonable time to be therein prescribed; which order shall be served upon the inmates, or left at such dwelling house, and in case of disobedience thereto, or of a re-occupation of the dwelling house without a permit to that effect, the court may direct a warrant to the sheriff or constables, or health inspectors, to enforce compliance with the terms of such order.

Cellars and vacant lots how cleansed.

12. Whenever it shall appear to the special court, that any cellars, lots or vacant grounds are in a state likely to endanger the public health, they shall cause a notice to be given to the owners, or the occupants, if any, and if there are no occupants, and the owners do not reside within the jurisdiction of the court, may give notice by advertisement in one or more public newspapers, if any be there printed, or by posting the same, publicly requiring such owners or occupants to remove such cause of complaint as in such notice prescribed, and in case of neglect the court shall order the same to be removed and double the expense shall be recovered by the health inspectors from the owners or occupant of the land.

13. No person unless specially licensed in that behalf shall put in any place on land or water any offensive matter or thing likely to endanger the public health, under a penalty not exceeding five pounds for each offence, and if any person shall suffer any such matter or thing to remain upon his premises after notice in writing requiring him to move the same, the health inspector may remove the same under the direction of the special court and at the charge of the owner or occupant of such place, and may recover double the expense as a private debt. CHAP. 56.  
Offensive matter; penalty for allowing; how to be removed.
14. Any justice, on the oath of one witness, may make an order in writing for the removal, burial, or destruction of any offensive substance being or likely to become a nuisance in any place or in any boat or vessel, and may direct the same to be done by the party occasioning the offence, or by any other party whom the justice shall appoint, and the expense shall be recovered as in the order prescribed. Justice may make orders for removing or destroying offensive substances.
15. No person shall sell, or offer for sale, or have in his possession in a public or private market or any other place for the purpose of sale, any unwholesome, stale, or putrid article of food, under a penalty not exceeding ten pounds, and the article may be forthwith seized and destroyed by the health inspector. Penalty for sale of unwholesome food.
16. The board of health or general sessions may make orders for prohibiting the introduction into any city or town, and for preventing the sale and the offering for sale of any kind of uncleansed fish, and for preventing persons from throwing offal into any place likely to be offensive or dangerous to the public health. Uncleansed fish and offal how prohibited.
17. Justices in general or special sessions may from time to time make orders fixing the extent and limits within which the slaughtering and dressing of animals for food shall be prohibited or conducted, under penalties not to exceed ten pounds for any one offence. Limits for slaughtering animals to be regulated by sessions.
18. All penalties and expenses incurred under this chapter shall be recovered in the name of the health inspector, and if there be none for the place, then in the name of the clerk of the peace. In either case such inspector or clerk shall be a competent witness. The proceeds of every prosecution, after first deducting all reasonable charges, shall be paid into the city or county funds. Penalties how recovered.
19. Any person who shall violate any of the orders made under this chapter, or shall obstruct any officer acting in discharge of his duty, shall forfeit a sum not exceeding ten pounds. Forfeitures for violation of orders.
20. No action shall be commenced against any person for anything done or omitted under this chapter, unless brought within six months from the date of the offence charged, and whenever any conviction shall have been removed into the supreme court at Halifax, or an appeal thereto granted, it shall be the duty of the law officers of Limitation of actions; prosecutions removed to supreme court, how conducted.

**CHAP. 57.** the crown to conduct the prosecution or defence, as the case may be, on behalf of the public.

Fish may be sold.

21. Any corporation or individual may open a fish market in any part of this province, or vend fish therein, subject to the provisions of this chapter.

## CHAPTER 57.

### OF REGULATIONS CONCERNING THE PRACTICE OF PHYSIC AND SURGERY.

Persons entitled to receive fees.

1. No person shall recover any fee or reward for curing or attempting to cure any disease, or for performing any surgical operation, who shall not previously have obtained the degree of Doctor of Medicine, or a certificate of his competency to practice as a surgeon from some college or other public institution legally authorized to grant such degree or certificate, or who shall not have received a license under the hand and seal of the governor, after having been examined and reported duly qualified by competent persons appointed by the governor, which license shall specify that the person so licensed is qualified to practice physic or surgery or both; but nothing in this chapter shall extend to physicians or surgeons in the naval or military service of her majesty.

Credentials to be registered in secretary's office.

2. It shall be incumbent upon every person claiming to be a physician or surgeon or to have license to practice as hereinbefore mentioned, to produce and register in the provincial secretary's office, in a book to be kept for that purpose, the credentials under which he founds his claim to that character, and such book for registry shall be open to inspection at all times on payment of one shilling.

All who have practised in province previous to 1821 entitled to license.

3. Every person resident in the province and who shall have practised therein previously to the year 1821, shall, on proof of that fact, be entitled to receive a license to practice under the hand and seal of the governor.

All provincial medical appointments to be held by persons registered.

4. Hereafter all provincial medical appointments and commissions shall be held only by medical men duly registered under the provisions of this chapter.

Penalty.

5. All persons professing to have medical or surgical degrees, or a license to practice, save physicians or surgeons in her majesty's service, and not duly registered agreeably to these provisions, shall forfeit a penalty of five pounds for every such offence, and shall not be entitled to recover any fee or reward for professional services.

Certified copy of credentials, &c., to be received in evidence.

6. A copy of such credentials or report certified by the provincial secretary, shall be received in evidence in all courts in this province in any action for the professional services of the party so registered.

## TITLE XVI.

## CHAPTER 58.

## OF INDIANS.

1. The governor in council may appoint one chief commissioner for Indian affairs, and such commissioner may appoint a deputy in each of the counties of this province, if he shall consider such appointment essential and necessary. Commissioner and deputies—  
appointment of
2. The governor in council may from time to time issue instructions to the commissioner for his guidance. Instructions to  
issue.
3. The commissioner shall take the supervision and management of all lands that are now or may hereafter be set apart as indian reservations or for the use of Indians, he shall ascertain and define their bounderies and report to the governor all cases of intrusion, or of the transfer or sale of such lands, or of the use or possession thereof by the Indians, and generally shall protect such lands from encroachment and alienation, and shall preserve them for the use of the Indians. Duties of com-  
missioner.
4. Where valuable buildings or improvements have been or may be erected or made on such lands, the governor in council may make agreement with the persons who have made the same or those claiming under them by compromise and grants of other lands for the value of lands so improved, or otherwise as may be reasonable and just. Compromise  
with persons  
who may have  
improved In-  
dian lands.
5. In all cases of enroachment upon any such lands, it shall be lawful to proceed by information in the name of her majesty in the supreme court, notwithstanding the legal title may not be vested in the crown. Encroachments  
how prosecu-  
ted.
6. The commissioner shall communicate with the chiefs, of the different tribes of the Mic-mac race, and explain the wishes of the governor, and invite their co-operation in the permanent settlement and instruction of their people, and shall parcel out a portion of the reservations to each family, with such limited power of alienation as may be authorized by the governor, and also shall aid them in the purchase of implements and stock with such assistance as they may deserve, in the erection of a dwelling for the chief, a school house and place of worship, and generally shall take such other measures as may seem necessary to carry out the objects of this chapter. Special instruc-  
tions to com-  
missioner.
7. The commissioner may make arrangements with the trustees or teachers of any schools or academies for the board and tuition of Indian children desirous of education, the expense to be paid out of the funds at his disposal. Education of  
Indian children

**CHAP. 59.**

Provisions for securing a permanent fund.

Reports of deputy commissioners, their contents, &c.

Apportionment of provincial grant.

8. The commissioner may raise subscriptions and apply for charitable contributions to secure a permanent fund for the purposes of this chapter.

9. The deputy commissioners shall at the close of every year furnish the chief commissioner for the information of the legislature, with reports of their proceedings and an account of their receipts and expenditure, with the names of the chiefs for the time being, the numbers of heads of families settled and children educated; and generally such other information as may enable the governor and legislature to judge of the value and correctness of their proceedings.

10. The money annually granted by the legislature for the benefit of the Indians shall be paid to the chief commissioner and shall be by him apportioned among his deputies in proportion to the number of families settled and resident in the several counties, provided that no pecuniary relief shall be given to any Indian, but that the amount so granted shall be expended by the chief commissioner, or his deputies under his directions, in purchasing blankets or necessary clothing, and that such articles shall be distributed in such manner and to such extent as may be considered judicious and necessary in the several counties.

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## TITLE XVII.

### CHAPTER 59.

#### OF THE TELEGRAPH.

Sworn telegraph operators — from what exempt.

1. No sworn operator in any electric telegraph office shall be compelled to serve on any jury or inquest, or in the militia, or as a town or city officer.

## TITLE XVIII.

## CHAPTER 60.

## OF PUBLIC INSTRUCTION.

## Part the First.

1. The governor in council shall appoint a provincial superintendent of education, and for each of the places named in schedule A, five or more commissioners of schools; and for every academy now or hereafter to be established, three or more trustees. Superintendent and commissioners of schools, and trustees of academies, how appointed.
2. School districts shall remain as now established, until altered. School districts established.
3. The commissioners, except those for the city of Halifax, may form new school districts, and subdivide or alter the limits thereof, and of those now established; and a school district may lie in two counties, and be partially assisted by the commissioners of both counties, and the trustees of the schools in such district shall account to both boards of commissioners, if they receive aid from both, otherwise to the board granting aid, but no subdivision or alteration shall be made until after public notices of the intended subdivision or alteration, to be posted up for ten days at least within the district, and after considering such objections as may be raised by persons interested therein. School district<sup>s</sup> and subdivisions, how laid off.  
A school district may lie in two counties.
4. Three school trustees shall be elected for each district by the rateable inhabitants thereof, at public meetings to be called by the commissioners for that purpose, by public notices to be posted up for ten days at least within the district. Trustees to be elected.
5. The commissioners shall appoint a clerk, who shall not be engaged in trade, and who shall give bond to her majesty with two sureties for the performance of his duties, and he shall keep the accounts, monies, and records of the board of commissioners. He shall receive for each license to teachers two shillings and six pence, and five per cent. on the actual disbursements, not to exceed in the whole twenty-five pounds in any one year. Clerk to be appointed; his qualifications and bonds; his duty and fees.
6. When the inhabitants of any district shall have provided one or more sufficient school houses, and the trustees shall have engaged by written contract one or more competent teachers for the district, male or female, at a specific remuneration, to give instruction in reading, writing, and arithmetic, the elements of English grammar and geography, for a period not less than three months, the commissioners, upon application of the trustees, shall enter the school on Schools entitled to be entered for participation in public allowance.

**CHAP. 60.** a list, to be kept by them, for participation in the sums allowed for the support of common schools.

1. (examination of teachers and the granting of licenses.

7. The commissioners shall examine all school teachers, and grant to such as they consider qualified and of good character, licenses to teach within the respective districts, and no teacher shall without such license receive any part of the money hereby granted.

Trustees' accounts, how rendered to obtain allowance.

8. The trustees of every school seeking aid hereunder shall render half yearly to the commissioners an account of the number, names, sexes, and ages of the scholars, and the average number who have attended since the last return; the branches in which they have been instructed, the books they have used, their progress in education, the amount and particulars of the income and expenditure of the school, the amount of the salary of the teacher, and how paid; and shall certify that the sum to be received from the commissioners by the trustees is payable to the teacher for his own use, and that the engagements of the persons applying for such school have been performed, and shall furnish to the commissioners a certificate from the teachers respectively, under oath, that no part of their salary has been collusively withheld, and that the representations and engagements have been made in good faith, and not merely to procure a portion of the allowance under this chapter.

Penalty for false returns.

9. If a trustee or teacher of any school or academy wilfully render an incorrect account or statement in any return, report, certificate or affidavit, required under this chapter for the purpose of obtaining provincial aid for any school, or for any teacher or trustee, he shall be liable to a penalty of five pounds, to be recovered by the clerk as a private debt, one half to his own use and the other to be paid to the commissioners and added to the school fund.

Assessments for schools where a majority agree.

10. The trustees of any school district may call a public meeting of the rateable inhabitants, after written notice by the trustees for at least twenty days in five of the most public places there, and if a majority present agree to raise money for the support of one or more schools by assessment, or for the purchase of land whereon to erect school houses, or for the building or repairing them, they shall then appoint three assessors, who shall forthwith assess the amount voted by an even rate upon the inhabitants of such district by an equal pound rate on the real and personal property in their respective occupation or possession within the county, whether the same be or be not in such district, regard being had to the value of the rents of the real estate and the capability of the personal estate to produce profit, and shall return such assessment to the general sessions, or to any special sessions held for that purpose, where appeals shall be heard and determined, and all such rates shall be collected and other proceedings had, in relation thereto as prescribed in case of poor rates.



11. The sum specified in schedule A shall be granted towards the support of academies and grammar schools, and the further sum specified in schedule B towards the support of common schools, to be applied as specified in such schedule. CHAP. 60.  
Amount of public allowance for academies and grammar schools.

12. The sums allotted for grammar schools shall be subdivided among not less than two nor more than four schools in each county, in such proportions as may be directed by the commissioners, except as may be otherwise provided in schedule A, but no grammar school shall receive less than twenty-five pounds. Allowance for grammar schools, how divided.

13. The commissioners shall draw half yearly from the treasury the sums allowed for the places respectively, and shall apportion the same for common schools according to the sums raised by the inhabitants of the district, and the number of useful branches of knowledge taught therein, having regard to the nature, amount, and quality of the instruction, and the amount paid by the people towards the salary of the teachers. The commissioners shall exclude any district from participation in the public grant if the inhabitants have not according to their ability provided and paid for a teacher and kept the school house in repair. Before distributing the common school fund, the commissioners shall apply such sum, not exceeding one sixth of the whole fund at their disposal as may be necessary for schools in poor or thinly peopled settlements, on such terms as they think reasonable. Common school allowance, how drawn and apportioned.

14. There shall be always gratuitously taught in every school or academy receiving aid under this chapter, as many poor scholars not exceeding eight, as the commissioners and trustees respectively shall see fit to send. Free scholars to be taught in schools and academies.

15. The commissioners shall return to the governor, on or before the thirty first day of December next, a true account of the monies received and distributed by them, and a report of their proceedings, with such other returns as may be directed by the governor, and shall certify that the same are to the best of their knowledge correct, and that they have distributed the provincial money impartially and faithfully. Commissioners to return annually to the governor the r. ac counts.

16. The allowance shall only be paid under the conditions following:—That a good and substantial school house, in an approved situation, shall be erected and completed to the satisfaction of the commissioners; that a salary not less than forty pounds a year for the teacher shall be subscribed by the inhabitants and secured to the satisfaction of the commissioners; that the teacher, before such school shall be admitted on the list of grammar schools, shall be qualified, examined and approved as herein mentioned, and shall be competent to teach, in addition to the ordinary branches, algebra and land surveying, and, when the same shall be required by the commissioners, navigation, the classics, agri- Conditions upon which allowance is payable.

**CHAP. 60.** cultural chemistry, one or more of the modern languages, and some of the practical branches of the mathematics.

Grammar schools required to teach the higher branches.

17. At grammar schools receiving aid under this chapter, in addition to reading, writing, arithmetic, geography, English grammar, history, and composition, there shall be taught, when any pupil shall require to be instructed therein, land surveying, navigation, and the mathematics, and whenever it shall be found practical to introduce the same, the classics, one or more of the modern languages, and agricultural chemistry.

Amount of salary and number of scholars to qualify a grammar school for allowance.

18. No grammar school shall receive any allowance unless the trustees shall have actually received by the contribution of the people, and the tuition fees, at least forty pounds per annum towards payment of the teacher, and unless at least twenty scholars shall be regularly taught therein throughout the year, of whom not less than ten shall constantly receive instruction in the above higher branches, or some of them.

French, German, and Gaelic schools entitled to aid.

19. Schools wherein the ordinary instruction may wholly or in part be communicated in the French, German, Gaelic, or other languages, shall participate equally in the provincial allowance with schools wherein the English language is exclusively used, provided such schools are in other respects entitled to such participation.

Academies required to teach certain branches.

20. At all academies receiving assistance hereunder, instruction shall be given in the classics, agricultural chemistry, the practical branches of the mathematics, algebra, geography, English grammar, history, and composition, and also in one or more of the modern languages.

Academy bye-laws, how made.

21. The trustees of academies may make bye-laws for the regulation thereof, to be transmitted within a month thereafter to the governor, for his approbation in council, and they shall have no effect until such approbation be signified.

Returns by trustees of academy required.

22. The trustees of academies receiving aid hereunder shall make an accurate return, on or before the thirtieth day of June and thirty-first day of December, in every year, of all sums received and expended by them, whether from legislative grant or otherwise, with a report of the names and ages of the pupils and the course of instruction and other particulars concerning such academy, its progress and management, in such form as the governor in council may direct.

Examinations of academies and grammar schools.

23. The trustees of academies and grammar schools receiving aid hereunder shall hold public examinations twice in every year, of which examination public notice shall be given.

Conditions for receiving academy allowance.

24. No academy shall receive any allowance unless the trustees shall have actually received, by contribution and tuition fees, at least one hundred pounds a year towards the payment of the teacher and the support of the academy, and unless at least twenty-five scholars shall be constantly

taught therein through the year, of whom not less than ten shall regularly receive instruction in the classics, agricultural chemistry, one or more of the modern languages, the practical branches of the mathematics, algebra, and arithmetic, English grammar, history, geography, composition, and other branches of a higher English education.

CHAP. 60.

25. The trustees of academies respectively shall be a corporate body, and possess the academy and its property so far as to prosecute and defend all actions relating thereto, and shall be designated "the trustees of the academy."

Trustees of academy incorporated.

26. The superintendent, as often as may be, shall visit the different schools, personally inspect their discipline, inquire into the qualifications of school masters, the books in use, and the accuracy of returns and accounts; and shall make a half yearly report of the general state of education throughout the province.

Superintendent's duty.

27. Meetings shall be held at least once a year at some time and place to be appointed by the superintendent, at which the commissioners for the county or district, and all licensed teachers may attend. At such meetings commissioners and teachers may discuss the subject of education, and offer suggestions and move resolutions. The superintendent shall preside, and the proceedings of the meetings shall be recorded by the school clerk, who shall furnish the superintendent with a copy of the same, to be appended to the general report.

Meetings to be held by him; instructions for proceedings.

28. A list shall be kept by the clerks of all the licensed teachers within their jurisdiction, the length of service of each being noted, and the most meritorious five having a mark set opposite their names, such distinction to be conferred by the superintendent and commissioners, and a copy of such list shall be annually furnished by the clerk to the superintendent for the information of the executive.

Lists of teachers; distinction of merit.

29. The superintendent shall furnish the commissioners, trustees, and teachers, with such necessary information as may tend to improve the structure of school houses, their free ventilation, the embellishment of the grounds on which they stand, the supply of the best maps, books, forms of returns, and means of illustration; and generally shall exert himself to encourage the formation of teachers' institutes, to supply destitute districts with teachers, and to establish so far as may be done without undue interference with the functions of the commissioners and trustees, an efficient and uniform system of instruction.

Instructions for, and general duty of, superintendent.

30. The superintendent may visit all academies drawing support from the public funds—inspect their discipline and accounts—offer suggestions for their improvement, and report on their state and efficiency for the information of the executive and legislature.

Academies to be visited by superintendent.

31. The governor may advance upon the requisition of the superintendent the sum of six hundred pounds to be

Amount grant to purchase school books.

CHAP. 60.

expended in the purchase of improved school books, maps, apparatus, and educational reports, to be distributed amongst the boards of commissioners of the respective counties and districts in the same proportion as the money appropriated for common schools is divided, to be gratuitously distributed by the commissioners among the poor schools in their respective counties or districts, or otherwise sold at cost price.

Amount for school libraries granted; its appropriation, &c.

32. The governor may draw from the treasury a sum not exceeding five hundred pounds, and apply the same in proportion to population for the establishment of school libraries in central and suitable places in each county under such regulations as to the governor in council may seem proper, to be under the charge and control of the commissioners, and open to the inspection of the superintendent. Catalogues of the books selected shall be returned to the legislature, upon whose vote any book deemed objectionable shall be withdrawn.

Salary of superintendent, and contingencies.

33. The superintendent shall be allowed one hundred pounds for the contingencies of his office and travelling expenses, exclusive of postage.

Real estate may be held by commissioners for the benefit of schools.

34. Any person may convey or devise real estate to the commissioners for the place where the lands are situate, and duly vest in the commissioners and their successors in office the legal estate therein in trust for the purpose of erecting and keeping in repair a school house thereon; and the commissioners may sue and be sued in respect thereof, but shall have no control over any school house on such lands as against the trustees of the school district or the inhabitants other than may be conferred by the conveyance or devise.

Clergy and magistrates appointed visitors.

35. The clergy and magistrates of each county shall be visitors of the schools within the same.

Commissioner not to be a teacher or clerk.

36. No commissioner shall during his continuance in office be teacher or clerk.

Superintendent and teachers exempted from certain public duties.

37. The superintendent, the teachers of academies, and every licensed teacher of schools while employed, shall be exempted from the performance of statute labor on the highways and from militia duty, from serving in any town office or on juries, and from the payment of all rates.

Limitation of chapter.

38. The forgoing sections of this chapter shall continue in force till the first day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

Schedules

SCHEDULE.

A.

THE DISTRICT OF HALIFAX.—*Eastern district of the county of Halifax.*—Fifty pounds for one or two grammar schools. *Western district of the county of Halifax.*—Fifty pounds for one or two grammar schools.

*County of Lunenburg.*—One hundred pounds for grammar schools.

*County of Queens county.*—One hundred pounds for two or three grammar schools.

*County of Annapolis.*—One hundred pounds for four grammar schools, namely, Annapolis, Bridgetown, Paradise and Nictaux.

*County of Kings county.*—One hundred pounds for grammar schools.

*County of Pictou.*—One hundred pounds for grammar schools, to be divided equally between the townships of Pictou, Egerton, and Maxwelton.

*District comprising the township of Parrsborough,*—and such other portions of the county of Cumberland as are south of a line to be drawn from the south-west corner of Franklin Manor to the centre of Sand Cove, in the Cumberland bay.—Twenty-five pounds for one grammar school.

*District comprising the residue of the county of Cumberland.*—Seventy-five pounds for two or three grammar schools.

*County of Colchester.*—One hundred pounds for an academy.

*District of Rawdon and Douglas, in the county of Hants.*—Thirty-three pounds six shillings and eight pence for one grammar school.

*District comprising the residue of the county of Hants.*—Sixty-six pounds thirteen shillings and four pence for two grammar schools, one to be situate in Newport and one in the town plot of Windsor.

*District of Clare, in the county of Digby,*—Thirty-three pounds six shillings and eight pence for one grammar school.

*District comprising the residue of the county of Digby.*—Sixty-six pounds thirteen shillings and four pence for one or two grammar schools.

*District of Yarmouth in the county of Yarmouth.*—Sixty-six pounds thirteen shillings and four pence for one or two grammar schools.

*District of Argyle, in the county of Yarmouth.*—Thirty-three pounds six shillings and eight pence for one grammar school.

*District of Barrington.*—Fifty pounds for one or two grammar schools.

*District of Shelburne.*—Fifty pounds for one or two grammar schools.

*District of Saint Mary's, in the county of Guysborough.*—Thirty-three pounds six shillings and eight pence for one grammar school.

*District of Guysborough.*—Sixty-six pounds thirteen shillings and four pence for two or three grammar schools.

*County of Sydney.*—One hundred pounds for grammar schools.

CHAP. 60. *County of Cape Breton.*—One hundred pounds for three grammar schools.

*County of Richmond.*—The sum of one hundred pounds per annum shall be set apart and paid annually for the maintenance of an academy at Arichat, in the county of Richmond, in lieu of grammar schools for the county.

*Northern district, county of Inverness.*—to commence at Angus McIsaac's, number one, on the shore, thence to run by the road to Loch Bar, thence by the waters of the lake, western side, to Ainslie Glen, and thence by the main road to the head of the bay,—Thirty-three pounds six shillings and eight pence for one grammar school.

*Southern district of Inverness.*—comprising the remainder of the county,—Sixty-six pounds thirteen shillings and four pence for two grammar schools.

### B.

*City of Halifax.*—Seven hundred pounds.

*Eastern district of the county of Halifax.*—Three hundred and eighty-nine pounds.

*Western district of the county of Halifax.*—Three hundred and eighty-nine pounds.

*County of Lunenburg.*—Six hundred and fifty-two pounds.

*Queen's county.*—Three hundred and ninety pounds.

*County of Annapolis.*—Six hundred and forty-nine pounds.

*King's county.*—Six hundred pounds.

*County of Pictou.*—One thousand one hundred and twenty-two pounds; one half to the northern district, composed of the township of Pictou, and the other half to the southern district, composed of the townships of Egerton and Maxwellton.

*District of the township of Parrsborough.*—as described in the schedule A.—One hundred and eight pounds.

*District comprising the residue of the county of Cumberland.*—Four hundred and thirty-two pounds.

*District of Stirling, in the county of Colchester.*—One hundred and forty-two pounds.

*District comprising the residue of the county of Colchester.*—Four hundred and seventy-nine pounds.

*The district of Rawdon and Douglas, in the county of Hants.*—Two hundred and thirty-two pounds.

*District comprising the residue of the county of Hants.*—Three hundred and eighty-seven pounds.

*District of Clare, in the county of Digby.*—One hundred and seventy-one pounds.

*District comprising the residue of the county of Digby.*—Three hundred and forty-two pounds.

*District of Yarmouth, in the county of Yarmouth.*—Two hundred and ninety-four pounds.

*District of Argyle, in the county of Yarmouth.*—Two hundred and fifteen pounds.

*District of Barrington.*—One hundred and ninety-five pounds. CHAP. 60.

*District of Shelburne.*—One hundred and ninety-five pounds.

*District of Saint Mary's, in the county of Guysborough.*—One hundred and twenty pounds.

*District comprising the remainder of the county of Guysborough.*—Three hundred and two pounds.

*County of Sydney.*—Six hundred pounds.

*County of Cape Breton.*—Eight hundred and fifty-five pounds.

*County of Richmond.*—Four hundred and thirty-three pounds.

*Northern district of Inverness, as described in Schedule A.*—Two hundred and fifty-nine pounds.

*Southern district of the county of Inverness.*—Five hundred and eighteen pounds.

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## Part the Second.

### NORMAL SCHOOL.

39. A normal school for the training of teachers, shall be founded in a central and convenient locality.

Normal school to be established.

40. A building for such purpose, provided with all necessary furniture and apparatus, shall be erected under the direction of the commissioners appointed by the governor in council, upon a site, and according to plans approved of by the governor and council, and such commissioners may draw from the treasury, for the cost of the building, with its furniture and site, a sum not exceeding one thousand pounds.

Building for, furniture, apparatus, &c.

Cost of.

41. The teachers of the normal school shall be a principal appointed by the governor in council, who shall superintend the normal and model schools, and teach such classes as he may deem necessary, and shall also be superintendent of education, and shall receive a salary of three hundred pounds per annum, and two assistants, chosen by the principal, with the approval of the governor in council, and who shall respectively receive salaries of two hundred pounds per annum.

Teachers and superintendent, &c.

Salary of superintendent.

Do. of teachers.

42. The superintendent may draw annually from the treasury, a sum not exceeding one hundred pounds, for expenses of fuel, repairs, and books for the normal school, and the expense of teachers' institutes, the expenditure of which he shall annually make return of to government.

Allowance to superintendent for expenses.

Management.

43. The school shall be under the management of a board of five directors, appointed by the governor in council, who shall frame the bye-laws and regulations of the institution, and arrange the length of its terms of instruction.

## CHAP. 60.

Boards of commissioners may send pupils

Pecuniary assistance to pupils.

Ages of pupils, qualification, &c.

Additional pupils may be received conditionally.

Licensed teachers to have access to Normal school.

Pupils who do not intend to teach in the province.

Examination of pupils, certificates, &c.

Pupils found to be incompetent on examination.

Pupils who have graduated may enter anew.

Certificate to entitle pupils to a license.

Bad character.

Three pupils may be sent to college, &c.

44. Each board of commissioners shall have the right of sending to the normal school, at the commencement of any of its terms, one pupil, either male or female, for every one hundred pounds received by the board from the provincial treasury, and if necessary, they shall aid such pupils from the provincial grant at their disposal, in paying their travelling expenses to and from the normal school at the rate of three pence per mile: provided that such pupils shall not be less than sixteen years of age, and of good moral character, and shall have received an ordinary common school education before the commissioners shall give any order or orders for their admission to the school—such pupils shall give to the principal a written pledge that they will teach for at least three years within this province.

45. The principal of the school may receive an additional number of pupils not exceeding twenty in any one year, on their being examined by him and giving the necessary pledge; and all licensed teachers shall have free access to the school, either as spectators or regular pupils. Instruction and the use of text books shall be free to all pupils.

46. The principal may admit pupils not intending to teach in this province, at such rates of fees as he may think proper, such fees to be applied in improving the apparatus of the school; provided no greater number of such pupils than ten be in attendance on the school at any one time.

47. All pupils shall be examined by the principal after having attended the school for a term not less than five months, and if competent, shall receive certificates as graduates of the school,—such certificates shall be of three classes, denominated, A. B. and C, according to the capacity of the graduate; and pupils, who after having studied one year, shall be found incompetent to act as teachers may be dismissed or receive instruction for a second term at the discretion of the principal; and such graduates as may have received certificates of the class A. or B., may be admitted anew, and after attending for one or more terms shall receive a certificate of such class as upon examination they shall be found entitled to.

48. Any person holding a certificate from the principal of the normal school shall be entitled to a license from any board of commissioners unless the holder of such certificate be of bad moral character, in which case, so soon as the fact of any graduate having contracted immoral habits is made known to the principal, he shall erase the name of such person from his list of graduates.

49. The principal shall have the power of sending, as free students, to any college or academy receiving provincial aid, graduates of the normal school, who may desire instruction in mathematics and classics, with the view of becoming teachers of high schools; provided that no such institution



be required to give instruction to more than three such pupils at any one time. CHAP. 60.

50. There shall be an annual public examination of such school. Annual public examination.

51. The principal of the normal school and his assistants, shall be exempted from the performance of statute labor on the highways,—from militia duty, and from serving in any town office or on juries. Principal and assistants exempted from statute labor, &c.

52. The model schools at Truro in connection with the normal school, shall be considered as an integral part of such normal school, and shall be under the control of the commissioners of that institution. Model schools Truro,

53. Such model schools shall be recognized by the board of school commissioners of the county of Colchester proper, as the schools of the district, and shall be entitled to all the rights and immunities appertaining thereto, and the bounds of the district shall be fixed by such school commissioners. To be considered as schools of the district.

54. The teachers of the model school shall be chosen in the same manner as the teachers of the normal school, and shall be under the same management and control. Teachers—how chosen, &c.

55. The teachers of the primary, juvenile, and high schools shall receive respectively fifty pounds, seventy-five pounds, and one hundred pounds per annum; and the sum now payable to the academy at Truro, together with a grant of twenty-five pounds to be made by the school commissioners of the district, and a further sum of one hundred pounds to be drawn annually from the treasury, shall be the source from which this endowment is derivable; and when the fees to be received from scholars attending these schools shall yield a sufficient fund, the salaries above mentioned shall be increased to one hundred pounds, one hundred and fifty pounds, and two hundred pounds respectively; and the surplus of such fees shall be appropriated towards the general improvement of the model schools, and an account of the expenditure of such surplus shall be rendered annually to the legislature. Salary of  
Source of endowment.

56. The superintendent of education is authorized to draw up a code of rules for the regulation of the model schools, such code of rules to be submitted to the commissioners of the normal school and receive their sanction before going into operation. Increase of salaries.

57. The principal of the normal school shall be empowered henceforth to grant diplomas as well for grammar schools as for common schools, and the time of attendance and amount of qualification of every one intending to graduate for a grammar school diploma shall be fixed by the commissioners of the normal school. Code of rules.

58. The allowance for common schools shall be eleven thousand one hundred and seventy pounds, and shall be divided among the various counties and districts, as hereinbefore provided. Diplomas.

59. The allowance for common schools shall be eleven thousand one hundred and seventy pounds, and shall be divided among the various counties and districts, as hereinbefore provided. Allowance for common schools—division of, &c.

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School district to be assisted by educational district which it intersects.

59. Where the bounds of any school district are intersected by the lines of educational districts into which any county may be divided, such school district shall be assisted proportionally by the board of commissioners for each educational district by the lines of which the bounds of such school district are so intersected.

Grant for grammar schools in county of Cape Breton.

60. The sum of one hundred pounds granted for the support of three grammar schools in the county of Cape Breton, may hereafter be applied to the support of two grammar schools only in that county.

Undrawn school grants to revert to the general revenues.

61. All sums heretofore granted for grammar schools and undrawn, shall be carried to the credit of the general revenues of the province, and hereafter all grants for grammar schools not drawn during the year for which such sums were appropriated, shall revert to the general revenues.

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## TITLE XIX.

### OF HIGHWAYS, STREETS, BRIDGES, PUBLIC LANDINGS AND FERRIES.

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#### CHAPTER 61.

##### OF LAYING OUT CERTAIN GREAT ROADS.

Roads to which this chapter applies.

1. The provisions of this chapter shall extend to the following roads only, viz: The main post road from Halifax to Pictou, thence to Antigonishe, Guysborough, and Saint Mary's; the great eastern road from Halifax to Saint Mary's the eastern shore road from Dartmouth to Saint Mary's the road from Antigonishe to Auld's, at the Gut of Canso; the road from Guysborough to the Gut of Canso; the road from McMillan's, east side of the Gut of Canso, to Saint Peters, thence by the Bras d'Or to Sydney, and thence to the Sydney mines, Boularderie, Baddeck, Middle River and Margaree, thence to Broad Cove, Port Hood, and McMillan's, at the Gut of Canso; the road from Arichat to Grandance; the road from Truro to Amherst, and thence to the boundary of the province; the road from Truro to River Philip, by Tatamagouche; the road from Amherst to Parrsborough; the road from Pictou to River Philip, by Wallace; the road from Halifax to Windsor, thence to Kentville, Annapolis, Digby, Yarmouth, Shelburne, and Liverpool; the road from Liverpool to Mills Village, thence to Bridgewater and Mahone Bay, and thence to Chester and Windsor; the road from Chester to Halifax by Saint Margaret's Bay; the road

leading from the Kempt road, in the county of Richmond, to West Bay, thence by the same road to Saint Peters, thence to Grand River, thence to Louisburg by Saint Esprit; and the road leading from River John to Amherst, by Pugwash, in the county of Cumberland, following the course of the present telegraph line, and also to the new road leading from the town of Baddeck to the western line of the county of Victoria, and also to the road leading from the town of Digby to Westport.

2. Commissioners to expend monies for the opening of new roads or altering old ones when it shall be necessary to cross private lands for that purpose, the proprietors whereof claim damages, shall, if deemed for the public benefit, make an agreement in writing with the proprietors; the agreement to state the length of the road and the amount agreed on for damages and cost of fences, and to have a plan annexed of the road and land through which it is intended to be carried; and the same shall be laid before the general sessions of the peace for the county or district, or a special sessions; and if the sessions approve of the agreement or portions thereof, they shall return the same with their certificate to the provincial secretary's office, to be laid before the house of assembly, and the house having considered may confirm the agreement, or any portion thereof, in which case the same shall be returned to the provincial secretary's office, and the governor may draw warrants on the receiver general for the amounts which may be confirmed.

Private lands  
when crossed  
by agreement.

3. Where no agreements shall be made, or any part thereof shall not be confirmed, one appraiser shall be appointed by the governor in council, a second by the persons interested in the lands, and on their default after three days' notice, by the commissioner, and a third shall in any case be appointed by the commissioner; and the three appraisers shall be sworn to the faithful discharge of their duties, and shall enter upon the lands and lay out the road in the manner most advantageous to the public and least detrimental to the persons interested in the land, and measure and mark the same and appraise the lands, taking into account the improvement and assess the damages to the owners and tenants therefor, and for fencing the sides of the road; which appraisement shall be reduced to writing and accompanied by a plan and admeasurement of the road, shall be returned to the clerk of the peace, to be laid before a general or special sessions; and further proceedings shall be had thereon in conformity with the provisions of the last section.

Mode of procedure when no agreement can be made.

4. After any agreement shall have been made or an appraisement had under the second or third sections, the commissioner may enter upon the lands and proceed with the road, leaving the compensation to be paid to the pro-

Commissioner may proceed immediately upon agreement or appraisement.

## CHAP. 61.

prietor, to be finally determined in the manner in such sections respectively directed.

Fences to be made before compensation.

5. No payment for fences shall be made under this chapter until the proprietors of the land shall have made oath that the same has been put up in a proper manner and at least thirty-three feet from the centre of the road, and encloses in whole or in part some of his lands, and that the same shall not be removed with his assent; nor shall any compensation for such fencing be made unless claimed within one year after the road shall have been opened.

Damages from treasury restricted to roads in the first section described.

6. No money shall be drawn from the provincial treasury for damages on the completion or running out of any new road, or alteration of any old one, other than on the roads specified in this chapter.

Width of road.

7. The road shall be at least sixty-six feet in width.

Site of road, when held as surrendered.

8. When roads have been or shall hereafter be altered without any demand for compensation by the proprietors of land through which the new road runs and for which no compensation shall have been afterwards made, such acquiescence on the part of the proprietors shall be held a voluntary surrender to her majesty forever, for a public highway, of all the land through which the new road passes to the breadth of sixty-six feet.

What roads to be under charge of governor in council, viz:

9. It shall be lawful for the governor in council to assume the charge and management of the undermentioned great roads, that is to say:

Great eastern road.

First. The great road east, from Halifax to Sydney, Cape Breton, passing through the counties of Halifax, Colchester, Pictou, Sydney, Inverness, Richmond and Cape Breton.

Road from Truro to frontier of New Brunswick.  
Eastern shore road.

Second. The great road north, from Truro to the frontier of New Brunswick.

New Guysboro' road.

Third. The eastern shore road, from Dartmouth to Ship Harbor.

Southern shore road.

Fourth. The new Guysboro' road from the point of intersection with great eastern road at Pollock's to dividing line between the counties of Halifax and Guysboro'.

Great western road.

Fifth. The southern shore road from head of North West Arm to dividing line between the counties of Halifax and Lunenburg.

To be divided into sections, and supervisors appointed for each.

Sixth. The great western road, from the city of Halifax to Avon bridge in the county of Hants.

Supervisors—their authority.

10. It shall be lawful for the governor in council to lay off the great roads herein mentioned in convenient sections, not exceeding one hundred miles, and to appoint one supervisor for each of the sections so laid off and determined.

To expend money.

11. Such supervisors when duly commissioned and appointed, shall have the general charge and superintendence of the sections of great road which shall be respectively entrusted to their care.

12. The supervisors shall be entrusted with the expenditure of whatever sums are annually voted by the legislature

for the maintenance, repair, and improvement of such great roads, the power of the legislature to subdivide and apportion the great road monies not being impaired by this chapter.

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Apportionment of road monies, by legislature, not impaired.

13. In the expenditure of such monies, and in the mode of accounting for the same, (except in so far as the law may be varied by any order in council which may be hereafter made and promulgated,) the supervisors shall be guided and bound by the laws of this province, and (except when restrained by any order in council) shall possess and exercise all the powers now by law possessed and exercised by commissioners of highways.

Mode of expenditure.

14. It shall be the duty of such supervisors to furnish annual reports of the state, condition, and requirements of the sections of roads committed to their charge, with suggestions for their improvement, and detailed estimates of the probable cost of the alterations and improvements so suggested.

Supervisors to furnish reports.

15. It shall be lawful for the governor in council to issue, from time to time, such orders and instructions to the supervisors, as may seem meet, such orders and instructions to be laid before the legislature within ten days of the opening of the next session, and to have the force of law until the same shall be disapproved.

To be governed by orders from governor in council, such orders to be approved by legislature.

16. The rate of remuneration to the supervisors to be appointed under this act, shall in no case exceed the amount of commissions which is now by law given to commissioners of roads, except where surveys of new and important sections of roads are made, and then they shall be entitled to charge at the same rate as is now paid to surveyors for the like service.

Supervisors—how remunerated.

17. All road work shall be done by tender and contract, except where the expenditure of the money by days' work may be more advantageous to the public, and so testified to by the supervisor.

Road work—contract and day's labor.

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## CHAPTER 62.

### OF LAYING OUT ROADS OTHER THAN CERTAIN GREAT ROADS.

1. The provisions of this chapter shall be applicable to roads other than those mentioned in the last chapter.

Roads to which this chapter applies.

2. Twenty or more freeholders of the county may petition the sessions for the making of a new road or alteration of an old one, and the sessions, if satisfied of the propriety thereof, shall order a precept to be directed to three disinterested freeholders resident within the county, directing them within a convenient time to examine into the propriety

Mode of laying out new, or altering old roads.

CHAP. 62. of the desired new road or alteration; and if they shall be satisfied thereof, then to lay out and mark the same in the way most advantageous to the public and least prejudicial to the proprietors of lands through which the road may pass, and the freeholders, if satisfied of its propriety, shall ascertain the length of the new road or alteration, and taking into consideration the distance which it may run through the lands of different parties, and the nature of the soil and the improvements, and the fencing which will be rendered necessary, shall make an appraisement of the damages to be paid to each person through whose lands the road will run, specifying separately the damage to soil, and for improvements, and for fencing, and shall make return of their proceedings to the clerk of the peace, who shall file the same and forthwith post notices, containing the substance of such return, in at least six places of public resort in the county, and also near the contemplated new road or alteration, for the space of thirty days previous to the next sessions.

Sessions to confirm or disallow proceedings.

3. At the next sessions the proceedings shall be considered, and objections, if any, heard thereto; and the sessions shall confirm or disallow the proceedings, and, if confirmed, they shall be recorded.

Special sessions may act where general sessions sit only once a year.

4. In counties where there shall be only one general sessions in the year, a special sessions shall have all the powers of a general sessions, subject to the like approval.

Appeal from the decisions of sessions.

5. Any person who may have objected to the proceedings, may appeal from the decision of the sessions, in which case a precept shall be by the clerk of the peace directed to the sheriff or his deputy, who shall thereupon summon and swear a jury out of the adjoining townships, who shall lay out the road or alteration, and make an appraisement in manner hereinbefore prescribed; and the sheriff, or his deputy, shall return the same under his hand, and the hands of the jurors, to the then next sessions, when the same shall be confirmed and recorded; but no appeal shall be allowed until the appellant shall give bond to her majesty, with two sureties in a sum to be ordered by the sessions, upon condition that if the jury who may be summoned to lay out or alter the road shall confirm the return of the freeholders, or shall not give greater damages to the appellant by one-sixth more than was allowed by the return of the freeholders, into all which the jury are hereby empowered to inquire, then the appellant shall pay the expenses consequent on the appeal, to be taxed by the sessions.

Fines for non attendance of jurymen.

6. If a juror shall not attend and perform the duties required by this chapter when summoned, he shall forfeit twenty shillings.

Value of old roads may be allowed in appraisement.

7. The freeholders in making their appraisement in case of alteration of a road, may apportion the old road or parts thereof to proprietors of land through which the alteration

runs, and put a value thereon as compensation in whole or in part for the land taken for the alteration, and shall include the same in their return; but the land so apportioned must run through or adjoin the land of the proprietor to whom it is apportioned.

8. When the proceedings shall be finally confirmed the land apportioned under the last section shall become the absolute property in fee of the person to whom the same shall have been allotted, but it shall not be shut up or the public excluded from the free use thereof until closed by order of sessions, under the law in reference to the closing of old roads.

Old road to be shut up only by order of sessions

9. The damages appraised and expenses incurred shall form a county charge.

Damages and expenses to be a county charge.

10. The roads hereinbefore referred to shall be laid out sixty-six feet in width.

Width of roads.

11. The freeholders appointed under this chapter to lay out any new road, or alter any old one, may lay out the same of a less width than sixty-six feet, as prescribed by the last section, but not of a less width than fifty feet, if they shall consider such less width sufficient for the public convenience; and the sessions may confirm or disallow the same.

New road, &c., width of.

12. In case of confirmation, the proprietors of the land shall be entitled to receive compensation for fencing, on making oath that the fence has been put up at least half the full width of the road from the centre thereof, as so laid out; such oath being in other respects conformable to section sixteen of this chapter.

Compensation to proprietors, when made.

13. Where roads have been, or shall hereafter be, altered without any demand for compensation made by proprietors of land through which the new road runs, and for which no compensation shall have been afterwards made, such acquiescence on the part of the proprietors shall be held a voluntary surrender to her majesty forever, for a public highway, of all the land through which the new road passes to the breadth of sixty-six feet.

Sites of roads, when held as surrendered.

14. The sessions upon application, may order two surveyors of highways to lay out a private way, either open or pent, and the surveyor may agree with the proprietors of land through which the same runs as to the damages, or otherwise the sessions shall direct a jury to be summoned, who shall appraise the damages in manner hereinbefore prescribed; the amount of damages in either case, with the expenses incurred shall be included in the next poor-rate of the place where the road runs, and when collected shall be paid to the clerk of the peace for the parties entitled thereto.

Open and pent roads, how laid out.

15. The sessions may direct gates and bars to be placed on private ways, and make regulations respecting the placing and keeping thereof; and persons guilty of a breach

Gates and bars on private ways by order of sessions.

**CHAP. 62.** of the regulations shall for every offence forfeit not less than five nor more than forty shillings.

Fences to be made before compensation.

16. No compensation for fencing shall be made under this chapter until the proprietor of the land shall have made oath before a justice that the fence has been put up in a proper manner and at least thirty-three feet from the centre of the road, and encloses, in whole or in part, some of his lands, and that the same shall not be removed with his assent.

Public landing, making of.

17. A public landing upon the shore of any navigable water, may be established or altered by the same means, and in the same way as a new road may be made or an old one altered, under this chapter; and in so far as the same may be applicable, the provisions of this chapter shall extend to such landings, and to roads connecting the same with the queen's highway.

Land included, what quantity.

18. Any public landing laid off or established under this chapter may include so much land as, in the opinion of the committee may be sufficient for the purposes of such landing, not to exceed in all one acre.

And whereas it is expedient that engagements in aid of public roads, and other undertakings should be enforced:

Persons subscribing for money, &c., in aid of public undertakings to be held legally liable.

19. Whenever any subscription shall be opened and made in aid of the erection of any road, bridge, place of worship, school house, or for any other undertaking of public utility, or which may be designated in the subscription list as, or appears to be, a public undertaking, and such undertaking shall be commenced, every person who may have engaged by written subscription, to contribute money, labor or other aid towards the undertaking, shall be held legally liable, and bound to perform his engagements, notwithstanding any apparant want of consideration in the agreement for the same.

Subscriptions—how recoverable

20. In case of public grants made in aid of such undertaking, the commissioner or other person appointed to expend such grant, or where no public grant shall be made, then the person to whom the performance or superintendence of such undertaking may have been entrusted, or the person who may himself have engaged in, and be then carrying on such undertaking, may require all persons who may have so subscribed to perform their engagements; and in case any subscriber shall, after a written notice of at least one month, refuse or neglect so to do, he may be sued by such commissioner or other person hereinbefore mentioned, or the person to whom such subscription may be payable, as if such subscription were a private debt of the like amount; but nothing in this chapter shall be construed to bind or make liable the estate of the executors or administrators of any subscriber, unless they shall be specially named in the instrument subscribed by him.



21. All monies or other aid so subscribed and recovered, shall be applied and expended for the purpose for which the same shall have been so subscribed, and for no other purpose whatever; but nothing in this chapter shall apply to any subscription made or entered into before the thirty-first day of March one thousand eight hundred and fifty-three.

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Monies—application of.

Operation—not retrospective.

## CHAPTER 63.

### OF SURVEYORS OF HIGHWAYS AND HIGHWAY LABOR, EXCEPT IN HALIFAX.

1. The provisions of this chapter shall not extend to the city of Halifax.

City of Halifax excepted throughout this chapter.

2. The districts as now established for the performance of statute labor on the roads are confirmed.

Road districts as established confirmed.

3. The sessions may erect new districts, or alter the limits of those established.

Districts, how altered; new ones how established,

4. Persons over sixteen and under sixty years of age, being able to do a reasonable day's work for themselves, or being freeholders able to pay the commutation, or hire the labor in this chapter prescribed, without injury to their families, and not being military persons, or holding commissions from her majesty in the military or civil department of the army, nor clergymen, nor ordained ministers, nor teachers of academies or grammar schools, nor licensed schoolmasters, shall annually perform upon the highways the number of days labor following, by themselves or sufficient substitutes to be approved by the surveyor of highways or commissioners of streets, and provided with the tools by him or them directed, viz:

Persons liable to perform statute labor, and the amount.

Every person above twenty-one years and under sixty years of age being a householder and the owner or possessor of real or personal estate, and not being a hired servant, journeyman or day laborer, nor residing with his parents, shall perform six days' labor.

Every person above twenty one years of age, being a hired servant, journeyman or day laborer, shall perform two days' labor; masters of vessels and hired seamen, not being freeholders to be considered as hired servants.

Every person above twenty-one years of age residing with his parents shall perform three days' labor.

Every person above twenty one, and under sixty years of age, not being a householder, hired servant, journeyman or day laborer, nor residing with his parents, shall perform four days' labor.

Every minor and apprentice, above sixteen and under twenty-one years of age, shall perform two days' labor.

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Labor of horses  
and teams.

5. In addition to the labor in the last section mentioned, every such person over twenty-one and under sixty years of age, owning working oxen, or saddle or draught horses or mules shall perform one day's labor for every working ox, and every saddle or draught horse, or mule; but no person shall be liable to perform more than four days labor, on account of any number of oxen, horses, or mules by him owned.

Oxen pastured.

6. Persons usually owning working oxen, or a working ox, and pasturing the same shall not be relieved from statute labor in respect of such ox or oxen, unless such ox or oxen shall have been out of their possession *bona fide* for two months previously to the time for performing such labor.

Fine for neglect-  
ing to send  
teams, &c.

7. Every such person so owning any such working oxen, draught horses or mules, shall, when required by the surveyor or commissioners, send such oxen or ox or horses or mules, properly yoked and harnessed, to labor upon the highways under a penalty of three shillings and six pence a day for every such pair of oxen, or ox, or horse or mule respectively, and for every pair of oxen and every horse or mule so sent to labor, or the penalty therefor paid, every such person shall be allowed one day's labor.

Persons above  
sixty years  
having teams,  
required to send  
them.

8. Every person above sixty years of age, being a householder and owning working oxen or draught horses or mules, shall, when notified, send to labor upon the roads a pair of oxen or ox, or one draught horse or mule, at the option of the surveyor or commissioners, properly harnessed, for four days, or, at the option of the person, such pair of oxen or ox, or draught horse or mule, with a driver, for two days; and every such person so notified who shall not send the same shall forfeit for every day's omission three shillings and six pence for the pair of oxen or draught horse or mule, and six shillings for the pair of oxen or draught horse or mule with a driver, to be commuted or sued for and recovered in manner as hereinafter directed as respects claims for non-performance of days' labor.

Truck or wag-  
gon to be sent if  
party own such.

9. When any person owning oxen or draught horses or mules, shall be so required to send any such oxen or horses or mules, such person shall also, if required by the surveyor or commissioners, send therewith a cart, truck, or waggon if he shall own one, which the surveyor or commissioners consider fit, and in case of neglect shall forfeit two shillings for every day.

A day's work  
shall be eight  
working hours.

10. A day, when mentioned in this chapter, shall mean eight working hours.

Lists, how made  
out.

11. The surveyors and commissioners shall make out lists of persons liable to perform highway labor, whether by themselves or in respect of owning oxen, horses, or mules, and shall be responsible for the correctness thereof.

Persons, how  
and when sum-  
moned; season  
for repairing

12. The surveyors and commissioners shall cause to be summoned the persons contained in their lists to labor upon the highways at the most seasonable time, between the first

day of June and the first day of September in every year, seed time and harvest excepted, by giving them six days' notice of the time and place where they are to be employed, and of the tools to be brought for such labor; the notice to be given either by the surveyors or commissioners, or by any person by them authorized, and to be left verbally or in writing, with some person of the age of discretion, at the usual place of abode of the party; and at the time and place appointed, the surveyors and commissioners shall attend and oversee the persons so summoned to labor in making and repairing the highways and bridges in the most useful manner during the number of days required by this chapter for each person to labor, and the surveyors and commissioners shall be excused from any other service upon the highways than that of overseeing the persons employed thereon.

13. In the following counties instead of the time prescribed in the last section, the labor shall be performed within the times following in every year, viz: in the counties of Yarmouth, Shelburne, Queen's and Lunenburg, between the fifteenth day of May and the fifteenth day of September; in the county of Cape Breton between the first day of June and the fifteenth day of October, and in the county of Richmond between the first day of May and the fifteenth day of October.

Certain counties excepted, and seasons specified.

14. Every person liable to perform labor under this chapter who has been duly notified but who may have left the district and shall be absent therefrom during the time appointed for the performance of his labor, and shall not have provided a sufficient substitute or paid the commutation therefor as hereinafter prescribed, or shall not adduce satisfactory proof of his having performed or so commuted, or otherwise paid for his statute labor in some other district, shall if he shall return to his usual place of abode within the year, pay three shillings for every day's labor to which he was liable.

Absent persons liable on return.

15. In case a highway shall become obstructed, or a bridge broken down or carried away, or the road rendered impassable by any unforeseen cause except by the falling or drifting of snow, the surveyors of highways or commissioners of streets, under the direction of two justices of the peace, shall notify such persons within the district as may be deemed necessary, to attend immediately either by themselves or with their teams as may be considered advisable to remove the obstructions or make such repairs upon the highway or bridge, as may be by the justices considered absolutely necessary to render the same passable; and every person so attending and laboring shall be allowed for the labor by a reduction of the like number of days from the labor to be by him performed under this chapter either for that or the subsequent year, as the same may occur, before

Obstruction of roads, bridges, &c., from unforeseen causes.

CHAP. 63. or after the time limited for the performance of highway labor in the district, in the same manner and to the same extent as if the labor had been performed at the usual time; and every person duly notified to attend and labor under this section who shall neglect so to do, shall be liable to the same forfeitures as if he had neglected to attend and labor at the regular time, such forfeiture for each day, when paid, to reckon for one day's labor of such person under this chapter.

Commutation  
of labor.

16. If any person liable to perform labor hereunder shall prefer paying money to doing the labor, he may at or before the day on which he shall be notified to attend and labor, pay to the surveyor or commissioners a commutation for the whole labor to be by him performed, but not for any part thereof, at the rate of three shillings for every day's labor, to which he may be liable for the current year; and if any person so offering commutation shall be sued for not performing his labor, on proof of the tender of the commutation, and on the same being paid at or before the trial the plaintiff shall be nonsuited; and the commutation for the labor of an ox, shall be half that of a pair of oxen.

Fines for non-  
attendance.

17. Every person duly notified who shall not labor agreeably to the notice, or tender the commutation therefor as in the last section directed, shall forfeit three shillings for every day's labor to be by him performed.

Relief to poor  
persons.

18. Two justices of the peace for the county may, by a certificate under their hands, relieve any person from a portion of his labor hereunder, if they shall be satisfied from his circumstances and situation in life he is really entitled to such relief.

Persons resi-  
ding on islands

19. No person residing upon an island whereon there are any highways upon which the performance of labor under this chapter may be enforced, shall be obliged to work or furnish any labor hereunder upon the main land, or be liable to any penalty for not so doing, but every person so residing upon an island and liable to perform labor under this chapter, shall perform the same upon some highway or bridge on the island; and where the island shall be connected with the main land by a causeway or bridge, such portion of the labor as may be required to keep the causeway or bridge in repair, or to rebuild the same, shall be performed thereon.

Sessions may  
order labor on  
particular  
roads.

20. The sessions may grant permission in writing to persons to perform their labor upon such roads as they shall direct, and the faithful performance by such persons of the labor as directed by the sessions shall be held to be the performance of their ordinary highway labor under this chapter, but they shall within one week after the performance of the labor, obtain from the surveyor or commissioners for the district, who, if the labor has been faithfully performed, are hereby required to grant the same, a certificate of the due performance thereof; which permission and certificate

shall be a bar to any action brought against any such person for non-performance of his ordinary highway labor under this chapter.

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21. No surveyor shall alter any highway without the consent of two justices of the peace for the county, although the owner of the land required for the alteration may assent thereto.

Highway not to be altered without the consent of two justices.

22. The surveyors and commissioners shall, as often as they shall deem necessary during the winter, order the inhabitants to work with their shovels, horses, oxen and sleds upon the highways, in order that the same may be rendered passable, and every inhabitant not complying with the order shall, for every omission, forfeit five shillings; but no person shall be obliged to furnish more than one day's labor of himself and team for any one fall of snow, or work in any case when the fall or drift of snow shall not exceed twelve inches in depth.

Winter labor.

23. Every surveyor shall, annually, on or before the first day of the sessions which shall happen next after the time herein limited for the performance of highway labor, make a true and faithful return in writing, under his hand, to the clerk of the peace, of the labor performed under his directions, designating the names of the persons and the labor performed by each, and shewing the commutations and fines by him received and the expenditure thereof, and the amount of monies then in his hands, and which latter he shall at the same time pay over to the clerk of the peace, to be expended under the direction of the sessions upon the roads.

Returns of surveyor, how made.

24. Two justices of the peace for the county, on a statement under oath (see appendix A) of persons applying for remission of statute labor, may, by a certificate endorsed on such statement, (see appendix B) remit such part of the statute labor as, in their opinion, the applicant may be entitled to; and such statement so endorsed, shall be returned by the surveyor to the clerk of the peace and be by him laid before the sessions.

Remission of statute labor.

25. Absent persons shall be notified after the return required by section fourteen.

Notification of absent persons.

26. Each surveyor of highways, after six days' attendance, shall be entitled to retain four shillings per day out of any statute labor money he may have in his hands, or be credited therefor the following year.

Surveyors of highways, payment of.

27. Each surveyor who shall, by neglect or misconduct, cause the loss of any statute labor, shall be liable to pay double the amount of such statute labor, to be recovered as debts of that amount are now recoverable; such amount to be proceeded for within two years, and when recovered to be applied as follows:—one-half for the roads within the county or district, and one-half to the prosecutor.

Loss of statute labor through neglect, penalty for.

28. All fines and forfeitures incurred by minors under this chapter may be recovered from the parents, masters, or

Recovery of fines.

CHAP. 64. guardians of such minors, with whom such minors reside, or who have a right to receive their wages, in the manner provided in the next section.

Fines, how recovered and appropriated.

29. Forfeitures, except under the fourth and fifth sections of this chapter, shall be sued for and recovered by the surveyor or commissioners by their name of office, as surveyor of highways or commissioners of streets for the place for which they have been appointed, or in the individual names of them, or any of them, or by and in the name of any person who will sue therefor, and in any case in the same manner and with the like costs as if they were private debts; and, when recovered, shall be applied by the surveyor or commissioners to the repair of the highways.

#### APPENDIX.

##### A.

I, A. B., do swear that I am of the age of \_\_\_\_\_ years, [*here insert with or without a family,*] am sick or infirm—own real estate of the value of \_\_\_\_\_, and personal estate of the value of \_\_\_\_\_. So help me God.

##### B.

We, \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_ justices of the peace for \_\_\_\_\_, hereby authorize the remittal of \_\_\_\_\_ days' statute labor to the within named \_\_\_\_\_.

## CHAPTER 64.

### OF COMMISSIONERS OF STREETS.

Jurisdiction of commissioners defined.

1. The jurisdiction of the commissioners shall be confined to the limits following, that is to say:

#### FOR MAITLAND.

From Richard Anthony's east line to the Five Mile River, and along the Kennetcook road to Rocky brook.

#### FOR WINDSOR.

To such parts of the town as extend from Smith's island to the northward and eastward as far as the bridge over the Trecothick creek, on the main road leading out of the town of Windsor, as far as the church, and on the southward and westward to Falmouth ferry.

## FOR BRIDGETOWN.

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Within the bounds following, that is to say: beginning at the western boundary line of the late William Ruffee, one half a mile to the northward of the Granville main road as now situate, thence westwardly until it meets the eastern boundary line of the late Henry Troop, thence southwardly until it meets the Annapolis river, thence by the course of the river to the western line of William Ruffee, thence northwardly the course of that line to the bound first mentioned.

## FOR ANNAPOLIS ROYAL.

To such parts of the town as extend eastwardly to the intersection of the main road to Halifax, by the old road leading to the Dalhousie settlement, southwardly to the General's bridge, westwardly to Allen's creek, and northwardly to Hog Island, including the same.

## FOR DIGBY.

To all the roads and streets which are comprehended within a circuit of two miles extending from the court house in the town of Digby in every direction.

## FOR LIVERPOOL.

To such parts thereof as extend from Fort Point by the western side of Liverpool harbor to the bridge crossing the main road leading to the falls near More's tan-yard, thence south-west one mile, thence south-east one mile, thence north-east until it strikes the harbor of Liverpool, and thence by the harbor to Fort Point.

## FOR MILTON.

Beginning on the eastern side of Liverpool river at a bridge called Salmon Island Bridge, thence running at right angles to the river eastwardly half a mile, thence northwardly parallel to the river until it comes opposite to Thomas Etherington's house, thence running one mile and a quarter on a course about north forty-five degrees west, in the direction of and past the house of Joseph Ford, jnr., including such house, thence southwardly parallel to the river until it comes opposite to the residence of Freeman Tupper inclusive, thence to the river, thence down the river to Salmon River bridge.

## FOR PORT MEDWAY.

From the Western Head to South West Cove, and extending back from the river one mile.

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## FOR LUNENBURG.

Within such parts of the town as extend eastward to the southwest angle of the garden lots nearest to the town, west to the road leading to Burn's tan-yard, and north to the bridge in the rear of the town.

## FOR CHESTER.

To the town plot.

## FOR DARTMOUTH.

Within the distance of one mile, measured in a southwardly, eastwardly and northwardly direction, from the public landing or steamboat company's wharf.

## FOR PICTOU.

On the west, by the west side of the Town Gut, on the east, by the west side line of the farm lately occupied by the late David Lowden, on the south by the harbor of Pictou; and on the north, to the rear line of the original lots laid out and fronting the harbor.

## FOR NEW GLASGOW.

To such part as is comprehended within the bounds following, that is to say:—To be bounded on the south by a line running on the south line of the property of the widow of Alexander Fraser, deceased, and extending eastwardly and westwardly to the east and west lines and boundaries hereinafter mentioned; on the north by a line running on the north line of the property of John Rose, and extending eastwardly and westwardly as hereinbefore mentioned; on the east by a line running on the front line of Edward Graham's house, and extending northwardly and southwardly to the north and south lines hereinbefore mentioned, in a parallel course with the river; and on the west by the road leading from the Albion mines to the point.

## FOR GUYSBOROUGH.

To the town plot.

## FOR SYDNEY.

To the peninsula of Sydney, extending to the southward and eastward to Fresh Water River Creek, the old Saint Peter's road, and thence in an eastwardly direction to Copitt's mill brook, and thence to be bounded by the brook until it meets the waters of Malony's creek.

## FOR TRURO.

To the village of Truro, in the county of Colchester, within the following limits: bounded north by the line be-



tween Truro and Onslow; west by a line at right angles thereto, passing by the presbyterian meeting house, so as to include the road from the presbyterian meeting house to the board landing; south by a line parallel with the first line, and to run one mile south of the court house, and east by a line parallel with the west line, and to run along the east line of the lane called David Fulton's lane, so as to include William Eaton's lane—the east boundary line to extend northwardly the corner of said lane to the Onslow town line.

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FOR NEW CALEDONIA.

From Jacob Sturk's west line, west to William M. Weather-  
spoon's west line, bounded south by the Annapolis river,  
and running north half a mile from the main road.

2. The subsequent provisions of this chapter shall extend to the city of Halifax, and the commissioners of streets therein, unless where specifically excepted.

Sections applicable to the city of Halifax.

3. The commissioners shall appoint a clerk and receiver of moneys, and subdivide their districts and assign a part to each commissioner.

Clerk and receiver appointed; subdivision of districts.

4. The commissioners shall remove all incumbrances upon the streets, prevent encroachments thereon, make repairs, alterations and improvements therein as required; open and make new streets when authorized, make and repair bridges, and cause to be observed the laws touching the streets and bridges, or the work to be performed thereon: and especially shall call out, sue for, levy and receive from the inhabitants liable to perform highway labor, the monies, services, highway work and penalties, and composition therefor, due, payable, or to be performed by them; and shall prosecute for offences committed against the laws relating to highways, and sue persons holding monies appropriated to the repair of the streets, or not paying any penalty appropriated thereto.

Duties of commissioners.

5. The commissioners shall keep an exact account of monies received by them, and services performed under their direction; and shall, under a penalty of five pounds, annually on or before the first day of the sessions which shall happen first after the time limited for the performance of statute labor, render under their hands to the clerk of the peace, to be laid before the sessions, a general, regular, and fair account in writing of all monies received and paid by them as commissioners for the past year, to the end that the same may be audited and passed by the sessions. This section not to extend to the city of Halifax.

Accounts of commissioners.

6. The commissioners shall from time to time cause the streets within their divisions to be cleared, repaired, raised, sunk, altered or paved, as they may deem proper, and may also cause to be dug and carried out of or brought into the

Further duties of commissioners.

**CHAP. 64.** streets, materials from the shores of the harbors, doing as little injury as possible in any case to the proprietors of the soil, and may employ and pay boatmen, carts and laborers, as they may judge conducive to the accomplishing the designs of this chapter; and may also make contracts for the repairing and paving of the streets; and may compound with persons by the year for such sum in advance as they may deem reasonable for the proportion of highway labor or payments to which such persons may be liable; and may put up bars and fences to shut up streets while undergoing repairs; and may raise, sink, alter, or new lay, drains, water-courses, pipes and sewers, as they may think proper, causing as little detriment to individuals as the case will admit of; and may cause the course of gutters, water-courses or channels, running in or through the streets, to be altered as they shall think proper.

Fine for neglecting to keep gutters and streets in front of premises clean.

7. Persons residing within the foregoing limits respectively, shall keep the gutters and streets before the houses, buildings, or land inhabited or occupied by them, free from dirt, filth, and nuisance of every kind; and whenever any incumbrance or nuisance shall be found in any of the streets, the person before or nearest whose house, building, or land the same shall be, shall forfeit twenty shillings, and also pay the expense of removing the same; and any commissioner may cause the removal thereof without giving notice to the owner, or being in any way answerable therefor; but no person shall be liable to this penalty unless he shall have placed the nuisance or incumbrance in the street where found, or not having so placed it shall suffer the same to continue twenty-four hours.

Persons building may occupy streets for placing materials.

8. Persons by leave of the commissioners may place in the streets materials for building, and erect posts, bars, or enclosures for securing such materials, and continue the same for such time as the commissioners may give leave, and in manner as they shall direct, and not longer or otherwise on pain of forfeiture.

Wells and pumps, how provided.

9. The commissioners may cause wells to be dug, and pumps to be placed therein, in the streets where they shall judge necessary and convenient, in manner as they shall direct.

Nuisances and encroachments liable to removal.

10. The commissioners shall cause all things belonging to any building or cellar, or to any ground or enclosure thereof, which may occasion any nuisance, encroachment, or annoyance in any street, to be removed or altered in manner approved by them or their surveyor; or, if it can be done without particular inconvenience to the public, may suffer the same to remain, upon the proprietor giving security that it shall not be repaired or rebuilt, and also paying to the commissioners a reasonable annual ground rent for the part of the street encroached on during the continuance of the encroachment.

11. Persons intending to build upon, or close to, the line of a street, shall, before digging a foundation or beginning the building, apply to the commissioners to cause the line of the street to be defined and laid out, and shall defray the expense of a surveyor, if necessary to employ one, and shall dig the foundation and erect the building within the line, avoiding any encroachment; and if any person shall erect a building upon the line of the street without making such application, and having the line so ascertained, he shall forfeit ten pounds, and shall also remove the encroachment, or otherwise the commissioners may remove the same, or take the steps by law allowed in cases of common nuisances.

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Line of streets, how protected in case of new buildings.

12. When the commissioners shall have proceeded to ascertain the line of the street on the application of any person about to build thereon, and he shall be dissatisfied with the line pointed out by the commissioners, a judge of the supreme court shall, upon application of either party, issue a precept to the sheriff or his deputy, to summon a jury of twelve disinterested freeholders to meet at some convenient day therein mentioned, to view and lay out the line; and the jury shall have an oath administered to them by the sheriff or his deputy, well and truly to lay out and establish the line of the street according to their best judgment, and the witnesses tendered shall be sworn by the sheriff or his deputy; and if the jurors or either party require it, a new survey of the line shall be made, and the sheriff or his deputy shall make a return forthwith under the hands of himself and the jurors, to the judge, who, if he shall approve thereof, shall confirm the return, and the same shall be filed in the office of the clerk of the peace; but if the judge shall not approve of the return, a new precept shall be issued and further proceedings had thereon in manner prescribed as to the first precept, and so on until a return be confirmed; and the judge shall direct how and by whom the expenses of the proceedings shall be paid, and the same shall be taxed by the judge and shall not exceed ten pounds.

Lines settled by jury in case of dispute; return, how confirmed.

13. No person shall break up the soil of a street without first making application to the commissioners in writing, specifying the purpose for which such breaking up is required, and obtaining their permission therefor in writing; and the commissioners may impose such terms upon the person applying as the security of passengers shall appear to them to require; and any person acting contrary to this section or to terms imposed by the commissioners, shall for every offence forfeit five pounds.

Soil of streets to be broken only by permission in writing; fine for offences.

14. Every person who shall drive any carriage or ride over a side path, or roll or place heavy articles over or on the same to the injury or obstruction of the side path, shall for every offence forfeit not less than five nor more than forty shillings.

Fine for driving or riding on side path.

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Duties on licenses appropriated in part to repair of streets.

Annapolis river bridge under charge of commissioners.

Sessions may set off districts.

Appointment of commissioners.

Vacancies, how filled.

Bridges over rivers, &c., dividing townships, &c.

Provisions of this chapter to apply to commissioners.

Not to apply to city of Halifax.

Vacancies how filled up.

Powers of commissioners.

Money and fines, how recovered and applied.

15. The county treasurer shall pay to the commissioners out of the county treasury, quarterly, three-fifth parts of the monies arising from duties on licensed houses and shops within their jurisdiction, to be applied by the commissioners to the repair of the streets or the purposes of this chapter.

16. The whole of the bridge over the Annapolis river at Bridgetown shall continue under the charge of the commissioners there, whose duty it shall be to see to the proper keeping and repair thereof; and they shall take such measures for preventing injury to the bridge and for bringing to punishment persons guilty of wilfully injuring the same as to them may appear expedient.

17. The court of general sessions are hereby empowered to set off, by limits, districts within their counties, and to declare what number of commissioners of streets shall be appointed for each district, in manner following: the grand jury shall recommend double the number being residents in such districts, of whom the sessions shall select one-half, one of whom shall annually retire in the order in which his name stands on the recommendation list handed in by the grand jury, and upon such retirement, two other residents shall be recommended in like manner, one of whom shall be selected by the sessions to supply the vacancy created by such retirement, and in case of the death, continued absence, or refusal to serve, of any such commissioners, a special sessions may fill up such vacancy, subject to the confirmation of the grand jury and the general sessions, at their next meeting; and any person appointed under this section, who, after notice of such appointment, shall refuse or neglect to be sworn into office, shall forfeit and pay a fine of two pounds.

18. The sessions, in setting off districts, may include within their limits any bridge now or hereafter to be built over any brook, stream or river, dividing any districts or townships, and may place such bridge, or any part thereof, under the charge of the commissioners having supervision within such districts.

19. Upon being sworn to the faithful discharge of their duty, all the provisions of this chapter shall apply to the commissioners to be appointed under the seventeenth section.

20. Sections fifteen and seventeen shall not apply to the city of Halifax.

21. When vacancies of commissioners shall occur in the several districts or villages in the first section named, they shall be filled up and supplied under the seventeenth section.

22. The commissioners shall have all the powers by law vested in the surveyors of highways, and no surveyors of highways shall have any powers within their jurisdiction.

23. Monies and forfeitures payable under the foregoing sections may be sued for and recovered by the commis-

sioners in their name of office as commissioners of streets for the place for which they have been appointed, or in the individual names of them or any of them, in the same manner and with the like costs as if they were private debts, and when recovered shall be applied by the commissioners to the repair of the streets, or other the purposes of this chapter. CHAP. 65.

24. No action shall be commenced against the commissioners or persons acting under them until twenty days' notice in writing shall be given to one or more of the commissioners, nor after six months next after the act committed for which the action shall be brought, and every such action shall be laid and tried in the county within which the commissioners have jurisdiction. Notice of action against commissioners; limitation.

25. The word "commissioners," when used in this chapter, shall include the commissioners of streets, or the major part of them within their respective jurisdictions, unless otherwise expressed or repugnant to the sense; and the word "streets," shall include highways, lanes and bridges. Definition of terms.

## CHAPTER 65.

### OF HIGHWAY LABOR IN THE CITY OF HALIFAX.

1. Every person within the city of Halifax keeping a cart, team or truck, shall at the time notified by the commissioners of streets, send one cart, team, or truck, with two oxen or two horses, or with one horse, if he shall own no more, and one able bodied man to drive the same, to labor on the streets of the city, for four days in every year; and if he shall not attend and labor, he shall, for every day's omission forfeit, if owning two or more horses, ten shillings, and if owning only one horse, seven shillings. Labor of teams, &c., in Halifax.

2. Every hired servant, minor, apprentice, journeyman, and day laborer shall, at the time notified by the commissioners, and provided with the necessary tools directed by the commissioners, work for two days. Persons liable to labor two days.

3. Every other person able of body between the ages of sixteen and sixty, shall at the time notified by the commissioners, and provided with the necessary tools directed by the commissioners, work for six days in every year. Persons liable to labor six days.

4. The following persons are exempt from the provisions of this chapter:—Military persons, and persons holding commissions from her majesty in the civil or military departments of the army: teachers of academies or grammar schools, and licensed schoolmasters; the officers, clerks, List of persons exempted.

CHAP. 65. and persons employed and borne on the books of her majesty's ordnance department, naval yard, victualling establishment, and naval hospital establishment, in Halifax. This latter class of exemptions not to extend to more than forty persons in all, whose names shall be from time to time furnished by the heads of the departments to the city clerk.

Persons over sixty years liable for team labor. 5. Persons within the city keeping carts, teams, or trucks, who being sixty years old or upwards are exempt from labor under the foregoing provisions, shall, nevertheless, when summoned so to do, send their carts, teams, or trucks, to labor four days.

A day's work in Halifax to be ten working hours. 6. A day's labor, when mentioned in this chapter, shall mean ten working hours, and the labor shall be performed by the person liable, either by himself or his hired yearly or monthly servant, to be approved of by the overseer.

Winter labor. 7. The commissioners shall, as often as they deem necessary during the winter, order the inhabitants to work with their horses, oxen, and sleds, on the streets, in order that the same may be rendered passable; and every inhabitant not complying with the order shall, for every omission, forfeit ten shillings, but no person shall be compelled to furnish more than one day's labor of himself and team for any one fall of snow, or to work in any case where the fall or drift of snow shall not exceed twelve inches in depth.

Substitution of men for teams. 8. When the commissioners shall deem the labor of men more useful than the employment of carts, teams, or trucks, then the persons by this chapter required to furnish carts, teams or trucks, shall, instead thereof, be required under the like penalties to send two men provided with the necessary tools, and to labor for the time hereinbefore prescribed.

Extra liability where more than two horses kept. 9. Every person resident in the city, and keeping carts or trucks with more than two horses, shall, besides the performance of labor hereinbefore prescribed, pay for the additional horses over two the following sums annually, viz: for a third horse seven shillings, and for a fourth and every other horse five shillings each.

Horses not employed with trucks or carts, how rated. 10. Every person resident in the city who may keep horses not employed with trucks or carts, or for which he may not be subject to the labor or payments hereinbefore provided, shall pay for such horses annually, as follows, viz: for one horse seven shillings, for each additional horse five shillings.

Fine for neglect to labor. 11. Persons not performing the labor on the streets under this chapter, when summoned six days previously by a notice in writing from the commissioners, or any person acting under them, and delivered personally or at the usual place of abode of the party, shall forfeit for each day's labor to which he may be liable three shillings.

How recovered and applied. 12. Monies and forfeitures under this chapter shall be recovered in the name of the city in the same manner and

with the like costs as private debts, and the proceeds shall belong to the general funds of the city. CHAP. 66.

## CHAPTER 66.

### OF THE EXPENDITURE OF MONIES ON THE ROADS.

1. The governor in council shall annually before the fifteenth day of May, and thereafter in cases of necessity, appoint commissioners for superintending the expenditure of monies granted for the making and repairing of roads and bridges, and may remove them at pleasure and appoint others in their place; and the provincial secretary shall furnish the receiver general with a list of the names of the commissioners and the sums to be by them expended, and shall give the receiver general notice of alterations made in the commissions, and shall, within twenty days after the appointments, have the commissions and the bonds to be entered into by the commissioners, where required, transmitted ready for execution. Commissioners,  
how appointed.

2. The commissioners, when the amount to be expended shall exceed twenty pounds, shall, before entering upon the duties of office, give security by bond, with two sureties to the satisfaction of two justices of the peace for the county in double the amount of the sum to be by them expended, faithfully to lay out and account for the money according to law; and the justices shall certify their approbation and the sufficiency of the sureties upon the back of the bond. Commissioners'  
bonds where  
sums over twenty  
pounds.

3. The receiver general shall retain in his hands, where the amount shall not exceed twenty pounds, the whole, and in other cases two-thirds of the amount to be expended, until the whole sum shall have been duly laid out. Sums under  
twenty pounds  
not to be drawn  
till expended;  
over that am't  
one-third only.

4. The monies shall be expended by tender and contract, unless it shall appear to the commissioner that the same or parts thereof cannot be so advantageously expended in that manner as by day's work, in which case the monies or parts thereof required may be expended by day's work; but the commissioner who shall expend any monies by day's work shall render an account thereof in writing, under oath, to the receiver general, the oath to be administered by a justice of the peace, without fee, and to be, as near as may be, as follows:

"I, A. B., do swear that the annexed [*or foregoing account*] is just and true, and that the monies by me expended have been fairly and honestly applied for the purposes for which they were granted; that I procured the best labor in my power to procure, and at the lowest rate of wages, and that

Money how to  
be expended;  
accounts, form  
of oath, &c.

CHAP. 66. the day's work charged in the account has been, in my opinion, more advantageous to the public than if the expenditure of the sum had been made by tender and contract.

(Signed) A. B., commissioner.

Sworn to at ———, this ——— day of ———, 18—, before me. (Signed) C. D., J. P."

Contracts how to be entered into, and when to be fulfilled.

5. Before entering into any contract, the commissioner shall give notice thereof by advertisement posted up for ten days previously in the places usual for public notices in the county, and he shall receive sufficient security from the contractor for the performance of the contract within the time specified; and he shall, where the whole amount to be expended exceeds twenty pounds, pay the contractor as the work shall be proceeded in, monies on account, until one third of the amount of the contract shall have been paid; but shall not pay the remaining two-thirds until the work shall be completed agreeably to contract. Contracts shall be made to expire on or before the last day of September in the year in which they are entered into, except those for the opening of new roads and the improving such as have not been used for wheel carriages, and for erecting bridges which may be extended until the thirty-first day of October, and the contracts shall be as near as may be in the words following, and shall be binding on the parties thereto:

Form.

"Articles of agreement made this ——— day of ———, one thousand eight hundred and ———, between A. B., commissioner of ——— of the one part, and C. D. of ———, and E. F. and G. H. of ———, as sureties of the said C. D. of the other part, as follows, viz: the said C. D., E. F. and G. H. agree with the said A. B. that the said C. D. will, on or before the ——— day of ——— next, in a good and workmanlike manner, well and sufficiently ———, to the satisfaction of the said A. B.; and the said A. B. agrees with the said C. D. that he, the said A. B., will pay unto the said C. D. the sum of ———, in manner following, that is to say: one-third thereof from time to time as the work shall be proceeded in, and the remaining two-thirds when the work shall be completed according to this contract."

Contracts in cases under twenty pounds.

6. Where the sum to be expended on any particular work shall not exceed twenty pounds, it shall not be imperative on the commissioner to require the contractor to enter into the formal contract hereinbefore prescribed, but it shall be sufficient to make a memorandum in writing, which shall be binding upon the contractor and his surety, for the due performance of the contract, and upon the commissioner for the payment of the monies agreed on. And the memorandum shall be, as near as may be, in the words following:

Form.

A. B. of ——— hereby agrees with C. D. of ——— to perform the following work, viz: ——— and to complete the same in a good and workmanlike manner, on or before the ——— day of ——— next. For the due performance



whereof E. F. of \_\_\_\_\_ hereby becomes surety for the said A. B. And the said C. D. as commissioner for the performance of the work, hereby agrees with the said A. B. on the due performance of his contract, to the satisfaction of the said C. D. to pay him the sum of \_\_\_\_\_ therefor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

(Signed)

A. B.

C. D.

E. F.

7. Commissioners expending any monies by contract, shall make return under oath to the provincial secretary's office, stating the amount of the different contracts entered into by them,—the oath to be administered by a justice of the peace, without fee, and to be, as near as may be, as follows :

Return of commissioner in cases of monies expended by contract.

"I, A. B., do swear that the contract referred to in the annexed [*or foregoing*] account, has been faithfully executed, and the money voted for the work has been laid out properly, and to my entire satisfaction.

Oath.

(Signed)

A. B.

Sworn to at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18—, before me.

(Signed)

C. D., J. P."

And they shall also make return of the contracts, or copies thereof, when exceeding ten pounds.

8. If two justices of the peace for the county shall certify to the governor that the work upon any road or bridge hath not been faithfully performed, or that any contract hath not been faithfully executed, the commissioner shall not draw the money entrusted to him to expend, or the remaining two-thirds thereof, as the case may be; but the general sessions for the county, or a special sessions to be called for the purpose, shall inquire into the expenditure of the money, the performance of the labor, and the execution of the contract, where one has been entered into, notwithstanding the same may have been performed to the satisfaction of the commissioner, and shall certify to the governor the particulars of the expenditure, and the sum which, in their judgment, ought to be paid to the commissioner, which sum only the commissioner shall receive from the treasury.

Two justices may certify where work is not faithfully performed; proceedings thereupon.

9. Where it may be necessary or expedient to procure materials for the repair of the roads, the commissioner, if from the absence or obstinacy of the owner or possessor of the soil, no agreement can be made with him, may enter with workmen, carts, carriages and horses, upon any lands, and therefrom, for the repair of the road, dig up and carry away stones and gravel, and cut down and carry away trees, brushes, logs, poles and brush wood; and the damage done thereby shall be appraised by three indifferent freeholders, nominated by the nearest justice of the peace for the purpose; and the sum appraised shall be paid by the commis-

Materials how provided where the owner of the soil is absent or obstinate.

**CHAP. 66.** sioners to the owner of the soil, if demanded, within three months after.

Number of laborers under one commissioner; wages, how paid.

Foreman may be appointed.

Commissioners' per centage and pay; pay of men and teams; working hours.

When employed on breakwaters, &c.

Encroachments and incumbrances, how provided against.

10. There shall not be employed in any one day more than forty laborers to work under one commissioner, and the wages of laborers shall be paid in cash only.

11. For every ten laborers daily employed by one commissioner, the commissioner may employ a foreman, who shall work with the laborers, and take charge of those put under his direction, and shall work with and superintend the laborers generally in the absence of the commissioner.

12. Commissioners shall be entitled to charge and retain, after the rate of five per cent. on the monies to be by them expended; and also four shillings and sixpence per day for every day they shall have been actually employed superintending day laborers, and shall have had at least ten laborers at work throughout the day. No foreman or laborer shall be paid more than four shillings and six pence per day. No owner of a team, consisting of a cart, driver and two horses, or four oxen, shall be paid more than ten shillings per day; and of a team consisting of a cart, driver, and one horse or two oxen, more than seven shillings and sixpence per day. The day to consist of at least ten working hours; and the foregoing wages to be paid only where suitable day laborers, teams and drivers, cannot be had at lower rates for cash.

13. Laborers employed in erecting breakwaters, and in clearing out rivers, or in other public works of a similar nature, shall be entitled to receive a sum not to exceed five shillings per day for their labor while so engaged.

14. The commissioners shall examine the breadths of the roads within the limits of their commission; and if it shall appear that any encroachment or incumbrance hath been made or placed upon the same, shall forthwith give notice to the owner or possessor of the land adjoining, that unless the road be opened and cleared to its proper width, within thirty days, the person who shall have caused or continued the encroachment or incumbrance will be prosecuted as the law directs; and the commissioners shall make an accurate return of the breadth of the roads and of incumbrances thereon to the supreme court or sessions for the county, at its next sitting after their appointment, in order that such proceedings may be thereupon had by the court as may be deemed proper to carry into effect the laws in relation to encroachments and incumbrances on the highway.

## CHAPTER 67.

## OF THE PRESERVATION OF ROADS.

1. If any person shall illegally alter or encroach on a public highway or private road laid out and established by law, he shall forfeit five pounds.

Fine for alterations or encroachments.

2. A justice of the peace on his own view, or on the oath of a witness, may impose a fine not exceeding twenty shillings on any person who shall encumber any road or bridge by placing any thing thereon, to be levied by warrant of distress on the offender's goods; or in case the offender shall not be known, by sale of the incumbrance, the overplus, if any, being retained for the owner when discovered. If the incumbrance shall be continued, it shall be deemed a new offence.

Justice, on his own view, or the oath of a witness, may fine for incumbering roads; fine how levied.

3. The sessions may make regulations for preserving the side paths of any public highway, except within the city of Halifax, from being injured; and every person guilty of a breach of the regulations, shall forfeit not less than five nor more than fifty shillings.

Side paths preserved by order of sessions.

4. If any person shall destroy or injure any trees or underwood growing upon the land lying between any river, lake or arm of the sea, and any public highway running within thirty feet of the margin thereof, he shall forfeit a sum not exceeding forty shillings.

Fine for destroying trees, &c., between rivers and highways.

5. If any person shall injure or destroy any trees or underwood growing between the road leading round Bedford Basin from the three mile house to Sackville bridge, and the waters of the basin, at any place where the bank shall not be of greater width than twenty feet from the eastern side line of the road, or shall, from any place above high water mark, where the bank shall not be of greater width than before mentioned, unless for agricultural purposes, in a cultivated part thereof, carry away from the bank any earth or stones, or shall take from out of the bank, where not of greater width than before mentioned, any earth or stones near the roots of any trees or underwood, whereby the trees or underwood shall be injured or destroyed, he shall forfeit for every offence, forty shillings; and in default of payment, or goods whereon to levy, he shall be committed to jail for not less than ten, nor more than thirty days.

Bedford Basin road protected.

6. All incumbrances found on the ditches or tract of the road, in the last section mentioned, shall be forfeited, and may be disposed of by the surveyor of highways, without any legal proceedings, and the proceeds shall be applied by the surveyor to the repair of the road.

Incumbrances on the above road forfeited

## CHAP. 68.

Disorderly driving—penalty, &c.

Bridges protected.

Carriages on runners to be driven with bells.

Width of carriages on runners.

Width of loads of hay.

Unloaded sleds not to have pointed stakes, &c.

Centre of highway to be left on the right.

Persons passing in carriages to leave sufficient space on the left.

Carriages standing, not to be within eighteen inches of centre of road. Fines for offences, when to be prosecuted.

How applied.

7. No person shall ride or drive any horse at full speed, or in a disorderly manner, in the public street or highway, in any town or village. Persons violating this provision shall forfeit a sum not exceeding twenty shillings for each offence, to be recovered as directed in the sixteenth section.

8. No person shall trot or gallop any horse over a bridge within, or partly within this province, of greater length than twenty-five feet.

9. Carriages on runners driven on the highway shall have affixed to the harness two good open bells, or four good round bells, such as are commonly used in sleighs.

10. Carriages on runners used for the conveyance of loads on the highway, shall be not less than four feet wide from outside to outside.

11. No load of hay or straw of greater width than fourteen feet, shall be drawn on a highway.

12. No unloaded sled shall have pointed stakes standing, or frames or projecting pieces outside.

13. Persons in driving upon the highway shall leave the centre of the road on their right hand.

14. Persons attempting, when driving, to pass another carriage on the highway leading in the same direction, shall leave a sufficient way open on their left hand for the carriage which they are about to pass.

15. Carriages standing on the highway shall not be nearer the centre of the road than eighteen inches, and on the proper side thereof.

16. Persons violating any of the provisions of the last eight sections shall, for every offence, forfeit ten shillings; and in default of payment, or goods whereon to levy, shall be committed to jail for not more than forty-eight hours; but the prosecutions must be commenced within forty-eight hours after the offence.

17. Forfeitures under this chapter, not specifically appropriated, shall be applied under the directions of the sessions to the repair of roads and bridges.

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## CHAPTER 68.

### OF SUPERVISORS OF PUBLIC GROUNDS.

Supervisors—how appointed.

1. The grand jury in each county or district shall, on the application of twenty freeholders of any township, appoint six persons resident in such township, out of whom the sessions shall appoint three to be supervisors of public grounds, and the sessions, upon the recommendation of the

grand jury, may remove them, or any of them, and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number required, and the clerk of the peace shall keep a record of such appointments, removals, and vacancies, and the dates thereof; and such supervisors shall be a body corporate, by the name of "the supervisors of public grounds for the township of \_\_\_\_\_."

2. The legal title of and in all public parade grounds and public landings within the township, and of all commons and other lands not belonging to the county or district at large, but which may be acquired or had for the general purposes and uses of the inhabitants of such township, and of and in all buildings thereon being, and appurtenances thereto belonging, shall, on their appointment, vest in the supervisors for the original purposes for which they were intended.

Title of public grounds, &c., to be vested in supervisors.

3. The supervisors may, by direction of the grand jury and sessions, lease any such lands not required for public uses for any period not exceeding seven years; and they shall annually render to the sessions an account of monies by them received for rents, and of expenses connected with the letting, to be audited by the grand jury and sessions and then filed in the office of the clerk of the peace; and the balance of such rents, after deduction of the expenses, shall be by the supervisors paid to the overseers of the poor for the township, or where there shall be more than one poor district in the township, then such balance shall be equally divided among the different districts, and paid to the overseers thereof respectively.

Leases of, how made, accounts to be filed; rent how applied.

4. Nothing in the preceding sections contained shall extend to any place of divine worship, burial ground, college, academy, school, or any land thereto belonging, or any land belonging to any religious congregation or society, or shall deprive any person of any right lawfully acquired, or affect any lands or buildings now vested in trustees.

Lands and property excepted from the operation of this chapter.

5. Whenever the supervisors shall deem a road encroached upon or encumbered, and in all cases where a doubt or dispute shall exist as to the true line of a road, or as to which side is encroached upon, the supervisors, after ten days' notice in writing to the parties in possession of the land on both sides of the road where the line is in dispute, or the parties who may have caused the encroachment or incumbrance, of the time and place at which they will investigate the matter, shall repair to the place where the encroachment or incumbrance shall be alleged to exist or the line be in dispute, and there inquire into the facts, and, if necessary, may then, or at a future day, have a survey made of the road, and examine witnesses on oath, to be administered by a supervisor, touching the matter; and shall,

Encroachments upon roads, how dealt with; proceedings in cases of dispute.

CHAP. 68.

after completing the investigation, determine and mark out the true line of the road, and direct the same to be opened to the full width of sixty-six feet, or to any less width to which it may have been confined by its dedication ; and shall, by order in writing, direct and cause all encroachments or incumbrances to be removed to such distance as they shall determine on, but they shall not cause to be removed any building erected upon the road ; but where a building shall be found to encroach thereon, they shall report the same to the next sessions, and the sessions shall make such order in relation thereto as may be deemed proper.

Fine for disobeying supervisor's or sessions' order.

6. If any person shall not obey the order of the supervisor or sessions delivered to him in writing, within thirty days after receiving the same, he shall forfeit twenty shillings; and if the encroachment or incumbrance be suffered to remain for a further space of twenty days after the imposition of the fine, the continuance shall be held a new offence, and shall subject the party to a further fine of twenty shillings; and so in like manner shall every further continuance of the encroachment for twenty days be held a new offence, and the further fine of twenty shillings be imposed therefor.

Expenses how borne and recovered.

7. The supervisors may apportion and order the payment of the expenses incident to the proceedings hereinbefore mentioned, among and by such persons as shall appear advisable ; and the same shall be recoverable by the parties entitled thereto, as if it were a private debt of the like amount.

Order of supervisor, how proved.

8. In any suit under either of the two preceding sections, the production of a copy of the order of the supervisors under their hands, or of the order of sessions, under the hand of the clerk of the peace—proof of the hand writing being in either case given—shall be good evidence of the order, and shall suffice to establish the claim of the plaintiff.

Record to be signed and filed.

9. The supervisors shall make a record of their investigations and order, setting out therein the lines of road by them established, which record shall be signed by them, and be returned to the clerk of the peace to be filed in his office.

Appeal from order.

10. Any person dissatisfied with the order of the supervisors, or of the sessions, may appeal therefrom to the next supreme court of the county, where the matters in dispute shall be tried and determined by the verdict of a jury, if a jury shall be ordered by the court ; and pending the appeal, no further proceedings shall be had under the order.

Costs of appeal how paid if order confirmed.

11. If judgment, on appeal, shall confirm the order, then the cost of appeal shall be paid by the appellant, and having been taxed in the usual manner, shall be recovered by execution.

When order reversed, costs how paid.

12. If the order shall be reversed on appeal, the costs consequent thereon, as well as the expenses attending the

making of the order, shall be paid in the first instance by the supervisors, but shall form a county charge, and be refunded to them, together with their own reasonable charges.

13. Where a road shall have been opened and used as a public highway, and the same, although not encroached upon, has been originally laid off too narrow, or shall have been made public by use only, and the supervisors shall deem it proper to widen the same, they shall notify the parties in possession of the lands on both sides of their intention to widen the road, and that application for that purpose will be made to the next sessions.

Supervisors may make order for widening road.

14. The supervisors shall, at the next sessions, submit to the court their application for widening the road, stating the then breadth thereof and the width to which they propose to open the same; and, if they shall have made any agreement with the proprietors of the land as to compensation for land and fencing, shall at the same time submit it; and if the court are satisfied of the propriety of widening the road, and shall approve of the agreement so made, they shall make an order for widening the road, specifying the breadth to which it shall be extended, and confirm the agreement made—which order shall be final, and the supervisors shall proceed to widen the road accordingly.

Proceedings to be had at sessions.

15. In case no agreement shall have been made, or the sessions shall not approve of the agreement, but shall be satisfied of the propriety of widening the road, they shall appoint three disinterested freeholders, one to be nominated by the supervisors, one to be nominated by the possessors of the lands, or, on their omission, by the sessions, and the third to be nominated by the sessions; and shall issue their precept to the three freeholders, directing them to lay off and mark out the road to the width directed, in the way most conducive to the public good, and least prejudicial to the proprietors of the lands. And all further proceedings in reference to the widening of the road, whether upon appeal or otherwise, shall be had in the manner prescribed by the sixty-first chapter of this series, in regard to opening new roads or altering old ones, except that the propriety of widening the road shall not be inquired into, and the damages appraised shall form a county charge; but no fencing shall be paid for except as directed under the last mentioned chapter.

Sessions may appoint three freeholders to lay off road: subsequent proceedings.

16. No road shall be opened under the last three sections to a greater extent than sixty-six feet.

Width of road.

17. The provisions of this chapter shall extend to roads upon which grants of monies may have been made by the legislature—to roads which have been open for the use of the public for twenty years, and to roads upon which statute labor may have been performed, except private or pent roads, whereon the statute labor may have been performed

Roads affected by this Chapter.

CHAP. 69. by direction of the sessions, but shall in no case apply to roads which have been abandoned.

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## CHAPTER 69.

### OF CLOSING ROADS.

Old roads may be closed by sessions on petition: proceedings prescribed.

1. Where a line of road has been altered, and the old road has been abandoned by the public as a general thoroughfare, any of the proprietors of land adjoining the old road, may, by petition stating the facts, and the names of all persons interested in the lands on either side of the road, apply to the sessions to shut up or otherwise dispose of the same; —which petition shall be accompanied by an affidavit that at least thirty days' previous notice in writing of the application has been given to the parties interested, and posted up in two public places near the road; and the sessions shall hear the parties applying, and their witnesses, and also the parties notified, if they shall desire it, and their witnesses; and shall make an order, either dismissing the application, or granting, or modifying the same. Persons dissatisfied with the order, may appeal therefrom within ten days, to the next sitting of the supreme court, and the clerk of the peace shall thereupon return the proceedings to the supreme court, who shall examine them, and if deemed advisable, hear the parties appearing, and their witnesses, and shall make order as shall seem right therein. The order of the sessions, if not appealed from, and the order of the supreme court in case of appeal, to be conclusive.

Parties who may be heard; appeal allowed.

2. Persons, although not interested in lands adjoining or near the road, and their witnesses, may be heard against the closing or disposing thereof, and may appeal from the order of sessions.

Where owner of adjoining lands is dead, who to be considered the proprietor.

3. If any land adjoining the road shall have been the property of a person deceased, and be not divided among his heirs, the representatives of the deceased person, and the guardian of his minor children, if any, and the person in possession of the land, shall, for the purposes of this chapter, be considered the proprietors.



## CHAPTER 70.

## OF RAILROADS.

Whereas the construction and maintenance of a trunk line of railway from the harbor of Halifax to the frontier of New Brunswick, with branch lines extending to the harbor of Pictou and to Victoria Beach, will greatly facilitate the internal trade of Nova Scotia,—will develop her resources, enlarge her revenue, and open more frequent and easy communications with the neighbouring provinces and states. —

Preamble.

1. The lines of railway to be constructed under the provisions of this chapter, shall be public provincial works, and shall be made on such grades and in such places as the governor in council shall determine and appoint, as best adapted to promote the general interests.

Railways to be public works; grades, where to be made.

2. The line to be first completed shall be that which, beginning at the harbor of Halifax, and extending therefrom in a northerly direction, will form a common trunk for all the lines to be hereafter made under the provisions of this chapter.

Trunk line to be completed first.

3. After the common trunk shall have been so completed, the railways shall be carried on in such direction as shall be approved of by both houses of the legislature, and shall be designated by an act of this province, or by resolutions entered upon their journals, and communicated by address to the governor.

Other lines.

4. The construction and management of such railways shall be under the charge of three commissioners, to be appointed by the governor in council, and to hold office during pleasure: one of whom to be so named in the commission, shall be the chairman, and shall have the right of voting in all cases, with a casting vote, in addition to his own, where there would otherwise be an equality of voices: provided that not more than one of such commissioners shall at any time hold a seat in each branch of the legislature.

Construction; management; commissioners.

5. The commissioners shall build such railways by tender and contract, after the plans and specifications therefor shall have been duly advertised; and they shall accept the tenders of such contractors as shall appear to them to be possessed of sufficient skill, experience, and resources, to carry on the work, or such portions thereof as they may be willing to contract for. But where the commissioners, in any case, deem it for the public interest not to accept the lowest tender that may be made, it shall not be competent for them to accept a higher tender without the approval of the governor in council. And where any tender is higher than in the judgment of the commissioners, or of the governor in council, it is prudent to act on, the same shall not be accep-

Lines to be built by tender and contract.

**CHAP. 70.** ted; and in such case the work shall be suspended for a time, and new tenders advertised for, when the legislature or the governor in council shall deem it expedient to proceed.

Contracts, securities for performance of.

6. The contracts to be so entered into shall be guarded by such securities, and contain such provisions for retaining a proportion of the contract monies, to be held as a reserve fund for such periods of time, and on such conditions, as may appear to be necessary for the protection of the public, and securing a due performance of the contracts.

Chief engineer, appointment and duties of.

7. The governor in council shall appoint a chief engineer, to hold office, during pleasure, who, under the instructions he may receive from the commissioners, shall have the general superintendance of the works to be constructed under this chapter, and whose duty it shall be to measure the work done, and for which payment shall be claimed,—to report upon the lines to be selected—the permanence of the works to be designed or executed—the strength of the rails—the sufficiency of plant and rolling stock,—and the faithful fulfilment of the contracts which may be entered into.

Payments to contractors.

8. No money shall be paid to any contractor until the chief engineer shall have certified that the work for or on account of which the same shall be claimed, has been duly and faithfully executed, nor until such certificate shall have been approved of by the commissioners.

Contractors and officers not to be members of the legislature.

9. No member of the legislature shall hold, or be appointed to any office of emolument under the commissioners, or be a contractor, or party to any contract, arising out of the construction, management, or working of the road, or any part thereof.

No government officer or member to be security for railway contracts.

10. No person holding a place in the provincial government, or a seat in the legislature, shall hereafter become security, or be answerable for the performance of any contract with the railway commissioners, or of any work or engagement in relation to the railway.

Lands required for lines and termini.

11. The commissioners or contractors are authorized to enter upon and take possession of any lands required for the track of the railways, or for stations, and they shall lay off the same by metes and bounds, and record a description and plan thereof in the registry of deeds for the county in which the lands are situate, and the same shall operate as a dedication to the public of such lands; the lands so taken shall not be less than four rods nor more than six rods in breadth for the track, exclusive of slopes of excavations and of embankments, except where it may be deemed advisable to alter the line or level of any public or private carriage road, or divert any stream or river, in which case it shall be competent for the commissioners to take such further quantity as may be found necessary for such purposes; also, at each station a sufficient extent for depot

and other station purposes; provided always, that, excepting at the termini or junction of the railways, the quantity so appropriated shall not exceed five acres. CHAP. 70.

12. The commissioners or contractors may enter with workmen, carts, carriages, and horses, upon any lands, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood, or other material found on the line of railway or works connected therewith, or for the purpose of digging up, quarrying and carrying away earth, stones, gravel, or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom, for the making of such railway. Before entering for the purposes mentioned in this section, the commissioners or contractors, or the other persons acting under them, or either of them, shall notify the proprietors or possessors of the lands, and shall carry out such purposes with as little injury as possible consistently with those objects. Powers of commissioners to deposit soil.

13. It shall be lawful for the commissioners to make or construct in, upon, across, under, or over any lands, streets, hills, vallies, roads, railroads or tramroads, canals, rivers, brooks, streams, lakes, or other waters, such temporary or permanent inclined planes, embankments, cuttings, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, or other works, as they may think proper. Commissioners, &c., must notify possessors of the land &c.

14. They may alter the course of any river, canal, brook, stream, or water-course, and divert or alter, as well temporarily as permanently, the course of any such rivers, streams of water, roads, streets or ways, or raise or sink the level of the same, in order to carry them over or under, on the level of, or by the side of, the railway, as they may think proper. Construction of roads, bridges, &c., over lands, &c.

15. They shall have power to make conduits or drains into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway. Alteration of courses of streams, &c.

16. It shall be lawful for them, from time to time, to do all other lawful acts necessary for making, maintaining, altering, or repairing and using the railway. Drains, &c. conveying water to or from rail-ways.

17. In all cases under the twelfth section for entries upon lands and materials taken whether before or after the passing of this chapter, the recompense for the injury to the land, the value of the earth, stones, and gravel, and the trees, timber, brush, and other materials, dug, cut down, or taken away for railway purposes, and for other damages to the proprietors or possessors, shall be referred to the determination of three arbitrators, one to be chosen by the proprietor or possessor, one by the commissioners or contractors, or persons acting under them, or either of them, and the third on the part of the county, by some justice of the peace residing as near the premises as can conveniently be obtained to act, and not interested in any question of damages; and in case of the absence or neglect, after due General power relative to making, altering, repairing, &c.

Value of materials, how ascertained.

Appraisalment of arbitrators.

- CHAP. 70.** notice, of either party, the arbitrator on that part shall be named by some justice of the peace, disinterested as aforesaid, residing as near the premises as conveniently can be obtained. Two of the said arbitrators may make an award, and the award shall be in writing, signed by the arbitrators making it. The arbitrators shall be entitled to a fee of five shillings, which shall be added to the damages and paid in the first instance by the commissioners, contractors, or persons acting under them.
- Award.**
- Arbitrator's fees.**
- Damages, &c., how paid.**
- Appeal.**
- Damages how recovered.**
- Damages chargeable on county.**
- Persons other than contractors, &c., must furnish owner with a written authority.**
- Persons authorizing or acting may be held liable.**
- Fruit and ornamental trees excepted.**
- Monies paid for lands to form a county charge, —how to be assessed.**
- Working of lines.**
18. The damages awarded shall be paid within one month with interest thereafter, by the commissioners or contractors, or other party, acting under them, as aforesaid, as the case may be. Either party, including the arbitrator appointed on behalf of the county, or any justice of the peace on behalf of the county, may appeal to the supreme court according to the provisions of section fifty-one.
19. If appeal shall not be asserted in twenty days after the award, the sum awarded may be sued for and recovered as debts of like amount are now by law recoverable.
20. The damages paid under the three last sections shall be chargeable on the county where the property lies, and shall be assessed, levied, collected, and paid to the commissioners or contractors pursuant to the provisions of this chapter.
21. Before any party other than the commissioners and contractors immediately under them shall be at liberty to enter upon private lands under the twelfth section, they shall be obliged to furnish the owner or possessor thereof, or leave at his residence, a written authority from such commissioners or contractors authorizing such entry; and thenceforth the owner shall, at his option, be entitled to consider any act to be done, and any liability to be incurred by the party so authorized as the act of the party himself, or of the person or persons whose authority is so given.
22. Nothing contained in this chapter, shall authorize the commissioners or contractors to cut down and carry away any fruit trees, or trees planted or preserved for ornament.
23. The monies payable for such lands and fencing shall form a county charge; but in the apportionment of the assessment the sessions shall have respect to the relative benefits derived from the railway by the several sections of the county, and shall apportion the assessment accordingly.
24. Whenever the railways, or any portions of them, shall be completed, it shall be lawful for the governor in council, to make such arrangements as may be suitable for working the railways as one line by a common management, or for working the trunk line and branches by separate commissioners; such arrangements to be submitted to both branches of the legislature at the session then next ensuing.

## CHAP. 70.

25. The governor in council shall have power to inspect all contracts and proceedings of the commissioners, to examine their accounts at all times, and to suspend the progress of the work, until the next session of the legislature.

Inspection of contracts and proceedings of commissioners.

26. The governor in council shall, in the first instance, fix the rate of salary or compensation for the chairman, and the other commissioners, and the chief engineer, and shall approve of all other salaries to be awarded by the commissioners, subject, in all cases, to the revision and confirmation of the legislature, at its first session thereafter.

Salaries of officers.

27. The commissioners shall draw on the receiver general, in such form as may be directed by the governor in council, for all monies that may be required for the purposes of this chapter, but shall not expend a larger sum, nor incur liabilities to a larger extent, in any one year, than two hundred thousand pounds.

Yearly expenditure limited to £200,000.

28. The commissioners shall furnish quarterly accounts of all such expenditures and liabilities, which shall be examined and checked by the financial secretary, and presented to the general assembly in every year within the first ten days of each session, to be examined and audited by a joint committee of the legislative council and house of assembly, in the same manner as other public accounts.

Accounts of commissioners—audit of.

29. The commissioners are authorized to make regulations from time to time for the safe construction and working of the railways under their charge,—for the transmission of goods and passengers thereon—for their care and management, and that of the plant and equipment used thereon—for the protection of the wharves, bridges, culverts, crossings, stations, buildings, and depots, erected or to be erected, and all other the property in the possession and under the control of the board in their public capacity—and in such regulations to affix fines, penalties and punishments for the breach thereof: provided always, that such regulations before going into operation, shall be first sanctioned by the governor in council.

Board to make regulations regarding construction, &c.

30. The governor in council shall have power, by order for that purpose made, to exempt from drill, training, or other militia service, all persons engaged in the actual construction of railways in the province.

Proviso.

Governor may exempt persons working on railway from militia duty.

31. The governor, by and with the advice of the executive council, may contract a loan on the pledge of the revenues of this province, whether arising from the duties upon imports, the sale of crown lands, the royalty paid by miners, or the tolls to be collected on the railways constructed with the monies to be borrowed under this chapter; provided that the whole sum to be borrowed shall not exceed two hundred thousand pounds currency, in any one year.

Loan authorized; not to exceed £200,000 in one year.

32. Certificates of debt to be called debentures, bearing interest at six per cent., or at a less rate, as the governor

Debentures; issue of, authorized.

**CHAP. 70.** in council may see fit, may be issued from time to time, at par, or at such premium as the same may command, as the railways proceed; and the governor in council shall determine at what periods of time, in what amounts, and on what conditions such certificates shall be issued.

Form of debentures, mode of issuing, amount of, interest, &c.

33. The debentures shall be in the form to be hereafter directed by the governor in council, with coupons annexed thereto; they shall be signed by the governor, and verified by his seal of office, and also countersigned by the receiver general; they shall be numbered consecutively, commencing with number one, and shall be issued in such sums, not less than one hundred pounds sterling, as may be deemed expedient; the interest thereon shall be paid half yearly, at such place as shall be mentioned therein; and the principal of such debentures shall be paid in full, at the expiration of twenty years from the date of their respective issues to the then holders thereof.

Proceeds of line—how to be applied.

34. The whole of the revenues to arise from the receipt of tolls on such railways shall, after the expenses of working and maintenance have been paid, be applied towards the payment of interest on the debentures, and the surplus shall form a surplus fund for the redemption of the loan.

Pledge for redemption of debentures.

35. Subject to the payment of any previously existing provincial liability, and of the civil list, the faith and credit of the province, and the ordinary revenues thereof, and the amount of proceeds of any special impost which may hereafter be levied and collected for the purpose of paying off all such railway debentures, and the interest thereon, shall be and hereby are declared pledged to any and every holder of the same.

Monies raised to be paid to receiver general; application of.

36. The principal sums to be raised and borrowed shall be received from time to time as the same may be raised, by the receiver general, who shall, upon the warrants of the governor, pay out of the same such sums as may from time to time be required for defraying the charges made payable out of the same by this chapter, and who shall also, upon the warrants of the governor, pay the dividends and interest upon the sums so raised and borrowed as the same shall become due; and such fund shall be paid and managed in such manner for the redemption and liquidation of the principal sums as the governor in council shall from time to time direct and appoint, subject however to the provisions of this chapter. And it is hereby declared, that the parliament of this province will confirm and carry out by such legislative enactments, if any, as may be necessary to give full effect to the same, any arrangement or agreement not inconsistent with the spirit of this chapter, which may be made or authorized by the governor in council with regard to the raising and borrowing of the sums aforesaid.

Management of fund.

Receiver general's account—audit of, &c.

37. The receiver general shall quarterly transmit to the governor, for the purpose of being audited by the financial

secretary, and laid before the two houses of the legislature, a correct and detailed statement and account of the sums raised under the authority of this chapter, and of the debentures and other securities which shall have been issued, and of the interest and dividends paid thereon, and of the redemption of the whole or any part of the principal sum, and of the expenses attending the negotiation, management, payment, and redemption of the loan.

38. The city of Halifax shall be considered as holding stock in such railways to the extent of one-tenth part of the actual expenditures thereon,—such tenth part not to exceed in the whole, the sum of one hundred thousand pounds—and shall be entitled to participate in the profits of the railways in proportion to the amount of such stock; and shall be assessed annually for the amount of interest thereon, at the same rate of interest at which the loan is obtained, and also for a proportionate amount of such sums as may be chargeable against the general revenues of this province for the redemption of the loan; such annual sums to be assessed and levied as the legislature may hereafter direct, and to be paid into the hands of the receiver general, to form a part of the general revenues of this province; and to continue to be so annually assessed, levied, and paid in, until the loan, under this chapter, shall become extinguished under the provisions thereof.

City of Halifax to take a tenth of stock; limited to £100,000.

Assessment.

39. In case a less sum than two hundred thousand pounds be borrowed in any one year, the deficiency may be added to the sum to be borrowed in the next or any succeeding year, provided that the sums to be borrowed shall not exceed the rate of two hundred thousand pounds per annum.

Deficiency of sum borrowed in one year added to next.

40. Such debentures may be made payable in currency or sterling monies, and in such sums as from time to time may be deemed most expedient by the governor in council.

How payable.

41. All the provisions of this chapter, except in so far as they are altered or modified by the two last sections shall extend to such debentures.

Provisions to extend to debentures.

42. The debentures that have heretofore been or may hereafter be issued under the thirty-third section, shall be and are hereby declared to be valid and binding, although the same have not heretofore been and may not hereafter be verified by the governor's seal of office, as therein required.

Debentures valid without the governor's seal.

43. On the first Tuesday of June in every year, or at such other time and times as shall be fixed by a judge of the supreme court, between the hours of ten o'clock in the forenoon and twelve o'clock at noon, the prothonotary of every county in which a railway is being constructed shall in his office, in the presence of the clerk of the peace, who is hereby required to be present, and in the presence of any other persons who may desire to attend, draw from the grand jury box the names of twenty-eight persons then resident within the county liable and able to serve as grand

Jury—how drawn.

CHAP. 70. jurors for the then current year, in the same manner as special jurors are now drawn; a notice of such time to be posted up by the clerk of the peace in at least three of the most public places near where such railroad damages have been sustained, at least ten days before the drawing of such jury.

Striking of jury.

44. The clerk of the peace on the one side, and the claimants for damages on the other, shall reduce such list to fourteen by each striking off a name alternately as special jurors are struck.

Where same person hold the offices of prothonotary and clerk of peace.

45. Where the same persons shall fill the office of prothonotary and clerk of the peace, and no person shall have been appointed for the purpose by a general or special sessions who are hereby authorized to make such appointment, the custos shall attend and act on behalf of the county instead of the clerk of the peace; and in the absence of the custos, or in case the clerk of the peace and custos, or either of them, be claimants for damages, and no person be appointed by the sessions, as before mentioned, or if the person appointed do not attend, then any disinterested magistrate may act for the county.

Lists to be furnished by railway commissioners.

46. The board of railway commissioners shall, previously to the striking of the jury, furnish the prothonotary with a list of the names of the several claimants for damages through whose lands the railway passes, according to the engineer's return to the board, together with the quantities of land in each case dedicated to the public, and also with a list of the names of those who shall have sustained damages by reason of the railway having deprived them of access to their property, whether on land or water, or having destroyed or impaired any use, easement, or privilege which they had enjoyed in relation thereto: and such commissioners shall also furnish the prothonotary with plans distinctly exhibiting the premises of the claimants, with the line of the railway as it affects the same respectively. If the parties present, who are interested as claimants, agree upon any person to strike for them, the prothonotary shall minute the fact in writing, and such person shall act in that behalf. If the claimants cannot agree upon any person, or if no claimants attend, or if no one attend to strike on behalf of the county, the prothonotary shall strike for the absent party in the same way as special jurors are struck. If no qualified person appear to strike on either side, the first fourteen names drawn shall be the jury to be summoned.

Regulations regarding the striking of the jury.

Venire.

47. The prothonotary shall thereupon forthwith issue and deliver to the sheriff a venire as in schedule A, directing the sheriff to summon such jury to appear at a time and place to be therein named, not more than sixteen days distant. And the sheriff shall duly warn such jurors, and both he and the prothonotary shall attend on the return day of such venire.



48. The first seven jurors who shall answer upon being drawn and called as petit jurors are drawn and called, shall be sworn by the prothonotary according to the form of oath in schedule B; and a panel of their names shall be prepared by the prothonotary, and by him attached to the venire, and he shall hand such venire to the sheriff, who shall, with such jury, proceed to the execution of their duty forthwith, or on a day to be then named, and whereof the jury shall be duly notified; and if the number of such jurors at any time be reduced by death, inability from illness, or other cause, or through neglect or refusal, the remaining jurors shall proceed as if no such reduction had taken place, provided the whole number be not reduced below five. The jury shall examine the premises in each case, and shall value the land taken and dedicated for the railway, and shall estimate the damages to the property, and investigate each separate claim for damages according to the circumstances, and form their judgment of such damages, as well prospective as present, including loss for delay of payment; and also shall consider the relative benefit as well as injury done to the property by the construction of the railway; and the jury, or in case of disagreement after four hours deliberation, a majority, whether of the full or reduced jury, shall make an appraisalment in writing, signed by such jurors, setting forth the amount of damages awarded to each claimant, and particularizing the nature and grounds of such damage, and the property or right in respect of which they accrued; and the sheriff shall within thirty days next after the swearing in of the jury file the venire and panel with the appraisalment and his return with the clerk of the peace. If the jurors be reduced below five before the appraisalments are completed, the appraisalments duly made previously thereto, shall be returned to the clerk of the peace, and the sheriff shall forthwith summon so many of the jurors drawn and struck, but not at first sworn, as shall be required to fill up such jury to the requisite number; and such replenished jury, or a majority of them, or in case of their reduction to a number not less than five by the causes hereinbefore mentioned, a majority of such reduced jury shall proceed to make the remaining appraisalments; and the sheriff shall have power to adjourn or re-summon the jury from time to time, as occasion may require.

49. For the purpose of securing a fair and impartial appraisalment, the sheriff and jury shall have free access to all public offices, and to the papers, plans, and returns therein; and the railway commissioners, engineers, and officers, if required by either party, and any other persons, if subpoenaed, shall attend and give evidence as witnesses, under oath, if required by any party interested, and shall also produce all plans, papers and documents under their control touching the matters at issue.

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Proceedings of  
jury, duties, &c.

Disagreement.

Returns of she-  
riff.Proceedings if  
jury reduced  
below five.Jury to have ac-  
cess to papers,  
plans, &c.

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Fees.

50. The prothonotary and clerk of the peace, or person acting for the county, shall be entitled to a fee of twenty shillings each for their services; the sheriff shall be entitled to twenty shillings per day; and the jurors sworn shall be entitled each to the sum of fifteen shillings for every day's actual attendance, in full payment for their services; the jurors not sworn, but who were summoned and attended, shall be entitled to five shillings for such attendance, and to travelling fees as now allowed to petit jurors; and the sheriff shall be entitled to a further sum of twenty shillings for warning such jury; which fees shall be assessed, levied and collected, and paid, as ordinary county charges. Every person summoned as a juror and making default in the performance of any of the duties required of him shall forfeit the sum of twenty pounds for each default, to be immediately levied under a warrant from the prothonotary, directed to the sheriff.

Forfeit for default of jury.

Appeal to supreme court—proceedings in.

51. Within thirty days after the return of any appraisal, the custos or clerk of the peace, on behalf of the county, or any party interested who may deem himself aggrieved, may apply by affidavit to the supreme court, or a judge thereof, for a summons and order to set the proceedings aside, in whole or in part, or to alter the valuation, which summons shall be served upon the opposite party in the manner specified therein; but such proceedings shall not be set aside upon any mere technical objection; and the court or a judge shall have power, upon satisfactory proof adduced by affidavit or viva voce examination of the parties and those interested, to confirm, increase, or reduce the damages, or otherwise rectify the finding of the jury, in substance or form; or, if such court or judge shall see fit, a jury shall be empanelled to try the disputed matters of fact with reference to such damages; and in case the damages complained of shall either be reduced in case of proceedings by the county, or increased in case of proceedings by a claimant, to the extent of one-sixth, costs shall be recovered by the county or party applying, but not otherwise; and the county shall pay the cost of such proceedings, if the damages be not so reduced, to be added to the damages, and the party shall pay the cost of such proceedings if the damages be not so increased, to be deducted from the amount of his claim for damages; the court or judge shall make a final order touching the damages and costs, of which a certified copy shall forthwith be transmitted by the prothonotary to the clerk of the peace, and by which the court of sessions shall be governed in the amount of damages and costs to be assessed and collected. The jury contemplated under this section, is and shall be the ordinary petit jury of the supreme court, or a special jury when specially ordered; and the trials shall take place before the court or at sittings in the ordinary manner of trials. Damages under appraise-

Jury under this section.

Trial.

ments against which no appeal has been asserted, or which have been determined after appeal, shall be assessed, collected, levied, raised, and paid as soon as possible, and without any needless delay, or on any pretence whatever.

## CHAP. 70.

Railway damages under appraisements to be assessed, collected and paid.

52. The amount appraised upon each county shall be payable in two years by equal annual instalments, the first instalment to be paid in one year after such appraisement, with interest at six per cent. per annum for any delay after that period, and the other instalment to be paid in the ensuing year, with like interest for delay of payment.

Payment of amount appraised.

53. After the expiration of the notice required by the sixty-second section, the custos of the county shall deliver to each party in the form in schedule C, a certificate showing the amount to which such party is entitled under such appraisement; and such certificate shall be signed by the custos and countersigned by the clerk of the peace, and shall be payable to order, and be transferable by endorsement, and shall authorize the party entitled to receive the amount of such appraisement, together with interest for any delay of payment after the instalment becomes due, when the same becomes payable, and which shall be a charge upon the county for all the monies payable thereunder until fully discharged.

Certificate of appraisement.

54. The damages appraised and established under this chapter, and costs where costs shall be payable, shall be apportioned by the sessions without any delay amongst the townships, districts and places in each county and district, in proportion to the relative benefits which, in the opinion of the court, are likely to be derived by the several sections from the railway; and the proportion of each township, district and place shall be assessed upon their inhabitants, and shall be levied, collected and paid over, upon the same principle as county rates are or shall be by law levied, collected and paid over; provided that every tenant of real estate for any term less than freehold, who shall pay rate under this chapter shall be entitled to deduct from the rent payable by him to his landlord, or otherwise to recover from the owner of the estate so much of the rate paid by him as was imposed upon him in respect of such real estate.

Damages—how apportioned and collected.

55. If the sessions shall neglect or delay to make any such apportionment, or to cause any of the monies to be assessed, collected and paid over, which according to this chapter they ought to cause to be assessed, collected and paid over, it shall be lawful for the supreme court, or a judge, upon application by any party interested, forthwith to amerce the county for the amounts for which the sessions ought to have made apportionment, as aforesaid, together with the costs of proceeding before the supreme court or a judge; such amercement to be apportioned and assessed by the court or a judge upon the township, district, and place in each county on the principle pointed out in the

In case sessions delay to make apportionment, supreme court may amerce.

**CHAP. 70.** preceding section, and the court or judge may receive evidence thereon, by affidavit or otherwise, and the sums amerced shall be levied, collected and paid over, in a manner analogous to that in which county rates are levied, collected, and paid over.

**Amercement—  
how collected.**

56. The prothonotary shall furnish the clerk of the peace with a copy of such amercement and apportionment forthwith after the same shall be made by the court or judge; and the clerk of the peace, within fifteen days after the receipt thereof, shall make out and deliver to the collectors the necessary rolls and instructions, and the collectors for each township, district and place, shall thereupon proceed to collect the amount of such amercement. The clerks of the peace, assessors, collectors, county treasurers, and all other officers whose agency now is or by any law might be required to carry out the assessment, collection and payment of county rates, are hereby required and shall be bound to carry out the provisions of this chapter according to its true intent; and in case of neglect or violation of duty shall be liable to the like penalties as are now or as may be hereafter by law imposed for neglect or violation of analogous duties, touching the assessment, collection, and payment of county rates, and also to an action for damages at the suit of any party aggrieved.

**Assessors, collectors, &c., must carry out provisions of this chapter.**

**Compensation to collectors, &c.**

57. All officers employed under the sessions, supreme court, or a judge, in assessing, collecting and levying, shall be compensated for their services under this chapter, at such rate as the sessions shall award; and such compensation shall be a county charge.

**Sum assessed to be paid to receiver general.**

58. The treasurers of the counties shall forthwith pay over all monies received by them under this chapter, to the receiver general, who shall pay to the parties respectively the amounts to which they are legally entitled; and if the sums paid in shall not meet the claims in full, the sessions shall assess and cause to be collected and paid to the receiver general the deficiency; and in their default, the supreme court or a judge shall amerce for the same, and cause it to be collected and paid in agreeably to the several provisions of this chapter applicable to assessments by the sessions, and amercements by the supreme court, or a judge.

**In case amount fails to meet claim.**

**Compensation to appraiser or county of Halifax.**

59. The sessions of the county of Halifax may assess the county for such sum as they consider sufficient to compensate the appraiser appointed by them on behalf of the county, under the seventeenth section of chapter one of the acts of 1854, for his services in that capacity; and all appraisements heretofore duly made in pursuance thereof, shall remain in force.

**Parties entitled to benefit of act.**

60. Parties, for whose lands, taken for the railway, appraisements have been made and set aside, shall be entitled to the benefit of this chapter; and the damages sustained by Messieurs Piers shall be appraised, assessed, collected, and

paid to the receiver general, who in settling with them shall deduct therefrom the amount paid to them out of the treasury in anticipation of their claim. CHAP. 70.

61. No proceeding had or taken under any of the clauses of this chapter shall be set aside on any formal or technical ground, or in consequence of such proceedings not being in accordance with the strict letter of this chapter; but such proceedings may be commenced anew, renewed or amended in any stage thereof on application to the supreme court, or a judge; and when so commenced, renewed, or amended, shall be as legal, valid, and binding on all parties concerned as if no such formal or technical objection had existed thereto, or as if no such new or amended proceedings had been had. Amendment of proceedings.

62. No monies assessed or collected under this chapter, with the exception of the sums assessed in favor of Thomas Kenny and William Davey, and confirmed by the supreme court, shall be paid over until after notice specifying the amount and describing the land in respect of which the same is assessed, shall have been published for sixty days in the county newspaper, if there be one, and also in the royal gazette; which advertisement shall be made by the clerk of the peace immediately after the return of the appraisement by the sheriff, and shall be paid for as a county charge. If, within such period, objection founded on affidavit to be filed in the office of the clerk of the peace, be made by or on behalf of any person claiming to be entitled, other than the absolute owner in his own right, in fee simple in possession, and under no legal disability, payment of the sum assessed and collected, and respecting which such objection shall have been stated, shall not be made without the order of the supreme court or a judge, which court or judge shall have power to make such an order respecting the payment or the deposit or investment thereof, or the payment of interest accruing thereon, as to such court or judge may seem equitable and just. Notice of amount and description of land to be advertised.

63. The appraisements made under the authority of the act of 1854, in favor of Thomas Kenny and William Davey, and which have been confirmed by the supreme court, together with the interest thereon from the time their lands were taken possession of for the railway up to the time of actual payment, and costs payable under the order of the court granted on the first day of December, 1856, on the application of those parties respectively, shall be levied, collected, and paid to the county treasurer as in the case of county assessments under the existing law or any law in amendment thereof; and for that purpose the clerk of the peace shall make out and deliver to the collectors or proper officers the necessary rolls, instructions, and papers, and the collectors and proper officers shall forthwith make collection, and payment to the county treasurer, who shall immediately In case of objection made.

Appraisement in favour of Kenny and Davey—how collected, &c.

CHAP. 70. pay over the amount received by him to the receiver general, by whom the sums due and payable to the said Thomas Kenny and William Davey, for principal, interest and costs, shall be paid to them respectively.

**Cost of fencing.** 64. The cost of fencing necessary in the construction of the railway shall be levied from the respective counties within which the railway is or should be constructed, at the rate of fifty pounds per mile of railway within each county; and shall be apportioned by the sessions subject to amercement by the supreme court, and shall be collected and paid over to the receiver general in the manner directed by this chapter in the case of railway damages. No county wherein this chapter shall be carried out *bona fide* shall be required to assess in any one year for damages to lands and costs of fencing. The costs of fencing shall be payable in two years, one half in each year, and the first half thereof shall be imposed and collected in the year next following that in which the last instalment for land damages shall have been imposed, or in which the same under the provisions of this chapter, should have been imposed.

**Amount advanced by railway board to Messrs. Drillio, to be repaid.** 65. Out of the sum assessed to pay the amount of damages at the African settlement, there shall be repaid the amount advanced by the railway board for the purchase of land from Messieurs Drillio.

**Bonds from treasurers, &c.** 66. The court of sessions shall require the treasurers and collectors to give sufficient bonds in the name of her majesty, conditioned for the faithful discharge of their duties.

**Bells or whistle to be kept on engines; when to be rung or sounded.** 67. The proprietor of any railroad whereon any locomotive engine shall be run, shall cause a suitable bell or steam whistle to be kept on every engine while running, and which shall be rung or blown at the distance of at least eighty rods from every place where the rail crosses any other road upon the same level with the rail, and shall be kept ringing or sounding until the engine has crossed.

**Painted boards at crossings.** 68. The proprietor of every such railroad shall cause boards to be placed, well supported by posts and constantly maintained, across every road at every place where crossed by the rail on the same level; such boards and posts to be of a height to be easily seen by travellers without impeding the travelling; and on each side of the boards shall be painted, in capital letters at least nine inches high, the following inscription, to be kept always plainly legible: "railroad crossing,—look out for the engine."

**Gates and keepers at crossings may be ordered by sessions.** 69. Upon application to the sessions, setting forth that in addition to the foregoing provisions it is necessary for the security of the public that gates should be placed across any such railroad where the same shall cross any road on the same level therewith, and that persons should be stationed at such gates to open and close the same when required for the passing of the engine, the sessions shall investigate

the application and hear evidence thereon, and if they shall be of opinion that the placing of such gates and the stationing of such persons thereat is necessary for the security of the public, shall make an order accordingly, with which order the proprietor shall comply; but no such order shall be made unless a summons, to be issued by the clerk of the peace, setting forth the nature of the application, shall be served on the manager or person having charge of the railroad, or some known agent of the proprietor thereof, actually employed in and about the railroad, at least fourteen days before the first day of the sitting of the sessions at which the investigation shall take place, requiring cause to be shewn against such application.

70. If any proprietor shall violate any of the provisions of the three preceding sections, he shall, for every offence, forfeit a sum not exceeding fifty pounds.

Fine for violation of preceding sections.

71. If any person shall maliciously obstruct the passing of any engine or carriage along any railroad, or shall maliciously place any thing on such railroad calculated to obstruct the passing of any engine or carriage, or to injure or endanger the same, or shall maliciously injure such railroad or any thing thereto appertaining, or any materials or implements for the construction or use thereof, such person, and also every person abetting the offence shall forfeit a sum not exceeding fifty pounds.

Fine for obstructing rail roads.

72. If any person, after any such railroad shall be opened for use, shall himself go thereon, or shall ride, drive, or lead any animal thereon without the consent of the proprietor, he shall for every offence forfeit twenty shillings; but nothing in this section shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith.

Fine for going upon, or leading animal on, railroad.

73. If any animal shall be found going at large within the limits of any such railroad after the same is opened for use, the person through whose neglect the same shall occur shall for every offence forfeit five shillings; provided the railroad shall have on the sides thereof where it shall not cross some other road on the same level, a lawful fence.

Fine for cattle trespassing on railroad limits.

74. If any person convicted under any of the three preceding sections shall not pay the judgment, and no goods can be found whereon to levy, he may be imprisoned for a term not exceeding one day for every five shillings of the amount of the judgment; such term in no case to exceed three months.

Imprisonment when no goods to satisfy fine.

75. In order more effectually to prevent breaches of the foregoing regulations, the general sessions or any special sessions, not interested in the railroad or connected therewith, may appoint and swear in constables for such railroad, to be nominated by the proprietor; and such constables shall be stationed at such places as may be deemed necessary, at the expense of the proprietor, and shall carry such

Special constables, how appointed; their badge and duty.

**CHAP. 70.** distinguishing badge when on duty as the general or special sessions shall direct, and shall have all the powers of constables in preventing such breaches, and for apprehending offenders and taking them before justices of the peace, and for preserving public peace and order on and within the limits of the railroad.

Definition of terms.

76. The word "proprietor," when used in this chapter, shall include his agents and servants; and the word "road" shall include streets, lanes, and highways.

Obstruction of workmen on railroad—penalty for, &c.

77. If any person shall wilfully obstruct any person acting under the authority of the commissioners in the lawful exercise of their power in setting out the line of the railway, or shall pull up or remove any poles, pegs, or stakes, driven into the ground for the purpose of so setting out the line of the railway, or shall deface or destroy any pegs or marks put down or made for the same purpose, or shall wilfully obstruct any of the contractors or their servants or workmen, while employed in the construction of the railway, he shall forfeit a sum not exceeding five pounds for every such offence.

Obstruction to engine, &c.; injuries to railroad—punishment for, &c.

78. If any person shall wilfully obstruct the passing of any engine or carriage along the railroad, or shall maliciously place anything on the railroad calculated to obstruct the passage of any engine or carriage, or to injure or endanger the same, or shall maliciously injure the railroad, or any thing thereto appertaining, or any materials or implements for the construction or use thereof, or any of the property in the possession or under the control of the commissioners as such, he shall be guilty of felony, and be imprisoned in the penitentiary for a term not exceeding fourteen years.

Impeding officers in execution of duty; trespass, &c.

79. If any person shall wilfully obstruct or impede any officer, servant, or agent of the commissioners, in the execution of his duties upon the railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon the railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer, servant, or agent of the commissioners, or shall wilfully disturb, break down, injure, or destroy, any of the fences of the railway, or remove the same, or any part thereof, or shall blot out or deface any regulations put up on the line, or pull down or injure the boards upon which such regulations are affixed—every such person so offending, and all others aiding or assisting therein shall severally forfeit a sum not exceeding twenty-five pounds for every such offence.

Injury to road—penalty for.

Gates—penalty for leaving open.

80. If any person shall omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriage, cattle, or other animals under his



care have passed through the same, he shall forfeit for every such offence a sum not exceeding forty shillings. CHAP. 70.

81. If any person, after the rail road, or any section thereof, shall be opened for use, shall himself go thereon, or shall ride, drive, or lead any animal thereon, he shall for every such offence forfeit a sum not exceeding forty shillings; but nothing in this regulation shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith. Driving, &c. along the railroad—penalty for.

82. If any animal shall be found going at large within the limits of the railroad, or any section thereof, after the same shall be opened for use, the owner thereof, and the person through whose default or neglect the same shall occur, shall for every such offence severally forfeit a sum not exceeding forty shillings: provided the railroad shall have on the sides thereof, where it shall not cross some other road on the same level, a fence approved of by the commissioners. Animals straying on railroad; penalty, &c.

83. If any person shall travel, or attempt to travel, in any carriage belonging to the railroad, without having previously paid his fare, and with intent to avoid payment thereof; or if any person having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage; or if any person while in such carriage, shall offend or annoy the other passengers therein, by riotous conduct, or by indecent or profane language, or shall disobey the lawful directions of the guard, or shall persist in smoking after a request from the guard, or from any other passenger, to desist therefrom—every such person shall, for every such offence, forfeit a sum not exceeding five pounds. Riotous conduct in railcars, &c.; refusal to pay fare—penalty for.

84. If any person be discovered either in or after committing, or attempting to commit, any such offence as in the preceding regulation mentioned, all officers and servants of the commissioners, and such other persons as they may call to their aid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he can be otherwise discharged in due course of law. Detention of offenders—by whom.

85. If any person shall send by the railway any aqua fortis, oil of vitrol, gunpowder, lucifer matches, or other goods of a dangerous character, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice to the book-keeper, or other servant of the commissioners with whom the same are left at the time of so sending, he shall forfeit for every such offence a sum not exceeding twenty pounds. Gunpowder and dangerous goods; penalty for not marking them.

## CHAP. 70.

Tolls—how levied.

86. It shall be lawful for the commissioners to make and levy such tolls as in their opinion shall be best adapted for the accommodation of the traffic, and to alter and vary the same from time to time as they may see fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances.

Tolls—how and by whom paid.

87. The tolls shall be paid to such persons, and at such places, and in such manner, and under such regulations, as the commissioners shall appoint.

Refusal to pay tolls—penalty.

88. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the commissioners to detain and sell such carriage, or all or any part of such goods; or if the same shall have been removed from the premises of the railway, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls; and out of the money arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, to the person entitled thereto; or it shall be lawful for the commissioners to recover any such tolls by action at law.

Avoiding the toll by not giving correct account of goods; penalty for.

89. If any person, being the owner, or having the care of any carriage or goods passing or being upon the railway, shall, on demand, fail to give to any person appointed to collect the tolls a true and correct account in writing, signed by him, of the number and quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out, or are about to set out, and at what point the same are to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to payment of different tolls, shall fail to specify the respective quantities or numbers thereof liable to each or any such tolls, with intent to avoid in any case the payment thereof, he shall for every such offence forfeit and pay to the commissioners a sum not exceeding ten pounds for every ton of goods or for any parcel not exceeding one hundred weight, and so in proportion for any quantity of goods less than one ton, or for any parcel exceeding one hundred weight, as the case may be, which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

Damages to carriages, &amp;c.

90. If any passenger shall wilfully cut the lining, or remove or damage any part of the carriages, or shall get into or get off of any train when in motion, or at any other place than the passengers platforms, or attempt to do so,

every such person shall for every such offence forfeit and pay a sum not exceeding forty shillings. CHAP. 70.

91. Passengers at the road stations will only be booked conditionally, that is to say, in case there shall be room in the train for which they are booked. If there shall not be room for all so booked, the passengers for the longer distance will be allowed the preference, and for the same distance they will have priority according to the number of their tickets. Passengers :  
rules of book-  
ing.

92. The owners of goods and property of every description conveyed by the railway, liable to injury from the weather, or from smoke, sparks, or fire, shall be responsible for their proper protection, unless under a special bargain with the commissioners. Commissioners  
not responsible  
for goods injured,  
unless special-  
ly agreed for.

93. If any person shall load any carriage on the railway, so that the loading extends more than two feet beyond the flange of the wheels, or shall leave any carriage or goods or things under his charge to remain on the railway, or in any of the depots or sidings thereof, to an obstruction of the working of the railway, every such person, for every such offence, shall forfeit and pay a sum not exceeding forty shillings. Overloading  
carriages, &c.,  
causing ob-  
struction to  
working rail-  
way, &c.

94. If any person convicted under any of the preceding sections, from 71 to 87 both inclusive, shall not pay the judgment and costs, and no goods can be found whereon to levy the same, such person may be imprisoned in the common jail of the county for a term not exceeding one day for every five shillings of the amount of the judgment, provided such term shall in no case exceed three months. Persons convic-  
ted under the  
preceding sec-  
tion, without  
property, may  
be imprisoned.

95. All the sections of this chapter from one to nine, eleven to sixteen, twenty-three to twenty-eight, and thirty-one to thirty-eight, inclusive, have operation from the thirty-first day of March, one thousand eight hundred and fifty-four.

#### SCHEDULE.

##### A.

Venire—To wit:

To the Sheriff of \_\_\_\_\_

You are hereby commanded to summon A. B., &c., jurors, duly appointed to appear at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, then and there to qualify themselves for the purpose of appraising the damages sustained by certain claimants for damages in respect of lands taken for railway purposes, and in respect of other injuries within the provisions of chapter 70 of the revised statutes, second series, and have you then and there this writ.

Issued this \_\_\_\_\_ day of \_\_\_\_\_ A. D.

CHAP. 71.

## B.

*Juror's Oath.*

You swear that you will truly appraise the damages sustained by the respective proprietors of lands taken for the track of railways, and for stations, and that in the case of claimants for damages by reason of the line of railway having deprived them of access to their lands, or having destroyed or impaired any easement or privilege which they had enjoyed in relation thereto, you will truly appraise the damage so sustained by such parties respectively; and you do swear, that in every case you will faithfully examine the premises, and will investigate each case according to the circumstances, and that you will impartially form your judgment of the damages as well prospective as present, including loss for delay of payment; and also will impartially consider and estimate the relative benefit as well as injury to the property by the construction of the railway, and will deduct the benefit likely to be derived by the claimants from the railway running near to their lands, and that you will in all things decide according to the best of your judgment and ability. So help you God.

## C.

This is to certify that A. B. is entitled to receive the sum of £——, which on the —— day of ——, 18——, was appraised for railway damages, under the act of 1857, entitled "an act for authorizing assessments for railway damages," payable to the said A. B., or his order, in two equal annual instalments, in the manner following, that is to say: One half of the said sum on or before the expiration of one year from the date of the appraisement as above mentioned, and the other half on or before the expiration of two years from that date, together with interest on each instalment, after the time of payment shall have elapsed.

Given under my hand this —— day of ——, A. D. 18——.

C. D., custos of county of ——.

E. F., clerk of the peace.

**CHAPTER 71.**

## OF CERTAIN BRIDGES AND PUBLIC LANDINGS.

Wharves, landings, and certain bridges to be under the controul of the sessions.

1. The sessions shall have control of all public wharves and public landings, and of all draw bridges, and also of the following other bridges, viz:—Lake Porter bridge, in the county of Halifax, the bridge over Sissaboo River, in the

county of Digby, and Bear River, dividing the counties of Annapolis and Digby, which latter bridge, for the purposes of this chapter, shall be considered wholly in the county of Digby; and the sessions may make orders for the preservation and proper keeping thereof, and may appoint persons to superintend the same, who shall in such case be sworn to the faithful discharge of their duties before a justice of the peace, and the sessions may affix penalties for the breach of any such orders, not exceeding in any one case three pounds, and may also impose charges on vessels lying at, and goods landed on, such wharves or landings, and may direct the mode of recovery and application of such penalties and charges; but nothing herein contained shall affect rights conferred by any act of incorporation in relation to any such draw bridge, public wharf or public landing.

2. The sessions, upon the presentment of the grand jury, are authorized to cause draws to be made in any of the bridges erected or to be erected over any of the rivers in this province; and all such bridges so converted into draw bridges, shall be thereafter subject to all the provisions of this chapter; but nothing herein contained, shall authorize the placing a draw in any bridge built under any charter or act of incorporation.

Draws to be made in bridges upon presentment of grand jury.

## CHAPTER 72.

### OF FERRIES.

1. The sessions may establish ferries over harbors, bays, rivers and creeks within their counties or districts, and agree with and grant licenses to ferrymen on one or both sides thereof, under the regulations, and at the rates of ferriage by the sessions established or to be established.

Ferries and ferriages to be established and regulated by sessions.

2. At the Lennox passage in the island of Cape Breton, and at the Gut of Canso, there shall be at least one ferryman appointed on each side.

Lennox passage and the Gut of Canso, to have a ferryman on each side.

3. Ferrymen shall keep safe and good boats, or vessels in good repair, and suitable for the ferry, and give ready attendance on the passengers, according to the regulations.

Duty of ferrymen.

4. Ferrymen not complying with the regulations, or receiving more than the established rate of ferriage, or neglecting to keep boats or vessels, or to give attendance as hereinbefore directed, shall forfeit for every offence not less than ten nor more than forty shillings; and shall be further liable to an action on the case for damage by any person sustained from the neglect.

Fine for neglect of duty; further liability.

**CHAP. 73.** 5. When a ferry has been established, and the ferryman licensed, if any other person shall carry over the harbor, bay, river or creek, whereon the ferry is established, any person, cattle or carriage, for hire, unless by consent of the licensed ferryman, or on his not giving due attendance, he shall for every offence forfeit not less than five nor more than twenty shillings, to the use of the person suing; and in default of goods whereon to levy, the person convicted shall be committed to jail, for not less than five nor more than ten days, to be in the execution expressed, unless the amount shall be sooner paid; but if the licensed ferryman shall not give attendance pursuant to the regulations, then any other person may supply his place, and receive pay as if licensed, until another shall be appointed.

Fine for interfering with ferryman's privileges.

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## TITLE XX.

### OF SEWERS, COMMONS, AND COMMON FIELDS.

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#### CHAPTER 73.

##### OF COMMISSIONERS OF SEWERS AND THE REGULATING OF DIKED AND MARSH LANDS.

1. All commissions issued for the appointment of commissioners of sewers shall continue in force till the governor in council shall otherwise direct.
2. The governor in council, at the request of any of the proprietors of any marsh, swamp, or meadow lands, may appoint one or more commissioners of sewers for the county, township or place where such lands lie, who shall be sworn into office by a justice of the peace, and such swearing shall be entered in the commissioners' book of record, which shall be evidence of the fact; and the commissioners shall appoint a clerk, who shall be sworn into office by one of the commissioners, and the swearing shall be entered in the book of record, which shall be evidence of the fact.
3. Two thirds in interest of the proprietors of any marsh, swamp, or meadow lands, within the jurisdiction of such commissioners, may, by themselves or their agents, select one or more commissioners to carry on any work for reclaiming such lands; and they may at any time add to or diminish the number of commissioners selected or supersede any or all of them, and choose others instead; and the choice or dismissal of any commissioners for or from the management of any particular land shall be made in writing, under the

Commissions already issued, to continue in force.

Commissioners how appointed and sworn in; clerk to be appointed and sworn.

Commissioners, how chosen to carry on work; how dismissed.

hands of two-thirds of the proprietors in interest in such lands, and shall be entered in the book of record or filed by the clerk. Whenever any marsh, swamp, or meadow lands lie partly in two counties, one or more commissioners of sewers may be chosen therefor out of one or both counties in which such lands lie. CHAP. 73.

4. The commissioners so chosen may require the proprietors of such lands to furnish men, teams, tools, and materials to build or repair any dikes or wears necessary to prevent inundation, to dam, flow, or drain such lands, or to secure the same from brooks, rivers, or the sea, by aboiteaux or breakwaters, or in any way they may think proper; and in case of neglect may employ men and teams, and provide tools and materials for that purpose at the expense of such proprietors; the commissioner so chosen shall consult such other commissioners within the township, county, or place, as two thirds in interest of the proprietors of the lands in question, personally or by their agents, shall name, as to the practicability of the work, or anything relating to the same. In case of the commencement of any new work, two-thirds in interest of the proprietors of the lands shall first agree thereto.

Powers of commissioners for carrying on works; new works how begun.

5. Commissioners may appoint from among the proprietors of such lands one or more overseers to assist them, who shall be sworn by one of the commissioners.

Overseers may be appointed; how sworn.

6. Commissioners shall in ordinary cases cause three days' notice, exclusive of Sundays, to be given to the proprietors of lands, or to their known agents where they reside within ten miles of the place where the labor is required to be done, to attend and furnish labor and materials; but in cases of sudden breaches in any works, or apprehension thereof, the immediate attendance of each proprietor may be required.

Notice to be given proprietors.

7. The commissioners so chosen may assess the owners or occupiers of such lands for any expenses incurred by them or their predecessors, whose accounts remain unsettled, for dikes, wears, drains, aboiteaux, or breakwaters, including seven shillings and six pence per day for every commissioner while actually employed, and a reasonable sum for the payment of the clerk, overseers, and collector, having regard to the quantity and quality of land of each owner or occupier, and the benefit to be by him received.

Assesment to be made; and for what purposes.

8. Where any rate shall exceed seven shillings and six pence an acre on the whole quantity of rateable land, the commissioners shall summon the owners or occupiers of such land, or their known agents, or such of them as shall reside within ten miles of the work, to meet at a certain place and at a certain time, not less than three days exclusive of Sunday, after service of such summons, when two thirds in interest of the owners or occupiers present may elect not less than three nor more than five disinterested persons as assessors,

Rates exceeding seven shillings and six pence per acre, how assessed.

CHAP. 73. who shall be sworn into office the same way as the clerk; and they, or a majority of them, shall, with the commissioners, assess the owners or occupiers for the expenses incurred, including a sum not exceeding seven shillings and sixpence a day for each assessor while actually employed.

Commissioners of Wickwire dike may assess.

9. The commissioners for the new or Wickwire dike, in Horton, may assess the owners or occupiers of land in such dike, although the rate shall exceed seven shillings and six pence an acre, provided the rate shall not exceed twenty shillings an acre on the whole quantity of rateable land, without calling a meeting of the owners or occupiers, as provided in the last section, or taking the other proceedings prescribed by the chapter where the rate exceeds seven shillings and six pence.

Meadow and swamp lands assessed for original draining as in last section.

10. An assessment may be made in the same way in respect of meadow lands and swamps for the original opening or draining thereof, although the rate be less than seven shillings and six pence an acre on the quantity of rateable land.

Assessment when agreed to unanimously shall be valid as other rates.

11. If the owners or occupiers, or their agents, attending such meeting shall unanimously agree to an estimate and assessment in writing, to be entered in the books of the commissioners, it shall be valid and binding, as any other rate or assessment

Fines, rates and assessments, how recovered; private set off disallowed.

12. All fines, rates and assessments, shall be recovered by and in the names of the commissioners so appointed and chosen, with costs as if the same were private debts; and a copy of the assessment, or of such part as may relate to the particular rate sued for, shall be sufficient proof of the assessment having been made, and of the liability of the owner or occupier of the land in question to pay the same; and no fine, rate, or assessment shall be subject to any set off of a private nature, or be connected with any private claim on the part of the plaintiff.

Lands may be leased for payment of rates.

13. When no goods of any owner or occupier of such lands can be found within the county where they lie, or the commissioners shall not think prudent to proceed under any judgment so obtained against such goods, the commissioners may let so much of the land as will pay the rate and expenses thereon, first giving twenty days' notice, by handbills, posted in at least three of the most public places in the township where the lands lie.

May be sold, if rents not sufficient.

14. If any such lands cannot be let for a sufficient sum to pay the rate and expense, the sheriff or his deputy, at the request of the commissioners, shall sell the same, or so much thereof, as is necessary to pay the rate and expenses, having given three months' previous notice of the time and place of such sale, by handbills, posted in at least three of the most public places in the township where such lands lie; and shall execute and deliver to the purchaser a valid deed of such lands, for which deed, and his attention about



the sale, he shall be entitled, out of the proceeds, to ten shillings. A recital in the deed of such handbills having been duly posted, shall be presumptive evidence of the fact. No school or glebe lands shall be sold under this chapter.

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15. Where the present or former owner or occupier of any land, or his known agent, shall not have agreed to the building of any dike, wear, aboiteau or breakwater, or to the damming, flowing or draining of such land, the land only shall be liable for the rate or assessment.

Land only liable where owner hath not agreed to the works.

16. Any deficiency in the amount of a rate may be levied and collected as an original rate.

Deficiencies of rates, how levied and collected

17. No commissioner shall be liable to an action for any demand for work or materials furnished by the owner or occupier, or his agent, until all rates and expenses thereon against the lands of such owner or occupier shall have been paid, nor until after a reasonable time for making up the rate bill and collecting the same; and before any letting or sale shall take place, the amount due to the owner or occupier of such lands, for work or materials, shall be deducted from the amount due from such owner or occupier.

Action by owners, &c. against commissioner for work, &c. when sustainable.

18. Every owner or occupier of such lands, or their agent, shall, when required by the commissioners, provide, at a certain time and place named, a sufficient number of laborers, with tools, carts and teams, in proportion to the quantity of land owned or occupied; and for each day's neglect, in case of a sudden breach, or the apprehension of one, shall pay, besides his rate or assessment, a fine of five shillings for each laborer, and a like sum for each cart or team so required. All fines, when recovered, to be applied for the benefit of such lands generally.

Owners and occupiers required to furnish labor; fine for neglect.

19. When sods or soil shall be cut off the land of any proprietor, diked in common with other proprietors, for diking the same; or such lands shall be washed away, or diked out, or injured by carting over the same by order of the commissioners; such damage shall be valued, assessed and paid as other dike rates. If there be any lands so reclaimed, lying undivided and in common, the same shall be, as far as it may be available, allotted to the party injured, and the balance only, if any, assessed as above.

Damage for sods or soil how assessed.

20. The clerk of the commissioners shall keep a record of all their proceedings, and a fair account of all monies expended by them, open to the inspection of all persons interested therein, on payment for each search and examination of the book at one time, of one shilling; and a copy shall be furnished to every person interested, when demanded, on payment of six pence for every ninety words.

Record to be kept by clerk, fees for inspection and extra acts.

21. Whenever by the making or repairing of a breakwater, salt marsh lying outside the same shall be benefitted thereby, the same shall be taxed and assessed, towards the

Salt marshes liable in certain cases to expenses of breakwaters.

**CHAP. 73.** expense of the breakwater, in proportion to the benefit derived.

Expense to be assessed on the parts benefitted

22. Whenever in the draining of any swamp or meadow land a part shall be benefitted, the proportion of the expense shall be assessed on that part only.

Competency of clerks, and other officers as witnesses.

23. A clerk or overseer or collector shall be a competent witness to prove any fact connected with the duties of his office, although a proprietor in the land included in the assessment; except in a matter touching the particular rate or assessment upon his own land or himself in relation thereto.

Commissioner shall not be clerk.

24. No commissioner of sewers shall hold the office of clerk or collector.

Plans when necessary, how obtained.

25. When any commissioners of sewers, having the charge of any land, shall think it necessary to have a plan thereof shewing the several lots and boundaries, and the names of owners or occupiers, he may employ a surveyor to make such plan, and order the expense to be laid on the land so surveyed as other charges; and may require the owners or occupiers, or their agents, to point out to the surveyor the boundaries of their respective lots; and the owners, occupiers, and agents so called upon, shall be bound by such survey and plan.

Outerdikes protecting lands enclosed by inner dikes, how kept in repair.

26. Where any lands enclosed by dikes shall, by other dikes erected outside the same, be enclosed and protected, the commissioner in charge of the lands reclaimed by outer dikes shall call a meeting of the proprietors of the land within the whole level contained and enclosed by the outer dikes, who shall reside within the township or within ten miles of the place where such lands lie, giving six days' notice of the time and place of meeting to each proprietor or his known agent; and two thirds in interest of such owners or occupiers present, or, in case of their neglect, then the commissioners shall elect not less than three nor more than five disinterested freeholders, who, being sworn before a justice, shall determine what proportion or degree of benefit hath accrued or is likely to accrue to the old or inner dikes and the lands lying within the same, from the new or outer dikes, and shall settle and declare the proportion of expense the proprietors of the lands within the old dikes ought annually to contribute and be assessed towards the maintenance and repair of the new dikes; and such persons, or two thirds of them, shall make a report in writing of their proceedings, which shall be entered in the book of record for such outer dikes, and every sum or proportion of expenses so settled and declared shall be borne upon the lands within the inner dikes, and be assessed and collected as other dike rates.

Outer dikes ceasing to protect inner dikes.

27. If such outer dikes shall at any time cease, in whole or in part, to protect such inner dikes, the lands within the inner dikes shall not for such time contribute or be assessed to the support or repair of the outer dikes.

28. If at any time two thirds in interest of the proprietors of the lands within the inner dikes shall be apprehensive that the outer dikes are unsafe or out of repair, two thirds in interest of the proprietors of the whole level may call upon one or more commissioners to examine the outer dikes; and if it appear to him or them to require repair, he or they, with the assent of such two thirds in interest of the proprietors of the whole level, shall forthwith cause the same to be repaired, or otherwise, with the like consent, put the inner dikes in a state of repair, as shall seem most advisable. If the inner dikes be repaired, then the proprietors of the lands enclosed thereby shall bear the expense.

29. If any person shall pasture marshes or other lands enclosed by a common dike, or without and adjoining such dike, or shall make a road over such dike whereby it shall be injured, the commissioners may make an order on such person as often as occasion may require for repairing the injury by a certain day to be named therein; and, in case of refusal of obedience to such order, the commissioners shall cause the injury to be repaired, and the person disobeying the order shall forfeit for every offence ten shillings, which, with the costs of the repair, may be recovered and applied as other dike rates.

30. On application by any proprietor of marsh, swamp, or meadow lands, in writing, signed by him or his agent, to the commissioners for a county or township in which the lands lie, or in case there has been a commissioner or commissioners selected by two thirds in interest for carrying on work over the lands whereof the same forms a part, then to such commissioner or commissioners, setting forth that the same are frequently overflowed and rendered unproductive, the commissioners, or any three of them, or the commissioner or commissioners so selected, as the case may be, shall inquire into the merits of the application, and may direct such lands to be drained by causing new or old drains to be opened through the same or any adjacent land; and such commissioner or commissioners may order such measures as they may deem proper for rendering the lands productive, and may require the proprietors or occupiers of the lands through which the drainage shall be ordered, to perform a just proportion of the labor necessary for the purpose, and shall have power to tax all lands benefitted by such drainage, and the proprietors or occupiers thereof, for the expenses incurred, and for damage arising therefrom, in proportion to the benefit to be received by such lands respectively, by a rate according to the quantity and quality of the lands owned by the proprietors respectively; which rate shall be levied and recovered as other dike rates are; but no such rate shall be payable until ten days after notice given by the commissioner or commissioners, or his or their

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Proprietors interested in inner dikes may take proceedings to compel repairs of outer dikes.

Dikes injured by pasturage or roads how repaired.

Applications for drainage, how made; duty of commissioner thereon.

CHAP. 73. collector or clerk, to the proprietors or occupiers, or their known agents respectively, residing within ten miles of the lands drained, of the amount thereof, or, in case of an appeal, until after the decision thereon.

Making, altering, &c.; roads, &c. thro' diked lands.

31. Two-thirds in interest of the proprietors of any body of marsh, diked or undiked, may, on application in writing, specially require the commissioners of sewers having such land in charge, or in case there be none, may select any other commissioner for the purpose of making, repairing, or altering any private roads or bridges leading through or across the same, which such majority of two-thirds in interest may deem expedient or advantageous; and the commissioners so appointed or required may call upon the proprietors of such lands to furnish men, teams, tools, and materials to carry on such works, and may assess the owners or occupiers of such lands according to the benefit to be derived, and collect such rates in the same way as ordinary dike rates.

Flowing diked lands.

32. On application in writing, two-thirds in interest of the proprietors of any part or portion of any diked marsh, or meadow land, desiring to flow the same, may direct the commissioner in whose jurisdiction such lands may lie, or in case there is none, any commissioner selected by themselves from the same county or town, to proceed immediately and set off such part or portion into a separate body, and dike out such part or portion for the purpose of flowing the same; and such commissioner may require the proprietors or occupiers of such lands to furnish their proportions of labour and materials necessary to erect a division dike for that purpose, and shall assess them for the expenses and damages thereof according to the benefit to be received by such flowing: provided always, that whenever it shall appear to any commissioner of sewers adjoining such flowed lands, that such division dike is insufficient, and such lands adjoining are endangered thereby, it shall be lawful for such commissioner to repair such division dike, and collect the expenses thereof from the proprietors of the land so diked out.

Expenses, how borne.

33. The expenses of repairing the dike cut for such flowing shall be borne by the proprietors of the land so diked out and flowed.

Proprietors dissatisfied with rates may have assessors chosen, whose decision shall be final.

34. If any proprietor or occupier taxed, shall within seven days after being notified thereof, give notice to the commissioner or commissioners in writing, signed by himself or his agent, that he is dissatisfied with the rate, such commissioner or commissioners shall summon the owners or occupiers of such lands, or their known agents, or such of them as shall reside within ten miles of the work, to meet at a certain place and on a certain day, being at least three days, exclusive of Sunday, after service of such summons, when a majority in interest of those present shall elect not

less than three nor more than five disinterested persons as assessors; and the assessors, or a majority of them, having been first sworn into office in the same way as the clerk, with such commissioner or commissioners, shall assess such owners or occupiers for the expenses incurred, including a sum not exceeding seven shillings and six pence a day for each assessor while actually employed; and the decision of the assessors, or any three of them, shall be final.

35. In case the proprietors neglect to meet at the time and place appointed, or to appoint assessors, or in case the assessors or a majority of them neglect to perform the duties imposed upon them, the commissioner or commissioners shall forthwith submit and refer such rate to three other disinterested commissioners of sewers of the county or township within which the lands lie, by name, who shall forthwith revise, and, if they see fit, amend such rate, and the decision of the revising commissioners, or any two of them, shall be final.

Mode of procedure, where the provisions of last section are not complied with.

36. When the land of any proprietor within such marsh, swamp, or meadow land, other than that of the applicant, shall have been injured by such drainage or other measures ordered, the damage shall be valued, assessed, and paid in the same manner as directed for the expenses incurred in such drainage.

Damages to lands of persons not applicants, how valued and assessed.

37. Where any diked marshes are owned by two persons in such proportions that neither is interested to the extent of two thirds, either party may require one or more commissioners to take charge of and carry on any work necessary for repairing the dikes thereof.

Cases of two proprietors, but neither owning two-thirds, how provided for.

38. If any owner or occupier of land think himself aggrieved by the proceedings of the commissioners, or of any person acting under this chapter, he may remove the proceedings of such commissioners by certiorari into the supreme court, where they shall be examined, if necessary, and such determination made as shall be proper; but sufficient security shall be first given by the applicant to the prothonotary of the court for payment of costs to be awarded and taxed.

Certiorari for removing proceedings into supreme court.

39. All clerks, collectors, overseers, and assessors, who shall neglect or refuse to comply with their duties, shall be liable to a fine of ten shillings for each offence, to be collected and appropriated as other fines under this chapter.

Fines for clerks and other officers neglecting duty.

40. Every notice required to be given, unless herein otherwise directed, may be a verbal notice to be given to the parties in person, or left at their dwelling houses if known, and within the distance limited in this chapter.

Notices may be verbal unless otherwise specified.

41. Two thirds in interest of the proprietors of any marsh, swamp, or meadow land, may make choice of a collector, overseers, and assessors; may order, confirm, or disallow any plan of lands, and settle the wages to be paid to or for the collector, overseers, laborers, carts, or teams, and

Two-thirds of proprietors may choose collectors & other officers, settle rates of wages &c. &c.

**CHAP. 74.** the price to be paid for materials, and cause the same to be entered in the book of record for the guidance of the commissioners.

Commissioner, how far liable for his predecessor's acts. 42. No commissioner shall be liable for any act of his predecessors in office about any work in which such commissioner is engaged, unless for money he might or could have collected on account of work done by his predecessors.

## CHAPTER 74.

### OF COMMONS.

Sessions to have the management of commons.

1. The sessions shall make regulations respecting commons in the several townships, and enforce the same by penalties, not exceeding forty shillings; and they shall have the general management of the commons, and the control of the supervisors in the discharge of their duties in relation thereto.

Halifax commons, and commons regulated by special acts, exempted.

2. Nothing in this chapter contained shall extend to the city of Halifax, nor to any commons regulated by a special act remaining unrepealed.

## CHAPTER 75.

### OF COMMON FIELDS.

Lines and boundaries how kept up.

1. Each proprietor of lands lying unfenced, or in a common field, shall once in two years, on six days' notice given him or his agent by the adjoining proprietor, run the lines, and make and keep up the boundaries of such lands, by stones or other sufficient marks; and any person neglecting so to do shall forfeit twenty shillings.

Regulations to be made at general annual meeting.

2. The proprietors of common fields shall meet annually on the first Monday of September, or on some other day to be appointed at a general meeting, at some convenient place, and by vote of a majority in interest of those present, may make regulations respecting the managing, fencing, and improving the same, and keeping the fences thereof in repair, and the making and repairing of roads and bridges in and across such common fields, as may from time to time appear expedient.

Regulations to be recorded.

3. The regulations shall be entered in a book to be kept for the purpose, and shall be signed by the chairman of the meeting; and the production of the book, and proof of the

entry made therein, shall be sufficient evidence of the regulations. CHAP. 75.

4. If any person shall not comply with the regulations, he shall forfeit a sum not exceeding ten shillings.

Fine for non-compliance with regulations.

5. In addition to any penalty imposed by this chapter, if any proprietor shall, after three days' notice from another proprietor, neglect to obey any regulations of the proprietors, under which he shall be bound to make or repair any fence, the fence viewer shall, on application, make or repair such fence, if he shall think it insufficient, and the person so refusing shall pay double the expense to the fence-viewer.

Proceedings to compel the erection of fences.

6. Every brand or mark adopted by the proprietors of any common field by their regulations, for branding or marking animals to be turned thereon, before being used, shall be entered in the town clerk's book, and he shall receive one shilling therefor.

Brands to be entered in clerk's book; fee therefor.

7. The town clerk, after entry of such brand or mark, shall not enter any other brand or mark similar thereto, under a penalty not exceeding ten pounds.

Fine for a second entry of same mark.

8. If any proprietor of a common field, or any person by his direction, shall with a brand or mark not recorded or entered by the town clerk, brand or mark any animal for the purpose of turning the same into a common field, or shall counterfeit any such brand or mark for the purpose of branding or marking any animal, every person so offending, or being accessory thereto, shall forfeit a sum not exceeding five pounds.

Fine for unauthorized or counterfeit brands.

9. Every proprietor of any field adjoining a common field, enclosed and improved, in case his part of the fence dividing his land from such common field shall become defective, shall immediately make the same a legal fence; and in case of his neglecting so to do within three days after notice given him by the field keeper or any proprietor, any fence-viewer, on application, may forthwith cause the same to be repaired; and the person who ought to have repaired the same shall pay double the expense thereof to the fence-viewer.

Proceedings to compel proprietor of adjoining lands to repair his fences.

10. If any proprietor in a common field shall desire to have his land separately fenced, he shall, unless otherwise assented to by two-thirds in interest of the whole proprietors, bear the whole expense of fencing the same, and shall be bound to keep such fence in repair at his individual expense.

Proprietors in common fields desirous of fencing, shall bear the whole expense, unless two-thirds in interest consent.

11. At the annual meeting the proprietors shall appoint from among themselves a committee of not less than three, nor more than five, to carry into effect the regulations made respecting such common field for the ensuing year.

Committee of management how appointed; their duty.

12. Whenever the committee shall find it necessary to raise money to carry into effect any regulation not applying to the making or repairing of roads or bridges in or across such common field, they shall assess the amount on the

Instructions as to assessments for various purposes.

CHAP. 75. several proprietors or occupiers of the common field, by an even and equal rate, according to the quantity and quality of land held; and in cases of regulations applicable to the making and repairing of roads and bridges in or across such common field, the committee shall assess the amount on the proprietors or occupiers, by an even and equal rate, according to the benefit to be derived from such roads and bridges by each proprietor or occupier respectively.

Section 12 not to extend to Grand Prairie, &c,

13. The last section shall not extend to any common field on the Grand Prairie or Wickwire dikes in Horton, but the committee, for any common field on such dikes, shall have power to make and repair all fences, gates, roads, and bridges in, across, or around the same, to call meetings of the proprietors, giving three days' notice to all proprietors residing within six miles of their clerk's office, and to do all acts necessary for the security and improvement of such common field, and to notify the commissioners of sewers of said dikes of such expence; and the commissioners shall include the amount in any sum of money, to be by them assessed upon the proprietors of such dikes, as ordinary dike rates, and shall apply such amount in payment of the expenses incurred, as certified by such committee.

Power of committee of such dikes.

Collectors appointed by committee; their duty.

14. The committee may, by writing, appoint a person to collect from the proprietors or occupiers the several sums assessed upon them respectively; and the collector, upon neglect of any party assessed to pay the amount for which he shall have been rated, after due notice of such assessment, may collect the same, as if it were a private debt due him.

Allowance to committee to be included in assessment.

15. The committee may include in any sum to be assessed, five shillings for the attendance of each of their number, for every day actually employed in carrying the regulations into effect.



## TITLE XXI.

## OF THE REGULATION OF TRADE IN CERTAIN CASES.

## CHAPTER 76.

## Part the First.

## OF SHIPPING AND SEAMEN.

1. Examinations shall be instituted for persons who are or intend to become masters or mates of foreign going ships, registered in and belonging to this province, in accordance with the provisions of part third of the imperial act entitled, "the merchant shipping act, 1854."

Examination of masters and mates of foreign going ships.

2. The governor in council may appoint local boards of examiners at such ports in this province as he may deem necessary, for the purpose of conducting such examinations; and may lay down, for the guidance of such boards, such rules and regulations as respect the examinations and qualifications of the applicants as shall, as nearly as possible, correspond and be consistent with the rules and regulations in that behalf required by the merchant's shipping act, and such rules and regulations shall in all respects be strictly adhered to by such boards of examiners, under a penalty of twenty-five pounds for any deviation therefrom.

Appointment of local board of examiners—rules for their guidance.

Penalty for breach of rules.

3. In addition to the local boards mentioned in the preceding section, the governor in council may appoint a board at Halifax, to be called, "the central board of examiners," and such central board, shall have and exercise the functions of the board of trade, under section 134 of the imperial act hereinbefore referred to, and they shall report half yearly to the board of trade.

Central board—appointment of; functions, &c.

4. The local boards of examiners shall duly examine each applicant in strict compliance with the rules laid down for their guidance in that behalf; and if such applicant shall pass a satisfactory examination as regards his sobriety, experience, ability, and seamanship, a testimonial shall be given to him by such local board to the effect that he is competent to act as a master, or as first, second, or only mate of such foreign going provincial ship; and on such testimonial being presented to the central board, such board shall grant a certificate of competency, to the effect that he is competent to act as master, first, second, or only mate of such foreign going ship, as the case may be, and containing the other particulars required by such imperial act; and such certificate shall entitle the recipient to all the rights and privileges enjoyed in that behalf by persons to whom cer-

Certificates of competency how granted.

Privileges of holders of certificates.

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No foreign going ship to go to sea unless masters and mates possess certificate.

Exemptions.

Certificate to be recorded.

Penalty for altering, &c., any certificate.

Fees.

Proviso.

Cases in which certificate may be cancelled or suspended.

Justices may compel attendance of witness.

Shipping articles in what cases necessary; their form, contents, attestation, &c.

tificates of a similar kind were granted under sections 134 and 135 of the act hereinbefore referred to.

5. After the seventh day of May, 1859, no provincial foreign going ship shall go to sea from any port in this province, unless the master thereof and the mates thereof have obtained and possess certificates of competency, as provided in the preceding section; but nothing in this section shall apply to provincial ships trading with the United States of America, British American Colonies, or British and Foreign West Indies.

6. All certificates shall be made in duplicate, and one part thereof shall be kept and recorded in the office of the central board, and the other shall be delivered to the party entitled thereto; and every person fraudulently procuring, obtaining, or altering such certificate, or permitting the same to be used by any other person, shall for each offence, be deemed guilty of a misdemeanor.

7. Each applicant for a master's certificate shall pay a fee of forty shillings, and each applicant for a mate's certificate shall pay a fee of twenty shillings, to the local board of examiners; one half of such fees to be paid in advance on the application being made, and the other half on receiving the certificate: provided, that if such applicant shall not pass his examination, he shall forfeit the sum so paid in advance.

8. If the central board or local board of examiners have reason to believe that any master or mate is, from incompetency or misconduct, unfit to discharge his duties, they may direct any two justices of the peace and one member of the local board to investigate the same; and thereupon such justices may summon such master or mate to appear before them, and shall give him full opportunity of making a defence, and they shall report the result of their investigations to the central board; and such central board shall have power to cancel or suspend the certificate of competency of such master or mate, should the result of the investigation reported to them in their judgment justify such a course. The justices, for the purpose of such investigation, shall have the power of compelling attendance of witnesses.

9. The master of any vessel registered in and belonging to this province, trading to parts out of the province, shall not carry to sea, as one of his crew, any person, apprentices excepted, without entering into an agreement in writing with such persons specifying what wages he is to receive, the capacity in which he is to act, and the nature of the voyage intended. The agreement shall contain the date when made, and shall be signed by the master, in the first instance, and by each person shipped, at his port of shipment:—it shall be in the form, and shall contain, as far as possible, the particulars in the schedule hereto annexed; and a copy, attested by the signature of the master, shall,

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on reporting the arrival of the vessel, be deposited in the customs there. A clause may be inserted therein providing for the sale of the vessel during the voyage intended, and for the discharge of the crew in the event of such sale; but such clause must state the amount of wages to be paid to the seamen upon such sale.

10. The master of any such vessel carrying to sea any such person, apprentices excepted, without having entered into the agreement hereby required, shall forfeit five pounds for every such person; and the master not depositing, as hereby required, a true copy of the agreement, shall forfeit five pounds.

Fines for shipping seamen contrary to the first section, and for non-compliance with its provision.

11. The entering into the agreement shall not deprive any seaman of his lien on the vessel, or of any legal remedy for the recovery of his wages: no agreement made contrary to the above provisions, and no clause depriving seamen of their right to wages in the case of freight earned, by a vessel subsequently lost, shall be binding on the seaman. No seaman shall be obliged to produce the agreement, or a copy of it, to support his claim for wages.

Articles not to lessen seaman's lien for wages.

12. If a seaman having signed the agreement hereby required, shall not join his vessel, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, any justice of the peace near the place shall, upon complaint made upon oath by the master, mate or owner, by his warrant, cause such seaman to be apprehended and brought before him; and if such seaman shall not satisfy the justice as to such neglect, refusal or absence, the justice shall, upon due proof, commit such seaman to jail, there to be kept at hard labor, for a period not exceeding thirty days; but if such seaman shall consent to join his vessel and proceed on the voyage, the justice if requested by the master, shall, instead of committing such seaman, cause him to be conveyed on board the vessel, or delivered to the master, and shall award to the master the costs incurred in such apprehension, not exceeding the sum of two pounds, exclusive of jail fees, which shall be deducted from the wages to grow due to such seaman.

Proceedings when seamen refuse to join ship after articles signed.

13. If any seaman having received an advance on his shipping, and signing the agreement, and for whom any person shall have become surety, and as such subscribed the agreement, shall not proceed on the voyage, such surety shall repay such advance; and if the master or owner shall be compelled to procure another seaman, and thereby incur additional expense, the surety shall also repay the same—provided it do not exceed half the sum originally advanced.

Sureties liable for advance and expenses where seamen refuse to proceed on the voyage.

14. The party becoming surety shall subscribe his name to the agreement in the proper column thereof, opposite to the name of the seaman for whom he becomes surety, and such signature shall render him liable to the extent above declared; and the amount shall be sued for as debts of the

Execution of articles by surety; advance, how recovered back when forfeited.

CHAP. 76. like amount by the law are ; and on production of the agreement, and proof of the execution thereof by the seaman and by the surety, and of the refusal of the seaman to proceed to sea, judgment shall be given against the surety for the advance paid to the seaman, and for the additional expense, to the extent above named, together with costs, as allowed by law in cases of debts of the like amount.

Forfeitures incurred by seamen for absence and other offences ; mode of proof.

15. If any seaman after having signed the agreement, and during the period for which he has agreed to serve, shall, without leave, absent himself from the ship, or from his duty, he shall, in cases not of absolute desertion, or not treated as such by the master, forfeit out of his wages, to the master or owner, the amount of two days' pay for every twenty-four hours absence, and in like proportion for a less period of time, or at the option of the master, the expenses incurred in hiring a substitute to perform his work ;—and any seaman, without sufficient cause, neglecting to perform the duty required by the person in command, shall be subject to a like forfeiture for every such offence, and for every twenty-four hours continuance thereof ;—and if any seaman, after having signed the agreement, or after the ship's arrival at her port of delivery, and before the discharge of her cargo, shall quit the ship without a discharge or leave from the master, he shall forfeit to the master or owner one month's pay out of his wages. No such forfeitures shall be incurred unless the fact of the seaman's absence or neglect, and the time and duration thereof be entered in the log book ; this entry the owner or master shall, in cases of dispute, be obliged to substantiate by evidence of the mate, or other credible witness.

Mode of computing forfeiture where agreement is by the year.

16. Where the seaman has contracted by the voyage or by the run, the amount of forfeitures shall be ascertained thus :—If the duration of the voyage shall exceed one month, the forfeiture of one month's pay shall be considered a forfeiture of a sum bearing the same proportion to the whole wages as a month bears to the whole time spent in the voyage ; a forfeiture of two days' pay, or less, shall be considered a forfeiture of the sum bearing the same proportion to the whole wages as that period bears to the time spent in the voyage ; if the whole time does not exceed one month the forfeiture of one month's pay shall be considered a forfeiture of the whole wages ; if such time does not exceed two days, the forfeiture of two days' pay shall be considered a forfeiture of the whole wages. The master shall deduct all forfeitures from the wages of the seaman incurring the same.

Forfeiture in case of desertion.

17. A seaman deserting his vessel shall forfeit to the owner or master all his effects remaining on board, and the wages due to him ; provided the circumstances of the desertion be at the time entered in the log-book, certified by the signature of the master and mate, or other credible witness.

The absence of a seaman within twenty-four hours immediately preceding the vessel's sailing, without leave of the master, or at any time under circumstances shewing an intention not to return, shall be considered an absolute desertion; and if such desertion shall take place out of this province, and the master shall be obliged to engage a substitute for the deserter at an increased rate of wages, he shall recover from such deserter the excess of wages paid to such substitute as wages are hereby made recoverable.

18. Any person harboring or secreting a seaman who shall have signed the agreement hereby required and absented himself from his vessel without leave, knowing or having reason to suspect him to be so absent, shall forfeit twenty shillings. No debt over five shillings incurred by a seaman after signing the agreement shall be recoverable until the conclusion of the voyage. The keeper of a public house shall not detain any effects of a seaman for any debt contracted by him. In case of such detention, any justice shall, on complaint on oath by or on behalf of such seaman, inquire into the matter, and he may, by warrant, cause such effects to be delivered to such seaman.

19. The master or owner shall pay every seaman his wages, if demanded, within three days after the delivery of the cargo, or ten days after the seaman's discharge, whichever shall first happen. The seaman, on his discharge, shall be entitled to receive one-fourth of the estimated balance due to him; and in default thereof the master or owner shall forfeit to the seaman two days' pay for each day, not exceeding ten days, that such payment without sufficient cause is withheld. This forfeiture shall be recoverable in the same manner as seamen's wages; but this provision shall not apply to cases where the seaman by the agreement is paid by a share in the profits of the adventure.

20. The payment of wages to a seaman shall be valid notwithstanding any bill of sale or assignment thereof, or any attachment or incumbrance thereon. No assignment or sale of wages made prior to the earning thereof, and no power of attorney to receive wages expressed to be irrevocable, shall be valid or binding on the party making it.

21. A seaman shall on his discharge, be entitled to a certificate, signed by the master, of his period of service, and the time and place of his discharge; and a master refusing such certificate, without reasonable cause, shall forfeit five pounds.

22. If a seaman, having been three days discharged, and desiring to proceed again to sea, shall require immediate payment of his wages,—any two justices on his application, and proof that delay would hinder him of employment, shall summon the master or owner of the vessel to shew cause why immediate payment should not be made; and if cause be not shewn, they shall order payment forth-

Harboring or secreting seamen, how punished; seamen's debts, how and when recoverable.

Seamen's wages when and how recoverable.

Payment to seamen valid notwithstanding previous assignments.

Seamen entitled to certificate; fine for refusing.

Proceedings for wages where seamen about to proceed on a voyage.

**CHAP. 76.** with; and in default of such payment the master or owner shall forfeit five pounds.

Wages how collected when under twenty pounds.

23. When the wages due to a seaman do not exceed twenty pounds, any two justices in the neighborhood, on complaint upon oath, by or on behalf of such seaman, shall summon the master or owner to appear and answer such complaint; and on his appearance, or in default thereof, on proof of his having been summoned, the justices shall, on the oath of the parties and their witnesses, examine into the complaint and order payment of the amount due; and if such order be not obeyed within two days, they shall issue their warrant to levy the amount awarded, by distress and sale of the effects of the party on whom such order was made, rendering to him the overplus, if any, after deducting the expense attending the complaint, and the distress and levy; and if sufficient distress be not found, they shall cause such wages and expenses to be levied on the vessel; and if she be not within their jurisdiction, they shall cause the party on whom the order was made to be committed to jail, there to remain until payment of the amount awarded, and all costs and expenses. The award of such justices shall be final and conclusive.

Jury allowed.

24. A jury shall be allowed in the trial of causes under this chapter, according to the provisions of chapter one hundred and thirty-one.

Costs to be disallowed in the vice admiralty where wages might be recovered before a justice.

25. If a suit for the recovery of a seaman's wages be brought in the court of vice admiralty, or any court of record of this province, and it shall appear to the judge that the plaintiff might have had as effectual a remedy by complaint to a justice, as above directed, he shall certify to that effect, and no costs of suit shall be awarded the plaintiff.

Medicines to be kept on board vessels.

26. The master of every such vessel shall constantly keep on board a sufficient supply of medicines, suitable to accidents and diseases arising on sea voyages, and in default thereof, or in case a seaman shall sustain injury in the service of the vessel, the expense of the surgical and medical advice and attendance and medicine he shall require, until he is cured or returns, shall be borne by the owner or master of the vessel, without any deduction on account of wages.

Crews discharged abroad only on certificate.

27. No such master shall discharge any of his crew at any British port out of this province without the sanction in writing, of the officer appointed in that behalf, or of the principal officer of the customs, or of two respectable merchants resident there; nor at any foreign port without the sanction in writing of the British minister, consul, or vice consul there, or of two respectable resident merchants; any of whom may make examination on oath, and grant or refuse a certificate of such sanction, according to their discretion.

28. No such master shall leave at any place abroad, either on shore or at sea, any of his crew as unfit to proceed on the voyage, or having deserted or disappeared, without having obtained a certificate, as in the foregoing section, approving thereof, if there be any such persons to apply to for that purpose; and such persons may make examination on oath, and grant or refuse such certificate according to their discretion.

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Crews not to be left abroad unless for good cause duly certified.

29. In any action brought for violation of this or the preceding sections, it shall be incumbent on the master to prove his having obtained the certificate thereby required, or prove the impracticability of obtaining such certificate.

In case of action the burden of proof as to certificates to be upon the master.

30. Nothing herein shall prevent the entry of any person belonging to any merchant ship into her majesty's naval service,—such entry shall not be a desertion, and shall not incur any forfeiture whatever. No clause creating a penalty or a forfeiture for such entry shall be inserted in any ship's articles.

Entering the naval service shall not be held desertion.

31. A seaman received into such service from a merchant vessel, not having committed an act of total desertion, treated as such by the master, shall, on such entry, receive all his effects from such vessel, and if she shall have earned freight, the proportionate amount of his wages, from the master up to such entry, in money or a bill on the owner. For failure to deliver such effects and money, or bill, the master shall forfeit twenty-five pounds. If no freight has been then earned, the master shall give to the seaman a bill on the owner for his wages then due, payable on the ship's arrival at her destined port. If he be unable to ascertain the amount, he shall give to the seaman a certificate of his period of service, and the rate of his wages, and shall produce to the officer commanding such ship of war, the shipping agreement. On such delivery of the seaman's effects and settlement of his wages, the officer commanding shall, on request of the master, give him a certificate under his hand endorsed on the agreement of the entry of the seaman into such ship of war.

Seamen's right to wages and effects when entering the naval service.

32. The court or justices before whom proceedings are brought for recovery of penalties hereby imposed, may make such reduction therein, not exceeding one half of the original amount, as they think fit. All such proceedings shall be commenced within two years after the offence; or if committed without the province within six months after the return thereto of the offender.

Court's power to reduce penalties; limitations of actions.

33. The foregoing sections shall not extend to any ship trading coastwise between the ports of this province, or to any regarded as coasting vessels by any law of this province.

Coasting vessels not affected by this chapter.

## CHAP. 76.

*Schedule in this chapter referred to.*

Form of agreement.

An agreement made pursuant to chapter seventy-six, title twenty-one, of an act of the general assembly of Nova Scotia, passed in the fourteenth year of the reign of her majesty queen Victoria, between ———, master of the ship ———, of the port of ———, of the burthen of ——— tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the several capacities against their respective names expressed, on a voyage from the port of ——— to ———, [*here the intended voyage is to be described as nearly as can be done, and the places at which it is intended the ship shall touch, or if that cannot be done, the nature of the voyage in which she is to be employed,*] and back to the port of ———; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores and cargo thereof, whether on board such ship, in boats or on shore. [*Here may be inserted any other clause which the parties may think proper to be introduced into the agreement—provided that the same be not contrary to and inconsistent with this act.*] In consideration of which services to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise and agree to pay the said crew, by way of compensation or wages, the amount against their names respectively expressed. In witness whereof, the said parties have hereto subscribed their names on the days against their respective signatures mentioned.





CHAP. 76.**CHAPTER 76.****Part the Second.****OF THE REGISTRY OF SHIPS.**

1. The governor in council may appoint for every port, at which they deem it expedient to authorise the registry of ships, a principal officer of customs, and of navigation laws, who shall be the registrar for all the purposes contemplated by the imperial act, entitled, "the merchant's shipping act, 1854."
2. The governor in council may appoint at every such port, and at any other port or ports in the province, an officer to superintend the survey and admeasurement of ships in conformity with the said act, and the same person may be appointed both the registrar and surveyor at any such registry port.
3. Such registrars and surveyors shall receive for their services, in addition to any fees by law allowed, such sums as may be annually granted by the legislature.
4. Such surveyor shall be entitled to fees for the measurement of every vessel about to be registered for the first time, or requiring measurement for the purposes of registry; which fees shall be paid by the registered owner as follows: ten shillings for vessels under one hundred tons; fifteen shillings for vessels from one hundred to two hundred tons; and twenty shillings for vessels over two hundred tons; six pence per mile for travelling fees going and returning.
5. So much of the act entitled, "the merchant shipping act 1854," as is inconsistent with this act, is hereby repealed as to ships registered in this province.
6. In the event of the certificate of registry of any ship being mislaid lost or destroyed, the registrar of the proper port shall grant a new certificate, as the case may require, on proof by affidavit of the original certificate having been mislaid, lost, or destroyed.
7. Collectors of colonial duties shall have the same power to endorse from time to time on the certificate of registry of any ship at any port where such ship may be any change of master which takes place at that port, as are given to registrars of shipping under this chapter, and the act of the imperial parliament, entitled "the merchant shipping act, 1854."

Appointment of registrars.

Appointment of surveyor.

Salaries of registrars and surveyors.

Surveyor's fees.

Part of "merchant shipping act, 1854," repealed.

New certificate, how granted.

Endorsement of change of master.

## CHAPTER 77.

## OF WRECKS AND WRECKED GOODS.

1. All ships, and goods of every description, wrecked, abandoned, or forced on, or within the soundings or shores, or found floating in the bays or rivers of this province, shall be preserved for the owners thereof; and persons finding such wrecks or goods shall immediately give notice thereof, either to the sheriff, coroner, officers of customs, officers of impost and excise, or a justice, which ever shall be nearest at hand; who shall or a majority of them if more than one, attend forthwith and take all necessary measures for preserving such ship or goods.

Wrecked ships or goods, how, for, and by whom preserved.

2. Any justice upon information on oath made before him, that any such goods have been carried away and concealed, shall issue his warrant to search all places where they are suspected to be concealed, and commit to jail any person who shall appear to have wilfully concealed the same, there to remain until delivered by due course of law.

Proceedings and punishment in cases of taking or concealing wrecked goods.

3. Any of the officers hereinbefore named, when any vessel shall be in danger, or shall be driven on shore, or discovered floating, may command as many men of the neighborhood as may be necessary, to assist in preserving the lives of the people and the property on board such vessel; and may order the person commanding any vessel at anchor to furnish his boats, and as many men as he can conveniently spare, and such men are hereby required to give their assistance accordingly. Any person disobeying any such orders shall, upon information on oath before any justice, be committed to jail for trial, unless good security be given for his appearance at the next term of the supreme court for the county; and upon conviction of such offence, he shall be subject to a fine not exceeding fifty pounds, or imprisonment for a term not exceeding six months, at the discretion of the court; but any person giving assistance to the people, or towards preserving any property on board any ship in danger of being wrecked, or towards the preservation of any property found floating, or cast on shore, shall within thirty days from the performance of such service be paid a reasonable reward therefor by the commander of the vessel, or owner of the property preserved; and in default of such payment, the property preserved shall remain in the custody of any of the hereinbefore named officers until such charges be paid;—and all persons who aid in such preservation shall be reasonably remunerated for their services, unless it appear that during the time of the performance thereof, they have been guilty of dishonesty, disobedience,

Vessels in distress how assisted; salvage in such cases how adjusted.

CHAP. 77. or disorderly conduct; and the officer, if any such, who shall attend and direct the making of the salvage shall certify to the actual performance of such services. The amount of such remuneration shall be determined by three neighboring justices, mutually chosen by the parties, who shall adjust the quantum of reward to be paid to each of the persons employed in making such salvage; which decision shall be binding upon all parties, and the amount so awarded shall be recoverable by action at law.

Proceedings where no claimant.

4. If no person shall appear to claim the goods so saved, the officer or person who has the charge of them, shall sell so much thereof as will be sufficient to pay such salvage, with the incidental charges incurred; or, if the goods are in danger of perishing, or of being lost by delay, then the whole shall be sold, and the proceeds thereof when sold, put into the immediate possession of some principal officer of the customs, or other responsible person if no such officer be present, who shall make an account thereof, and sign the same; and if the goods or money be not claimed within twelve months by the owner thereof, such of the goods as may then be on hand shall be sold by public auction, and the proceeds thereof, reasonable expenses of such sale being deducted, paid into the treasury, there to remain until claimed by the owner, who, upon affidavit, or proof of his right thereto, to the satisfaction of a judge of the supreme court, shall, upon his order, receive the same out of the treasury.

Property in legal custody not to be interfered with; molesting an officer a misdemeanor.

5. No person under any pretence whatever, shall interfere with any kind of property referred to in this chapter, if it be in the legal custody of any person, unless his assistance be required; and the person in charge of any vessel wrecked or in distress, or the officer who shall come to his assistance, may repel by force any attempt to meddle therewith without his consent. Any person convicted of molesting or obstructing any officer or other person having charge or employed in making salvage of any such vessel or goods, shall be punished as for a misdemeanor.

Supreme court to sustain proceedings brought up from inferior courts, unless in cases of wilful error.

6. If any proceedings under this chapter be removed from a court of inferior jurisdiction to the supreme court, and they shall appear to have been in accordance with the justice of the case, the supreme court shall confirm the same, notwithstanding the want of legal form therein; or may correct and amend the same, and give final judgment upon the merits; and shall wholly reverse the proceedings only for wilful and corrupt error.

## CHAPTER 78.

## OF PILOTAGE, HARBORS, AND HARBOR MASTERS.

1. The governor in council shall appoint not less than three nor more than five commissioners of pilots for each of the ports of Halifax, Sydney, Pictou, Pugwash, Wallace, Antigonishe, Saint Mary's, Arichat, Tatamagouche, and Point Bruley. Every commissioner shall take the following oath:

"I, [*name of commissioner*], do swear that I will act diligently, faithfully, and impartially in the examination and selection of pilots for the port of [*name of port*]."

Three commissioners in any one of the said commissions to be a quorum.

2. The commissioners shall examine and select as many pilots as they may think necessary for each of the ports in the preceding section mentioned; and shall grant certificates to such pilots in the following form, and which shall be revocable at pleasure:

"Province of Nova Scotia,

No. —, port of [*name of port*].

We, [*names of commissioners*], commissioners appointed by law to examine and select pilots for the port of [*name of port*], certify that [*name and residence of pilot*], having been examined by us, was deemed a fit person to undertake the pilotage of vessels of every description into and out of the said port; and on the — day of — A. D. 18—, was by us licensed to act in that capacity.

(Signed) [*names of commissioners.*]

Commissioners.

Entered in the register of pilots' licenses.

This license cannot be lent or transferred.

Description of [*name and residence of pilot*] No. —.

Age.	Height.	Complexion.	Color of hair and eyes.	Remarks.

3. Every such certificate shall be numbered and registered in a book kept for that purpose, and shall be annually renewed. The pilots for Halifax and Sydney shall pay twenty shillings for the certificate, and two shillings and six pence for every renewal thereof; and the pilots for the other ports shall pay ten shillings for the certificate, and

Commissioners of pilots for certain ports named, how appointed; their number; oath of office.

Pilots how appointed; form of certificate of appointment.

Certificate to be numbered, registered and renewed annually; fees on certificates and for renewal; penalty for transfer.

**CHAP. 78.** two shillings and sixpence for every renewal thereof. And no pilot shall lend or transfer his certificate under a penalty of five pounds.

Bye-laws may be made by commissioners.

4. The commissioners may from time to time establish bye-laws for the further regulation of pilots, and for extra remuneration in cases of any extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels, pilots, and others, respecting pilotage; and also respecting the salvage of anchors and cables; and may annex penalties for enforcing the same; but no bye-law shall be in force until approved by the governor in council.

Regulations respecting flags and boats; fine for disobeying.

5. Every licensed pilot shall carry such flag, and have his boat marked and rigged in such manner as the commissioners shall direct, under a penalty not exceeding twenty nor less than five shillings; and every unlicensed person carrying such flag shall forfeit ten pounds.

Penalty for taking pilot to sea.

6. No pilot shall be taken to sea against his will, under a penalty of twenty-five pounds on the master of the vessel, except when through stress of weather the same is unavoidable; in which case he shall be entitled to receive from the master or owner of the vessel five pounds a month for time lost, and shall also be provided with a passage home at the expense of such master or owner from the first port which the vessel shall enter where the same can be obtained.

Pilots detained after vessel anchored, entitled to wages.

7. If any licensed pilot shall be detained on board any vessel after the day of the arrival and anchoring thereof, he shall be paid five shillings a day, in addition to his food, whether the detention be caused by quarantine regulations or otherwise.

Unlicensed pilots when to surrender vessel to licensed pilots.

8. Any unlicensed person, other than the master, taking charge of any vessel as a pilot, shall surrender the guidance thereof, under a penalty of five pounds, to the first licensed pilot who shall hail her at the respective distances herein-after mentioned, from the several harbors following, viz:— at Halifax, southward of Herring Cove or Thrum Cap; at Sydney, outside of Low Point and Cranberry Head; at Pictou, outside of the light house; at Antigonishe, outside the Bar; at Saint Mary's, one mile outside of Wedge Island; at Wallace, Pugwash, Tatamagouche and Point Bruley, more than one mile from the mouth of the harbors respectively; and at Arichat, eastwardly two miles west from Green Island, and westwardly outside of Madame Island Point.

Licensed pilots hailing vessels but refused, entitled to certain fees specified, if another pilot be taken.

9. If the services of the licensed pilot so hailing such vessel shall not be accepted, or the master shall afterwards take another pilot, the licensed pilot who first offered shall be paid half pilotage by such master, except at Halifax, where he shall receive one-third only, if the vessel be owned in this province, or in any other part of her majesty's dominions, or be British built, and half pilotage on all other ves-

sels. And during the months of November, December, January, February and March, the master of any vessel approaching the port of Halifax, shall pay such pilot two-thirds of the pilotage, if his services shall not be accepted. CHAP. 78.

10. The master of any vessel approaching any of the beforementioned harbors, when hailed within a reasonable distance by a licensed pilot with his flag flying, shall shorten sail, haul to, or use other means, as circumstances will permit, to facilitate the pilot's boarding, under a penalty of forty shillings. Fine for not shortening sail, &c. when hailed by a licensed pilot.

11. A master requiring a pilot to take his vessel out of any of the beforementioned harbors, shall, if a British vessel, hoist the union jack, or if a foreign vessel, such flag as is usually worn thereby, at the foretop-gallant-mast-head, and there continue the same for twelve hours during daylight, before the time of sailing; and if in the meantime no licensed pilot shall offer himself, the master may employ any person he may think fit to pilot the vessel outwards. Flag to be hoisted for pilot to take ship out of harbor; unlicensed pilots taken when no others offer.

12. Any unlicensed person who shall take charge of such vessel, shall surrender the guidance thereof to the first licensed pilot who shall board her within the time specified in the last section, under a penalty of five pounds, if such vessel be bound from the port of Halifax, and three pounds if bound from any other port. Such unlicensed pilot to surrender the vessel to a licensed pilot offering.

13. Where a licensed pilot shall have conducted a vessel inwards, and shall offer his services to pilot her outwards, and shall be in attendance, ready and willing so to do, when such vessel is ready for sea, he shall be preferred to any other licensed pilot; and if his services be declined, he shall be entitled to the proportion of pilotage prescribed by the ninth section; and if the pilot who conducted her inwards shall not have tendered his services, then any licensed pilot who shall first offer himself within the time specified in the eleventh section, shall be entitled to the same proportion of pilotage, if his services shall not be accepted. Pilot inward, to be preferred if he offer, as a pilot outward.

14. The following vessels shall be exempted from pilotage:—vessels owned in the province and employed in the coasting trade or fishery, except whalers, and all vessels under eighty tons burthen coming from any part of her majesty's dominions, and all her majesty's ships of war; but no vessel voluntarily taking a pilot on board shall be exempted from pilotage; nor shall any vessel not spoken by a licensed pilot at the distances from the respective harbors prescribed by the eighth section be subject thereto. Vessels when exempted from pilotage.

15. Nothing in this chapter contained shall deprive any person who may act as a pilot, in the absence of a licensed pilot, from receiving payment for his services, according to the tables of rates in the schedule. Any person may act in the absence of a licensed pilot and receive fees.

16. The sessions upon the recommendation of the grand jury, may from time to time appoint and license one fit and proper person to be harbor master for any harbor within Harbor master, how appointed &c.

**CHAP. 78.** any county or district where it shall be judged by the sessions that the services of such officer may be required, and shall prescribe the duties of such harbor masters, and the limits of the harbors over which their authority shall extend.

Amount of fees,  
how determined

17. The sessions shall fix and determine the amount of fees to be paid to harbor masters, by vessels entering such harbors, provided they shall not exceed the fees payable at Sydney under schedule B. Vessels engaged in the coasting trade and in fishing shall be exempt from such fees. But the sessions shall have no power to establish fees in respect of any navigable river which forms the dividing line between two counties.

Bridgeport and  
Spanish River  
harbor masters  
appointed by  
the governor in  
council.

18. The governor in council shall appoint for each of the harbors of Bridgeport and Spanish River, in the island of Cape-Breton, one fit person to be harbor master thereof.

Harbor masters  
to continue in  
office, how long.

19. Harbor masters heretofore appointed (except in the harbors of Sydney and Bridgeport) shall continue in office only until others shall be appointed in their place, or until they shall be reappointed under the provisions of this chapter.

Powers and du-  
ties of sessions  
relative to an-  
chorage, bal-  
last, public  
wharves, &c.,  
and the making  
of bye-laws.

20. The sessions shall also make regulations for the anchorage of vessels, and establish convenient and proper places for vessels to discharge their ballast at; and may make agreements with persons for erecting wharves and other conveniencies for such vessels to discharge their ballast upon, and may make bye-laws to compel vessels to discharge their ballast upon such wharves, or at such other places as they may appoint, and for allowing masters of vessels a reasonable time for disposing of or selling such ballast; and may affix penalties not exceeding ten pounds for breach of any such regulation or bye-law.

Wharfage, how  
established and  
collected.

21. The rates of wharfage to be paid by vessels using the wharves and other conveniencies mentioned in the preceding section, shall be established by the sessions, and may be recovered as a private debt.

Buoys, &c.,  
regulations re-  
garding them;  
penalties, &c.

22. The general or any special sessions shall from time to time direct as many buoys and other marks to be placed in and about the various bays and harbors, in their respective counties as to them may appear necessary for the safety of the shipping and the convenient navigation of those harbors respectively; and shall make regulations for the maintenance of such buoys and marks as well as of any buoys and marks heretofore placed or erected, or which may hereafter be erected by private enterprise or at the public expense, and may authorize the harbor masters to carry the same into effect, and may affix penalties for breach of any such regulations not to exceed five pounds for any one offence.

Buoys, &c., how  
kept in repair,  
&c.

23. The sessions may appropriate such part of the fees collected by harbor masters as they see fit to the procuring, placing, erecting, and keeping in repair of buoys and water marks in the harbor, where such fees are collected.



24. The sessions may, by regulations to that effect, **CHAP. 78.**  
 authorize the imposition of fines upon harbor masters for  
 neglect of duty, not to exceed forty shillings for any one  
 offence, to be sued for and recovered as other penalties are.

Fines.

25. The sessions shall appropriate out of the district  
 funds at Saint Mary's, and out of the license funds at Anti-  
 gonishe, the sums necessary for the purposes of the twenty-  
 second section, which shall be repaid by a regular rate, to  
 be by them established from time to time, upon the different  
 vessels coming into the respective harbors, according to the  
 tonnage thereof; which rates shall be collected by the  
 harbor master, and paid over to the district treasurer.

Funds for carry-  
 ing out such re-  
 gulations, how  
 raised.

26. At Saint Mary's, the last preceding section shall not  
 apply to vessels exempted from the payment of harbor  
 dues.

Exemptions for  
 certain ves-sels  
 at Saint Mary's.

27. It shall be the duty of the harbor masters to pro-  
 secute all persons violating the regulations or bye-laws of  
 their respective harbors.

Violation of re-  
 gulations to be  
 prosecuted by  
 harbor master.

28. No regulation or bye-law to be made by the sessions  
 under this chapter shall be in force until approved by the  
 governor in council.

Regulations  
 and bye-laws to  
 be approved by  
 governor in  
 council.

29. Any person feeling aggrieved by any regulation OR  
 bye-law, may complain thereof on affidavit to the supreme  
 court in the county, and the court shall inquire into the  
 complaint; and if it appear that the regulation or bye-law  
 is contrary to law or oppressive, shall annul the same; and  
 the sessions shall not afterwards make any regulation or  
 bye-law to the same effect.

Relief to party  
 aggrieved by  
 application to  
 supreme court.

30. The sessions shall from time to time appropriate out  
 of the district funds, sufficient sums to keep in repair the  
 tow-path of the harbor of Antigonishe.

Antigonish tow-  
 path. how re-  
 paired.

31. No person shall take away any stones or ballast from  
 the bar or beach called Fish Point, on the western side of  
 the harbor of Cape Forchu, in the county of Yarmouth,  
 under a penalty not exceeding five, nor less than three  
 pounds.

Fish Point bar  
 protected.

32. The harbor master of Spanish River shall furnish  
 copies of the regulations made by the sessions, by virtue  
 of the twentieth section, to the licensed pilots of the harbor,  
 who shall give a copy thereof to the master or commander  
 of every vessel which they shall take in charge.

Licensed pilots  
 at Spanishriver  
 to be furnishe  
 with, and to fur-  
 nish, regula-  
 tions to ship-  
 masters.

33. The rates of pilotage to be received by the licensed  
 pilots for conducting vessels into or out of the respective  
 harbors shall be according to the table in schedule A.; and  
 any pilot exacting or attempting to exact a larger sum for  
 his services, or taking a less sum therefor, shall for every  
 offence forfeit two pounds, and shall also refund any excess  
 so received.

Rates of pilot-  
 age regulated  
 by schedule A.

34. The fees to be taken by harbor masters shall be at  
 the rates in schedule B., according to the registered tonnage  
 of the vessels entering the harbors; but vessels bound to

Harbor masters  
 fees regulated  
 by schedule B.

CHAP. 78. and from the Bras d'Or Lake and calling at Sydney, but not discharging ballast in Sydney harbor, shall not be liable to pay any harbor master's fees at the latter place.

*Halifax excepted.* 35. The county of Halifax is excepted from the operation of sections 16, 17, 19, 22, 23, and 24 of this chapter.

## SCHEDULES.

## A.

## . RATES OF PILOTAGE.

*At Halifax.*

For vessels of 200 tons and under,	£2	0	0
“ “ from 200 tons to 300 tons,	2	10	0
“ “ “ 300 “ to 400 “	3	0	0
“ “ of 400 “ and upwards,	3	10	0
On her majesty's ships under 6th rates,	2	0	0
“ “ “ of 4th, 5th, and 6th rates,	2	10	0
“ “ “ of the line,	3	0	0

If any vessel be boarded north of Herring Cove or Thrum Cap, the rate shall be one fourth less.

*At Sydney.*

For vessels under 100 tons, to Sydney town,	£1	7	6
Plant's bar,	1	0	0
From 100 to 150 tons. to Sydney town,	1	12	6
Plant's bar,	1	5	0
150 to 200 tons, to Sydney town,	1	17	6
Plant's bar,	1	10	0
200 to 250 tons, to Sydney town,	2	5	0
Plant's bar,	1	15	0
250 to 300 tons, to Sydney town,	2	10	0
Plant's bar,	2	0	0
300 to 350 tons, to Sydney town,	2	15	0
Plant's bar,	2	5	0
350 to 400 tons, to Sydney town,	3	0	0
Plant's bar,	2	10	0

And for every additional fifty tons to Sydney town ten shillings, and to Plant's bar five shillings.

*At Pictou, Pugwash, Wallace, Antigonishe, Arichat, Tata-  
magouche, and Point Bruley :*

For vessels of 80 tons and under 140 tons,	£1	10	0
“ “ 140 “ “ 240 “	2	0	0
“ “ 240 “ “ 300 “	2	10	0
“ “ 300 “ and upwards,	3	0	0

And on all vessels under eighty tons three pence per ton.

*At St. Mary's.*

## CHAP. 79.

Three shillings and six pence for every foot of the draught of water of each vessel.

## B.

## HARBOR MASTER'S FEES.

*At Sydney and Bridgeport.*

For vessels not exceeding 100 tons,	£0	5	0
For vessels exceeding 100 and under 200 tons	0	10	0
For vessels exceeding 200 and under 300 tons	1	0	0
For vessels exceeding 300 tons	1	5	0

Vessels engaged in the coasting and fishing trade to be exempt from the payment of any fee.

*At Pictou, Pugwash, Wallace, Tatamagouche, and Point Bruley.*

One half-penny per ton on all vessels not under forty tons.

*At St. Mary's.*

For vessels exceeding 100 and under 150 tons,	£0	5	0
For vessels exceeding 150 and under 250 tons,	0	10	0
For vessels exceeding 250 tons	1	0	0

Vessels engaged in the coasting and fishing trade, and all other vessels resorting to the harbor for shelter, wood, water, or provisions, and not anchoring within the bar, to be exempt from the payment of any fee.

*At Antigonishe.*

The fees to be established by the sessions.

## CHAPTER 79.

## OF PARTNERSHIPS.

1. In cases of partnership were two partners only are concerned, and their partnership shall have terminated, either of them may file a petition in the supreme court, stating the facts respecting their dealings, and praying the aid of the court. A writ of summons shall thereupon issue commanding the appearance of the partner complained of at the next term, in the county where the petition is filed, to answer the same.

When co-partnership has terminated, members may proceed against each other in supreme court in certain cases by petition and summons.

2. A copy of the petition shall be served on the partner complained of, at the time of the service of the summons, or within a convenient time before the return day thereof.

Copy of petition and summons to be served.

## CHAP. 79.

Court may proceed by rule to order arbitrators.

Court may appoint arbitrators where parties neglect.

Arbitrators shall appoint a third person.

Arbitrators to be sworn; form of oath.

3. On the return of the summons, if it shall be shewn to the court that the partnership consisted of two persons only, the court shall, by rule, direct each partner to select one fit person as an arbitrator between them.

4. If the partners do not, within the time specified by the court, select two such persons, the court shall appoint two persons to act as arbitrators.

5. The two persons so appointed shall select one other person, and they, with such person, shall be arbitrators to examine and settle the partnership dealings.

6. The arbitrators before commencing such examination, shall make, before a judge or commissioner, the following affidavit, which shall be filed in the prothonotary's office.

We, A. B. C. D. and E. F. do hereby solemnly swear honestly and fairly to settle the partnership accounts and dealings of G. H. and J. L. to the best of our knowledge and ability.

Sworn at \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_ 18—  
G. H., J. P.

A. B.  
C. D.  
E. F.

Mode of proceeding by arbitrators prescribed.

Power to enforce attendance of witnesses.

Parties and witnesses to be examined; award how made; judgment how entered.

Execution to issue; costs and expenses, from whom and how recoverable.

7. The arbitrators shall then order the production of all books, papers and accounts, relative to the partnership dealings, and shall appoint such times and places as may appear expedient for the investigation of the partnership dealings, and the examination of the partners and their witnesses. If either of the partners, after due notice, shall fail to attend, the arbitrators shall proceed *ex parte*.

8. Witnesses shall be summoned to attend before the arbitrators by subpoena in the usual form; and if, upon being duly summoned, they shall neglect to attend and give evidence, they shall be liable to the same penalties as witnesses are subject to who neglect to attend the supreme court on subpoena; and the supreme court, on application to them for that purpose, shall enforce the same.

9. The arbitrators shall examine the partners and their witnesses upon oath, to be administered by any one of the arbitrators, and shall make an award in favor of such party, as they or two of them, shall find justly entitled thereto, which shall be filed in the prothonotary's office, and judgment shall be entered for the amount thereof, with or without costs, as directed by the arbitrators in their award, at the next term if no sufficient objection be made thereto.

10. Execution may be issued on such judgment in the usual course, and the arbitrators, or any two of them, shall have power to direct the costs of the proceedings, including reasonable compensation for their services, to be taxed and allowed by the court, to be paid by either of the partners, and in such manner as the arbitrators, or any two of

them, shall direct ; and the court shall enforce such payment by attachment or otherwise. CHAP. 79.

11. Neither of the partners shall after such adjudication commence any proceedings in equity touching the partnership dealings, and the judgment of the supreme court under the above provisions, shall be final. Judgment when entered shall be final.

12. Two or more persons may enter into and form limited partnerships for the transaction of mercantile, mechanical, or manufacturing business, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. Nothing herein shall authorize any such partnership to engage in any banking operation, or to become insurers upon any marine risk, or upon loss by fire, or upon any life. Such partnerships may consist of one or more persons called general partners, who shall be responsible as general partners now are, and of one or more persons, who shall contribute in actual cash payments a specific sum as capital to the common stock, called special partners. Special partners shall not be liable for the debts of the partnership beyond the fund so contributed by them to the capital, except in cases hereafter mentioned. The general partners only shall be authorized to transact the business of the partnership, and bind the same by the signature of the partnership name or otherwise. Limited partnerships, how formed.

13. Persons desirous of forming such partnerships shall, before the same shall go into operation, make and severally sign a certificate, containing the name of the firm under which such partnership is to be conducted, the nature of the business to be transacted, the names of all the partners interested therein, distinguishing which are general and which special partners, and their respective places of residence, the amount of capital which each special partner shall have contributed to the common stock, the period at which the partnership is to commence, and at which it will terminate. Such certificate shall be acknowledged by the several persons signing the same before a judge of the supreme court or justice of the peace, and such acknowledgment shall be certified in writing on such certificate by the person before whom the same is made. The certificate so acknowledged and certified shall be filed in the office of the registrar of deeds, where the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept for that purpose, open to public inspection ; and if the partnership shall have places of business situated in different counties or districts, a transcript of the certificate and of the acknowledgment thereof, duly certified by such registrar, shall be filed and recorded in like manner in the office of the registrar of every such county or district. Certificates and preliminary proceedings in case of limited partnership.

14. An affidavit of one or more of the general partners, and also one or more of the special partners, shall also at Certificates to be verified under oath.

**CHAP. 79.** the same time be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash; and no such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, and an affidavit filed as above directed; and if any false statement be made in such certificate or affidavit all persons interested in such partnership shall be liable as general partners.

Publication in newspapers and by handbills necessary.

15. The terms of every such partnership, when registered, shall immediately be published at least six weeks in the royal gazette and one other newspaper published in Halifax, and by handbills posted up in some public places in the township in which the business of the partnership shall be carried on. If such publication be not so made, such partnership shall be deemed general. Affidavits taken before a justice, of the publication of such notice by the printers of newspapers who shall have published the same, and by the persons who shall have posted the hand-bills, may be filed with the register, with whom the certificate of the partnership shall have been filed, and shall be evidence thereof.

Renewals of limited partnerships how provided for.

16. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general and special partner made and filed, and notice given in the manner herein required for its original formation; every such partnership otherwise renewed or continued shall be deemed a general partnership.

Alterations in names of business to constitute the partnership general unless in case of renewal.

17. Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership carried on after any alteration shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the foregoing section.

Limited partnership, under what terms conducted.

18. The business of the partnership shall be conducted under a firm in the names of the general partners only, without the addition of the word company or any other general term; and any special partner whose name shall be used in such firm, with his privity, shall be deemed a general partner.

Actions to be in the names of the general partners.

19. Actions and suits at law and in equity in relation to the business of the partnership may be brought and conducted by and against the general partners, as if there were no special partners.

Regulations as to capital stock, and the distribution of profits.

20. No part of the sum contributed by a special partner to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the part-

nership; but a partner may annually receive lawful interest on the sum so contributed by him, if payment thereof shall not reduce the original capital; and if after the payment of such interest any profit shall remain to be divided, he may also receive his portion of such profit; but if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall restore the amount necessary to make good his share of capital with interest. CHAP. 79.

21. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he shall interfere contrary to these provisions he shall be deemed a general partner. General partners shall be liable to account to each other, and to the special partners, for their management of the concern, both in law and in equity, as other partners now are. Special partners may advise, but not transact business for the partnership.

22. A partner guilty of any fraud in the affairs of such partnership shall be liable civilly to the party injured to the extent of the damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the court. Fraud in special partnerships, how punished.

23. Every sale, assignment, or transfer of any of the property or effects of such partnership, or of a general or special partner, made by such partnership or a general or special partner, when insolvent or in contemplation of insolvency, with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every warrant of attorney executed, and every judgment confessed, lien created, or security given by such partnership, or general or special partner, under the like circumstances and with the like intent, shall be void, as against the creditors of the partnership. A special partner who shall violate any provision of this chapter, or concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner. Preferential assignments by partners to be held void against creditors.

24. In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances, be allowed to claim as a creditor until the claims of all other creditors of the partnership are satisfied. Creditors' claims to be preferred to those of special partners in case of insolvency, &c.

25. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the registrar's office, in which the original certificate was recorded, and published once in each week for four weeks in the royal gazette, and in some other newspaper printed in Halifax, and by handbills in each of the Dissolution how effected.

CHAP. 80. counties where the partnership may have places of business.

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## CHAPTER 80.

### OF FACTORS AND AGENTS.

Agent in possession of goods, or the title thereof empowered to sell or pledge them.

1. Any agent entrusted with the possession of goods or the documents of title thereto, shall be deemed the owner thereof, so as to render valid and binding upon all persons interested therein any contract made with such person for the purchase of such goods, or by way of pledge, lien, or security for advances upon such goods or documents, or for further or continuing advances thereon, although the person making such purchase, or claiming such pledge or lien, may have had notice that the person with whom such contract is made is only an agent or factor; provided such contract be made in the ordinary course of business, and such person shall not have notice at the time of making such contract, that such agent is not authorized to sell the goods and receive the purchase money, or to pledge such goods.

Agent's powers in cases of exchange of goods or their titles.

2. Any contract for pledge, lien, or security made by an agent entrusted with the possession of goods, or the documents of title thereto, in consideration of the delivery or transfer to him of other goods or documents of title or negotiable securities on which the person delivering them has at the time a valid lien for a previous advance by virtue of some contract made with such agent, shall be as valid as if the consideration therefor had been an advance of money; but the lien required thereby shall not exceed the value at the time, of the goods, documents of title, or negotiable security delivered up and exchanged.

Contracts made with agents in good faith to be held valid; lien for antecedent debt invalid.

3. Such contracts, loans, advances, and exchanges as are made in good faith, and without notice that the agent making such contracts or agreements is acting without authority or in bad faith, although with notice that such agent not being the owner of the goods, are alone rendered valid hereby and binding upon all persons interested therein. Nothing herein shall make valid any sale, lien, or pledge in respect of an antecedent debt owing from an agent to the person to whom such lien or pledge shall be given, or sale made, or authorize an agent in deviating from any express orders or authority received from the owners.

Documents of title defined.

4. Any document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize the holder to trans-



for or receive goods thereby represented, shall be considered a document of title within the meaning hereof. CHAP. 80.

5. Any agent possessed of any such document, whether derived immediately from the owner of such goods or obtained by reason of such agent's having been possessed of the goods, or any other document of title thereto, shall be deemed to be possessed of the goods represented by such document. Possession of documents of title possession of goods.

6. Any contract pledging or giving a lien upon such document shall be deemed a pledge or lien upon the goods to which the same relates. Pledge upon title to be pledge upon goods.

7. Such agent shall be deemed possessed of such goods or documents, whether the same be in his actual custody or be held by any other person subject to his control or on his behalf. Agent to be considered in possession of goods, &c., whenever they are under his control.

8. Where any advance is made to an agent possessed of goods or documents of title thereto on the faith of a contract in writing, to consign, deposit, transfer or deliver such documents, if such goods or documents shall be received by the person making such advance without notice that such agent was not authorized to make such pledge or security, such advance shall be deemed to be an advance on the security of such goods or documents within the meaning hereof, though such goods or documents shall not be received by the person making the advance until a period subsequent to such advance. Any contract, whether made direct with such agent or with any person on his behalf, shall be deemed to be made with such agent. Advance to an agent possessed of goods, or their title, where agent not authorized to pledge, when held valid; contracts by others for agents held valid.

9. Any payment, whether by money or negotiable security, shall be deemed an advance within the meaning hereof. Advances may be in money, or negotiable securities.

10. Any agent in possession of goods or the documents of title thereto, shall be deemed entrusted therewith by the owner, unless the contrary be shewn in evidence. Possession by agent of goods, or their title, evidence of agency.

11. Any agent who shall, unauthorized by his principal, for his own benefit and in violation of good faith, make any consignment, deposit, transfer or delivery of any goods or documents of title so in his possession as a pledge or security, or accept any advance on the faith of a contract to make any such consignment, deposit, transfer or delivery, shall be guilty of a misdemeanor, and be imprisoned in the provincial penitentiary for a term not exceeding seven, nor less than two years, or be fined, or both, as the court shall award. Agent pledging goods illegally, guilty of a misdemeanor.

12. Any person knowingly and wilfully assisting in making any such consignment, deposit, transfer or delivery, or accepting or procuring such advance, shall be guilty of a misdemeanor, and shall be sentenced to any of the punishments above mentioned as the court shall award. Accessories also guilty of a misdemeanor.

13. No agent shall be liable to prosecution for any such consignment, deposit, transfer or delivery as above mentioned, for advances not greater than the amount at the time Agent may pledge goods for advances or acceptances.

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thereof due to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent.

Conviction not evidence against agent; compulsory disclosures not evidence against agent.

14. The conviction of any such agent shall not be evidence in any suit against him, and no agent shall be liable to such conviction upon any evidence whatsoever, who shall previous to his indictment have made disclosure upon oath under compulsory process of any court in any action instituted in good faith by a party aggrieved.

Owner may redeem goods pledged.

15. Nothing herein shall affect the right of the owner to redeem such goods or documents of title so pledged, before the sale thereof, upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien exists, and on payment or satisfaction to such agent, if by him required, of any amount in respect of which he would be entitled to retain such goods or documents as against such owner; nor his right to recover from any person to whom such goods or documents have been pledged, or who may have a lien thereon, any proceeds of the sale thereof remaining in his hands after deducting the amount of such pledge or lien.

Proceedings under this chapter not to affect other remedies at law or equity

16. These provisions shall not, nor shall any conviction or judgment under them lessen, or in any way affect any remedy at law or in equity which any person aggrieved would have had against the offender if such provisions had not been made.

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## CHAPTER 81.

### OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

Damages and interest on protested bills of exchange.

1. A bill of exchange drawn by a person residing within the province and returned protested, shall, if drawn upon a person residing within the province, be subject to six per cent. per annum interest from the date of the protest to the time of payment. If drawn upon a person in any part of North America without the province, it shall be subject to five per cent. damages and six per cent. per annum interest from the date of the protest to the time of payment; and, if drawn upon a person in any other country, it shall be subject to ten per cent. damages and six per cent. per annum interest from the date of the protest to the time of payment.

Promissory notes negotiable; who may sue thereon.

2. A promissory note shall be assignable or endorsable in the same manner as an inland bill of exchange; and the payee, or endorsee thereof, or the holder, where the note is payable to bearer, may bring an action thereon in his own name.

3. A note in writing for a sum certain payable otherwise than in money, shall be held *prima facie* to be given for a valuable consideration, but shall not be negotiable. The amount of such note may be sued for and recovered as if the amount thereof were payable unconditionally in money.

4. In an action brought upon such note the amount only payable thereunder shall be recoverable, without damages for the non-delivery of the articles enumerated therein.

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Notes not payable in money presumed to be for a good consideration, but not negotiable; how recovered.

No damages recoverable for non-delivery of articles mentioned in such note.

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## CHAPTER 82.

## OF INTEREST.

1. No person upon any contract, shall take directly or indirectly, for the loan of monies or goods, above the rate of six per cent. per annum. All contracts whereby a greater rate of interest is reserved, shall be void; and all persons taking or receiving upon any contract or security a greater rate, shall forfeit treble the value of the monies or goods in such contract or security contracted for or secured.

Interest to be 6 per cent.; contracts reserving a higher rate to be void, and offender to forfeit treble value.

2. Any person may, nevertheless, contract for the loan or hire of grain or live stock, upon halves or otherwise, upon the lender taking upon himself all risk of such stock; but if it shall appear that the same, or any part thereof, perished, or was lost through the wilful neglect of the borrower, he shall make good to the lender the full value thereof.

Contracts respecting grain or live stock excepted.

3. The foregoing provisions shall not extend to any hypothecation or agreement in writing entered into for money advanced upon the bottom of a ship or vessel, her cargo or freight.

Hypothecation of vessels excepted.

4. Upon all debts or sums certain payable at a certain time, or otherwise, the jury, and the court where there is no jury, on the trial of any issue or inquisition of damages, may, if they shall think fit, allow interest from the time when such debts, or sums certain, were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, such demand giving notice to the debtor that interest will be claimed from the date thereof.

Interest may be allowed in certain cases for delay of payment.

5. The jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest above the value of the goods at the time of the conversion or seizure, in all actions of trover,

Damages in the nature of interest may be allowed in certain actions.

**CHAP. 83.** or trespass *de bonis asportatis*, and above the money recoverable in all actions on policies of insurance.

Limitation of action for taking illegal interest.

6. No prosecution for taking illegal interest shall be commenced but within twelve months from the time the offence was committed.

## CHAPTER 83.

### OF CURRENCY.

Coins which are a legal tender, and their rate of value.

1. The several coins hereafter mentioned shall be legal tenders in discharge of any liability or demand, at the respective rates hereafter declared, viz.:

The gold coin of the United Kingdom called a sovereign, being of full weight, at the rate of one pound sterling, or one pound five shillings currency.

The foreign gold coin called the doubleon, being of not less weight than four hundred and fifteen grains, each containing not less than three hundred and sixty grains of pure gold, at and after the rate of three pounds four shillings sterling, or four pounds currency.

The Peruvian, Mexican, Columbian, and old Spanish dollar, being of the full weight of four hundred and sixteen grains, and containing not less than three hundred and seventy-three grains of pure silver, at the rate of four shillings and two pence sterling, or five shillings and two pence half-pence currency.

All British silver coins after the same rate as the sovereign in the same proportion as such respective coins bear thereto.

And the copper coin legally current in the United Kingdom and that issued from the treasury of the province as penny and half-penny pieces currency.

Amount of British silver which may be tendered at one time.

2. No person shall be compelled to receive at any one time a greater amount than fifty shillings currency in British silver money, nor more than twelve pence currency in copper money; and, in any payment, no account shall be taken of any fractional part remaining due less than one half-penny.

Bankers' notes and bills to be payable in gold or silver, and twelve per cent. after demand.

3. The holder of any undertaking or order for the payment of money, which is designed to be, and to serve the like purpose of notes or bills of bankers, or for circulating currency, whether payable to a real or fictitious person or to the bearer thereof, or purporting to be transferable by endorsement or delivery, and whether made payable in gold or silver or otherwise, may demand the full amount thereof in gold or silver money from the party by whom the same

is payable; and in default of such payment the party shall pay to such holder interest at the rate of twelve per cent. per annum upon the amount thereof from the day of such demand and refusal.

4. Every such undertaking shall be transferable by delivery only without endorsement or assignment; and every holder of such undertaking may recover the amount therein expressed as if the same were a promissory note, made absolutely payable in gold or silver money.

5. The holder of any such order or undertaking being indebted to the person being the maker thereof may tender the same to such maker in or towards payment of such debt for the full amount therein expressed.

6. Any person issuing as circulating currency any promissory note, bank note or bill for a less sum than five pounds, shall, for every such offence, forfeit ten pounds; and any person issuing as circulating currency any promissory note, bank note or bill, expressed to be payable otherwise than in gold or silver money, shall, for every such offence, forfeit a like sum.

7. The foregoing provisions shall not extend to treasury notes of this province, nor to any undertaking or order not designed for circulation as currency, but bona fide drawn by any person upon his banker or any other person; nor shall they prevent any person indebted in a sum less than five pounds from making to his creditor a promissory note or undertaking to pay such sum.

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Such notes to be transferable by delivery, and recoverable by the holder.

The holder may tender such note to the maker as a payment.

Bank notes not to issue under five pounds, and to be payable in specie.

Treasury notes excepted; also orders, bank checks and promissory notes, not intended as currency.

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**CHAPTER 84.**

**OF MILLS AND MILLERS.**

1. The tolls to be taken by every miller for grinding wheat, rye, barley, buckwheat, or indian corn, or for grinding oats which are not kiln dried, shelled and sifted, shall not exceed one sixteenth part, nor the tolls for kiln drying, shelling, grinding and sifting oats, one eighth part, of the whole quantity brought to the mill to be ground.

Tolls for grinding wheat, &c., regulated.

2. Every miller shall receive for hulling barley one sixth of the quantity, and for bolting or sifting flour or meal ground at his mill, one pint out of each bushel of grain or corn so ground.

Tolls for hulling barley, bolting flour, &c.

3. The quantity of grain or corn to be ground, shall be ascertained by a sealed measure.

Quantity of grain, how ascertained.

4. A miller demanding or taking any larger toll than is hereby allowed, shall forfeit forty shillings for every such

Fine for taking or demanding illegal toll.

**CHAP. 85.** offence, and shall pay the owner the full value of the grain or meal taken beyond the prescribed toll.

Fine for refusing to grind, &c; steam mills when excepted.

5. A miller refusing to grind any grain or corn, or to hull any barley which shall be in good order, or to bolt or sift any flour or meal, having the requisite machinery therefor, shall forfeit forty shillings for every offence; but the proprietor or manager of any steam mill may refuse to receive or to grind any grain or corn, or to hull any barley, and shall not be subject to the above penalty therefor, unless he shall first receive and afterwards refuse to grind such grain or corn, or to hull such barley.

Millers to keep scales and weights in mills under penalty of five pounds.

6. Every miller shall have in his mill, erected in a convenient place, properly fitted and provided, a good and sufficient beam and scales with proper legal weights, for the use of persons requiring grain or corn to be ground at such mill, and in default, shall, for every such offence, forfeit five pounds.

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## CHAPTER 85.

### OF THE REGULATION AND INSPECTION OF PROVISIONS, LUMBER, FUEL, AND OTHER MERCHANDIZE.

All fish to be inspected, &c.

1. All pickled fish intended for exportation in tierces, barrels, or half barrels, shall be inspected, weighed, and branded, in accordance with this chapter, by a chief or deputy inspector, duly appointed and sworn.

Appointment of chief inspector.

2. The governor in council shall appoint in and for every county a chief inspector of pickled fish, who shall be sworn into office, and shall give a bond, with two sureties, in five hundred pounds, to her majesty, for the faithful discharge of his duty.

Bond, &c.

Appointment of deputies, &c.

3. Every chief inspector shall appoint a sufficient number of deputies, to act under him during pleasure, whose duty it shall be to carry out faithfully the provisions of this chapter. And he shall be responsible for their official conduct, and shall take a bond from each of them, in one hundred pounds, with two sureties, and every such deputy shall be sworn to the faithful discharge of his duty. On any chief inspector ceasing to hold his office, such bonds shall be deemed to be assigned to his successor, and the deputies shall become and be the deputies of such successor. Deputies already in office shall remain until removed.

Penalty on inspectors not duly appointed.

4. Any person who shall inspect or brand any cask of pickled fish without being duly appointed and sworn shall be liable to a penalty of five pounds for every cask inspected or branded by him.

## PACKAGES.

## CHAP. 85.

5. All tierces, barrels, and half-barrels, in which pickled fish is intended to be packed, shall be made of sound well seasoned split or sawed staves, free from sap, and in no case to be of hemlock; and the heading shall be of hardwood, pine, or spruce free from sap, and planed on the outsides, and shall be at least three quarters of an inch in thickness; the staves shall be five-eighths of an inch in thickness; staves for salmon and mackerel barrels shall be twenty-eight inches in length, and the heads between the chimes seventeen inches. Staves for barrels for herring and alewives twenty seven inches in length, and the heads between the chimes shall be sixteen inches. The bung stave of all packages shall be of hardwood, and all casks shall be hooped one-third of their whole length from each chime, with sound good hoops, of not less than one inch in width, at the large end for all tierces and barrels, and in no case to be of alder.

Dimensions of barrels, &c.; of what materials to be made.

The makers of all tierces, barrels, and half barrels, shall brand the initials of their christian names, and their whole surname, at or near the bung stave, under a penalty of two shillings and six-pence, for every package not so branded.

Package to be branded by maker.

6. The qualities of pickled fish shall be classed as follows:

## SALMON.

Salmon to be branded "No. 1" shall consist of the largest, best, and fattest kind, being well split, the blood being well washed out before being salted, well cured, in the best condition, and in every respect free from taint, rust, or damage of any kind. Salmon, No. 1.

Those branded "No. 2" shall comprehend the best salmon that remain after the selection of the first quality, and shall be good sound fish, well split and cured, in good condition, and in every respect free from taint, rust, or damage of any kind. No. 2

Those to be branded "No. 3" shall consist of those that remain after the selection of the two first qualities, but must be good fish, and in every respect free from taint or rust. No. 3

## MACKEREL.

Mackerel to be branded "No. 1" shall consist of the best and fattest mackerel, being well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind. And shall measure not less than fifteen inches from the extremity of the head to the crotch, or fork of the tail. Mackerel, No. 1.

Those to be branded "No. 2 large," shall comprehend the best mackerel that remain after the selection of the first quality, and shall be properly split and washed, well cured, No. 2

- CHAP. 85.** and in every respect free from taint, rust or damage of any kind, and shall measure not less than thirteen inches from the extremity of the head to the crotch of the tail. All those of the same kind and quality measuring from eleven to thirteen inches as above described shall be branded "No. 2."
- Medium No. 2.**
- No. 3.** Those to be branded "No. 3 large," shall consist of good sound large mackerel, properly washed, well cured, and free from taint, rust, or damage of any kind, and shall measure fourteen inches and upwards from the extremity of the head to the crotch of the tail. All those that measure from eleven to fourteen inches shall be branded "No. 3."
- Medium No. 3.**
- "Small." All mackerel under eleven inches in length, of good sound quality, and free from taint, rust, or damage of any kind, shall be branded with the word "small," in place of a number.
- No. 4.** All short, sunburnt, or ragged mackerel of whatever class, and not otherwise defective, shall be branded "No. 4."
- "Sour." All sour mackerel of whatever class, shall be branded with the word "sour," in addition to other brands.

#### HERRING AND ALEWIVES.

- Herring, No. 1.** Herring or alewives to be branded "No. 1," shall consist of the largest and best fish. And those to be branded
- No. 2.** "No. 2" shall be the smaller and inferior description. Both qualities shall be well cleansed and cured, and in every respect free from taint, rust, or damage of any kind.
- "Split." All ripped herring shall be branded with the word "split" in addition to other brands.
- All herring that are not gibbed shall be branded with the word "gross," in addition to other brands.
- "Rusty" fish. All rusty fish of whatever kind or class shall be branded with the word "rusty," in addition to other brands.
- Fish cured in "bulk."** All fish known as pickled fish, that may be cured in bulk, and afterwards packed in barrels, shall be branded with the word "bulk," in addition to other brands.
- Tainted fish.** Tainted or damaged fish of any class or kind, shall on no account whatever, be permitted to pass inspection.
- Fish to be well salted.** 7. All inspected pickled fish, whether ripped or otherwise, shall have been well struck or salted, in the first instance, and the qualities shall be those prescribed in the sixth clause; the fish shall be very carefully sorted, and classed according to their respective numbers and qualities.
- How packed &c.** Each cask shall contain fish of the same kind and quality, properly packed in separate layers, and on every layer of fish so packed in the cask, a sufficient quantity of suitable salt shall be regularly placed; the quantity to be not less than half a bushel for a barrel, and in like proportion for other packages at the discretion of the inspector. After the cask shall have been properly packed and headed



it shall be filled with clean pickle, sufficiently strong to float a fish of the kind packed. Herring and alewives, and all mackerel except No. 1 and No. 2, shall be packed with coarse salt. CHAP. 85.  
Casks to be filled up with pickle.

8. Casks shall contain the quantity of fish hereinafter prescribed for each cask respectively. The fish shall be carefully weighed, perfectly clear of the salt and pickle, that is to say: Fish to be weighed.

A tierce three hundred pounds.

Tierce.

A barrel two hundred pounds.

Barrel.

An half barrel one hundred pounds.

Half barrel.

9. There shall be branded on the head of every cask of pickled fish, in plain legible characters, after the same has been inspected, classed, weighed and packed, in accordance with this chapter, the description of the fish, the number and the quality, the weight contained in the package, the initials of the christian name, and the whole surname, of the chief or deputy inspector by whom the fish was actually inspected, the name of the place where he acts as inspector, the abridged name of the county, the letters "N. S." for Nova Scotia, and the year of the inspection. What to be branded on cask.

10. Every inspector who shall actually inspect and brand any cask or package of pickled fish, or any cask or package intended to contain pickled fish, in accordance with all the provisions of this chapter, shall be entitled to the following fees from the owner or the person who employed him. Fees.

For every tierce, seven and a half pence.

For every barrel, five pence.

For every half barrel, two and a half pence.

And for all casks or packages intended to contain pickled fish, one penny; to be paid by the owner or person who employed him.

11. The inspecting, classing, weighing, packing, and branding any cask or casks of pickled fish, shall be done in the immediate presence and sight of an inspector; and any inspector suffering the same to be done, except in his immediate presence and sight, or who shall lend or suffer his branding irons to be taken to be used, shall be liable to a penalty of ten pounds for every offence. Inspecting, &c., to be done in sight of inspector.  
Penalty.

12. In every case, when it may become necessary, in consequence of any casualty, to re-pack a cask of inspected fish, such re-packing shall only be done by, or in the presence of, an inspector, if one be within five miles of the place of re-packing; and any other person attempting to re-pack or brand any such cask of pickled fish, shall be liable to a penalty of five pounds for every offence. Re-packing.  
Penalty.

13. Every chief inspector, by himself or deputy, shall be obliged, without any unnecessary delay, to inspect all pickled fish, under the provisions of this chapter, when called upon so to do, under a penalty of five pounds for Inspector, &c., must act.

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Proviso.

every default; provided, that no inspector shall be obliged to proceed more than five miles from his place of residence for that purpose; nor shall any inspector be compelled to act, unless at least ten packages shall be ready for inspection; he shall likewise inspect all tierces, barrels, and half barrels intended to contain the pickled fish that he is called upon to inspect, and condemn all such casks or packages as shall not be made conformable to the provisions of this chapter.

Penalty for intermixing, shifting, &amp;c.

14. Whoever shall intermix, take out, or shift any inspected pickled fish, in or from any package that has been inspected, packed, and branded, or shall alter any brand on any cask of pickled fish, after it has been branded by a legally appointed inspector, or shall re-fill any package previously branded, or shift any head in any package, after it has been inspected and branded, shall be liable to a penalty of five pounds for every cask.

Penalty for exporting fish not branded, &amp;c.

15. Any person who shall export, or attempt to export, any package of pickled fish, not inspected and branded in accordance with this chapter, shall forfeit ten shillings for every package exported, or attempted to be exported. Any vessel that shall have on board any pickled fish, not legally inspected and branded for the purpose, and with the intent of exporting such fish, contrary to the provisions of this chapter, shall not be allowed a clearance until such pickled fish shall be relanded.

Vessel not allowed a clearance.

Deputies shall account to chief inspector, &amp;c.

16. The deputy inspectors shall account to the chief inspectors, under whom they act, once in every three months, or oftener if required, for all fish inspected by them, and the fees therefor, and shall pay over to him one-fifth of the same, and shall describe in their returns the different kinds and qualities of fish inspected by them.

Return to provincial secretary, when to be made, &amp;c.

17. Every chief inspector shall make a return to the provincial secretary of all the pickled fish inspected by him or his deputy; the same to be made up to the last days of March, June, September and December, in each year, and delivered within the month thereafter, under a penalty of five pounds for every month's neglect.

Re-inspection, &amp;c.

18. When any cask of pickled fish, branded by a deputy inspector, shall prove unequal in quantity or quality to that which may be indicated by the brand on the cask, or deficient in any of the requisites prescribed by this chapter, the chief inspector may cause the same to be reinspected. And if it appear that the defect arose from the condition of the fish, or the bad quality of the cask, or the bad packing or pickling of the fish, at the time of the inspection, he may recover the costs and charges of such reinspection from the deputy who branded the same.

Prosecution of penalties against inspectors.

19. All actions for the recovery of penalties or damages on account of the misconduct or neglect of any deputy inspector, may be prosecuted either against such deputy or

the chief inspector under whom he acts, who shall have his remedy against the deputy, either upon the bond given by him or by action on the case for damages; and in every such action the judgment recovered against the chief inspector shall be evidence of damages against such deputy or his sureties if the deputy shall have had due notice of the action brought against the chief inspector.

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20. All pecuniary penalties imposed by this chapter may be recovered by and in the name of any person who shall sue for the same, and such penalties when recovered, shall be for the use and benefit of the party suing.

Penalties how recovered, &amp;c.

21. Actions against inspectors or their deputies, under this chapter, shall be brought in the county where the offence shall have been committed, and not elsewhere.

Actions against inspectors, where brought.

## SMOKED HERRINGS.

22. The sessions in every county shall appoint inspectors of smoked herrings in all places where they may be required, and shall take a bond from all persons appointed, in the sum of twenty pounds, with two sureties, for the faithful discharge of their duty.

Appointment of inspectors.

23. All smoked herrings intended for sale or exportation shall be culled, classed, weighed, and branded, by a legally appointed inspector, or in his immediate presence and sight.

Must be weighed in inspector's sight.

24. There shall be two qualities of smoked herrings—those to be branded “No. 1,” shall comprehend the fattest and best fish, and those to be branded “No. 2,” the poorer, smaller, and inferior fish.

No. 1.

No. 2.

Both qualities shall be well cured and smoked, free from taint, and not burnt or scorched.

All tainted, burnt, or scorched fish, and fish badly smoked shall be considered *refuse*, and may be branded as such without any other character. And every box of smoked herrings shall contain twenty pounds of the qualities described.

“Refuse.”

Weight of box.

25. Boxes intended to contain smoked herrings shall be made of well seasoned boards, the sides, top, and bottom to be not less than half an inch in thickness, and the ends not less than three quarters of an inch in thickness; and they shall measure on the inside at least eighteen inches in length, nine inches in breadth, and eight inches in depth; they shall be well nailed, and the tops or covers shall be planed or shaved.

Materials of boxes, dimensions, &amp;c.

26. Boxes of smoked herrings, after having been carefully culled, classed, weighed and packed, shall be branded on the top or cover with the name of the inspector, his place of residence, the quality of the fish, and the weight contained in the box.

How branded.

27. The fees for culling, classing, weighing, packing, and branding, shall be three pence per box; and for culling,

Fees.

**CHAP. 85.** classing, weighing, and branding only, shall be two pence per box.

Penalty on inspector not appointed.

28. Any person acting as an inspector of smoked herrings, not legally appointed, shall forfeit five pounds for every offence.

Penalty for intermixing, &c.

29. Any person counterfeiting or using the brands of an inspector, or being accessory thereto, or who shall shift, intermix, or take out any smoked herrings, or shall alter any brand on any box of smoked herrings, that has been packed and branded, shall be punished with fine or imprisonment, at the discretion of the court, before which he may be convicted.

Penalty for exporting fish not branded.

30. Any person exporting or attempting to export or selling or offering for sale any box or boxes of smoked herrings, without being duly inspected and branded in accordance with the provisions of this chapter, shall forfeit the value thereof, but no such forfeiture shall exceed ten pounds for any one offence.

Penalty for inspecting.

31. Any inspector who shall inspect and brand any box of smoked herrings, not in accordance with the provisions of this chapter, shall be liable to a penalty of two shillings and six pence for every box so inspected and branded.

#### FISH OIL.

Casks of fish oil, how branded.

32. On every cask of fish oil guaged shall be branded, or cut with a double iron, the initial letters of the christian name of the guager, and the whole of his surname, and the word "cod," "dog," "whale," "seal," or whatever word will express the description of the contents.

Guager's duty and fees.

33. No guager shall be compelled to leave his residence to guage a less quantity than five barrels; and the fees for guaging shall be at the rate of one shilling a puncheon, or nine pence a barrel.

Fine upon guager for misconduct.

34. Any guager who shall falsely brand any cask of fish oil, shall, for every gallon, forfeit six pence.

Fine for acting as a guager without authority.

35. If any person shall act as a public guager of fish oil without having been duly appointed and sworn, he shall for every offence, forfeit five pounds.

#### SALTED BEEF AND PORK.

Qualities and description of inspected beef and pork.

36. There shall be three qualities of salted beef and pork respectively, which shall be designated "mess," "prime," and "cargo." "Mess beef" shall comprehend all large and fat beef of the first quality, without hocks, shins, or neck pieces; "prime beef," good and well fattened beef of the next quality, each barrel containing one round at least, and not more than two hocks or shins, and half the neck; and "cargo beef" inferior quality beef, each barrel containing not more than three hocks or shins and half the neck. "Mess pork" shall consist of the rib pieces of good fat hogs only; "prime pork" of the next best pieces, with no

legs, and not more than three shoulders and twenty pounds of head in any one barrel; and "cargo pork" shall be fat and merchantable, with no legs, and not more than four shoulders and twenty-five pounds of head in a barrel. The snouts above the tusks and the ears shall be cut off all the heads, and the brains and bloody grizzle taken out. All pieces of pork shall, as nearly as possible, be cut square, and mess pork as near as may be to the weight of four pounds; and no piece of prime or cargo pork shall exceed twelve or be less than four pounds in weight.

37. The staves and heading of the casks in which salted beef and pork respectively shall be packed for exportation, shall be made of good seasoned hard wood, free from sap and every other defect; and each cask shall be secured with two iron hoops, and fourteen ash, oak, yellow birch, hickory, or maple hoops; and the casks to contain beef or pork for home consumption shall be made either of the above descriptions of hard wood, or of good seasoned spruce, with spruce or hard wood heading, free from every defect, with hoops similar in number and quality to those required for casks intended for exportation, with the exception of the two iron hoops, for which wooden ones may be substituted—the heads in all cases to be made of good thick stuff, and the hoops to be well set and drove. The dimensions of pork and beef barrels shall be seventeen inches between the chimes and twenty-eight inches long, and shall not guage less than twenty-seven, nor more than thirty gallons. Half barrels either for beef or pork, shall contain not less than fourteen, nor more than fifteen gallons.

Casks for packing salted beef and pork; their quality and dimensions.

38. Every barrel shall contain two hundred pounds nett weight of beef or pork, not less than three ounces of saltpetre, and, if pork, half a bushel of salt, and if beef, a peck and a half of salt; the salt to be Turk's Island, Bahama Island, or Saint Ube's; and every half barrel shall contain one half the quantity and quality of beef or pork, salt and saltpetre, above prescribed for each barrel respectively.

Casks to contain a certain weight of meat and salt of certain description.

39. The inspectors and re-packers shall within the districts assigned to them respectively, examine and sort all salted beef and pork intended for exportation or sale, and see that the same, and the casks in which they are packed, are of the qualities and dimensions hereinbefore in that behalf prescribed, and shall brand on one of the heads of each barrel the figures "200," and "100" on each half barrel, and the words "mess," "prime" or "cargo" "beef" or "pork" as the case may be, the name of the inspector, and the place of inspection or re-packing, at full length, in plain legible characters; and they shall carefully secure their branding irons, so as to put it out of the power of any person to use the same.

Duty of inspectors and re-packers; mode of branding.

40. No beef or pork shall be repacked until it has laid in salt fourteen days.

Beef and pork; how prepared for repacking.

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Fees of inspectors.

41. The inspectors shall receive for inspecting or re-packing each barrel of beef or pork one shilling, and seven pence half-penny for each half barrel; for putting on each hoop wanting, two pence; and for flagging, nailing, pegging and pickling each barrel, seven pence half-penny; and for each half barrel, five pence; the owner to supply the salt.

Fine for misconduct.

42. Any inspector or re-packer who shall inspect, re-pack or brand any cask of salted beef or pork contrary to, or shall in any way offend against these provisions, shall forfeit forty shillings for every offence.

Fines for exporting uninspected beef or pork.

43. All salted beef or pork, packed or re-packed, whether for home consumption or exportation, shall be inspected, re-packed and branded in the manner hereinbefore prescribed; and any person who shall ship for exportation any salted beef or pork without being so inspected, shall forfeit forty shillings for each cask; and any master having the same on board his vessel shall forfeit twenty shillings for every cask.

Proceedings where there is suspicion that uninspected beef or pork has been shipped.

44. If any inspector or re-packer shall have reason to suspect that any salted beef or pork is shipped contrary to the last section, he may apply to a justice of the peace, assigning under oath, the causes of his suspicion; and the justice, if he shall think the suspicion well grounded, shall issue his warrant to the inspector to board and search the vessel; and if any salted beef or pork not inspected, re-packed or branded, shall be found therein laden, any justice of the peace, upon the application on oath of such inspector, shall direct his warrant to the sheriff or to any constable of the county, commanding him to enter the vessel and cause the same to be re-landed and delivered to the owner, upon his paying all expenses of the warrant, search and re-landing. Any person obstructing the search or re-landing, shall forfeit fifty pounds.

Forfeiture for shifting or intermixing re-packed beef or pork.

45. If any person shall take out of the cask, or shift or intermix any salted beef or pork which has been duly re-packed and branded, and shall load on board any vessel, or sell the same, he shall forfeit fifty pounds.

## INSPECTION OF FRESH BEEF.

Fresh beef; regulation for weighing, &c.

46. Fresh beef slaughtered in the province, and sold by weight at a stated price, shall, if required, be inspected and weighed by an officer appointed for the purpose, to be named by the seller, who shall, at his discretion, make a fair allowance to the purchaser for any loss he may sustain by the same being weighed within four hours after the slaughter, or for any bruises found thereon, or to the seller, by making compensation to him for what may have been improperly trimmed off or reduced in weight by the purchaser. The hide and tallow shall, if the seller so require, be weighed with the carcase, and paid for by the purchaser as for the like quantity of beef; and it shall be imperative upon the

purchaser to take such hide and tallow, under a penalty of twenty shillings for each carcase. CHAP. 85.

47. Nothing in the preceding section contained shall prevent any person from selling or purchasing live cattle by weight, nor shall extend to any contract with the government or any public department. Live cattle and government contracts excepted from the operation of last section.

48. Where no more than two carcasses shall be inspected and weighed at one time, the officer shall receive nine pence for each; and where three or more, six pence for each. Officers' fees.

49. The officers for every neglect of duty shall respectively forfeit not less than two nor more than five pounds. Fine upon officer for neglect of duty.

#### BREAD.

50. All bread intended for sale shall be marked in Roman characters, with the initial letters of the grain of the flour or meal of which it is made, and with the initials of the christian and surname of the baker, and shall be also marked with the weight thereof. Bread for sale how marked

51. All bread intended for sale shall be made to the following weights respectively, and no other, viz: four pounds, two pounds, one pound, and eight ounces. Weight of loaves.

52. No person shall sell any bread that shall not be marked in accordance with the fiftieth section; and any person violating the same, by having in his possession, selling, or offering for sale, any bread not duly marked, shall forfeit for every loaf not duly marked, not less than one nor more than five shillings. Fine for selling unmarked bread.

53. Every person selling bread shall keep a pair of scales and weights, in order that the purchasers of such bread may, if they require, have the same weighed. Persons selling bread shall keep scales and weights.

54. Any justice of the peace, or constable authorized by the warrant of a justice, or the clerk of the market, may visit the premises wherein bread is made or sold, and may search for and weigh all bread therein; and if any bread be found therein under the prescribed weight, or not marked as herein directed, the same shall be seized, and on proof of the fact before a justice, it shall be disposed of to poor persons under the direction of such justice. Justices or constables authorized may seize bread unmarked or short of weight, as forfeited.

55. If any person shall obstruct or oppose the officer in making such search or seizure, he shall forfeit not less than twenty nor more than forty shillings. Fine for obstructing officer

56. Any person selling bread deficient in weight, and the offence being proved by the same being weighed within twenty-four hours after baking, before a justice, shall, unless the deficiency appear to have been occasioned by some unavoidable accident, forfeit not less than six pence, nor more than two shillings and six pence for every half ounce deficient. Fine for selling bread short of weight.

57. If any servant or journeyman in the employ of a baker, shall offend against these provisions, he shall forfeit not less than twenty nor more than forty shillings, and in Fine for servants or journeymen offending.

CHAP. 85.

default of payment he shall be imprisoned not less than seven nor more than fourteen days.

Baker may be relieved from fines incurred by the wilful misconduct of servants.

58. If any baker shall pay any of the foregoing penalties in consequence of the wilful neglect or default of his servant or journeyman, any justice of the peace, upon the application of such baker, may cause the offender to be brought before him, and order him to pay a reasonable sum by way of recompense, and if he shall not comply with such order may commit him to jail for a period not exceeding a month.

Loaves made to order, or weighing less than half a pound, excepted; limitation of suits.

59. These provisions shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes sold, weighing less than half a pound. Prosecutions for breach of any such provisions shall be commenced within three days after the offence committed.

## GRAIN AND CORN.

Weight of grain and corn, per bushel.

60. Merchantable grain and corn shall be of the following weight per bushel, viz: wheat sixty pounds; foreign barley, fifty two pounds, and if the produce of the province, forty eight pounds: rye, fifty six pounds; indian corn, fifty eight pounds; oats, thirty four pounds; and malt, thirty nine pounds.

Wheat and barley, not home produced, to be sold by weight.

61. All wheat and barley not the produce of the province shall be sold by weight, and the number of pounds by the last section established as the standard weight of a bushel thereof respectively shall be deemed to represent a bushel of such wheat or barley.

Grain sold on board, to be delivered from a vessel, to be weighed and measured by a sworn measurer

62. All grain and corn sold on board of and intended to be delivered from any vessel, shall be weighed and measured by a sworn measurer; but grain or corn may be exported or be sold in a store without his intervention, unless the purchaser require to have the same weighed or measured by such officer.

Heated or unmarketable grain not to be taken account of, unless by request of purchaser.

63. If the measurer shall find the same heated, or in any other respect unmarketable, he shall inform the purchaser, and shall not take any account thereof unless at the request of the purchaser.

Fees of measurers; their measures.

64. The grain measurers shall receive from the seller for inspecting and weighing or measuring grain, or corn, at the rate of two shillings and six pence for every hundred bushels. The measures used by them shall, in all cases, be struck with a straight stick rounded at the edges.

Fines for violation of provisions.

65. If any person shall sell or deliver any grain or corn, in violation of these provisions, he shall forfeit six pence for every bushel of such grain or corn.

Fine upon measurers for misconduct.

66. If any grain measurer shall undertake to attend the weighing and measuring of grain or corn from more than one vessel at the same time, or shall be guilty of any neglect or dereliction of his duty, he shall forfeit a sum not exceeding five pounds for each offence.



## FLOUR AND MEAL.

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67. All barrels and half barrels of flour and meal brought into or offered for sale in the city of Halifax, or in any of the counties, townships, or districts, for which weighers of flour and meal may be hereafter appointed, shall, before being used or offered for sale, or carried out of the city or any such county, township, or district, be weighed by one of the weighers of flour and meal, and each barrel shall contain not less than one hundred and ninety-six pounds nett weight, and each half barrel not less than ninety-eight pounds nett weight.

Flour to be weighed; weight of barrels, &c.

68. Every barrel or half barrel found to be of full weight, shall be branded by the weigher with the initials of his christian name and his surname at full length, and with figures denoting the nett weight—no barrel or half barrel deficient in weight shall be branded until the importer or owner shall have the deficiency supplied.

Barrels, &c. how branded.

69. Every person sending from, or offering for sale within the city of Halifax, or within any such county, township, or district, any barrel or half barrel of flour or meal deficient in weight, or without its having been previously branded, shall be liable to a penalty not exceeding twenty shillings for each barrel, ten shillings for each half barrel, and six pence for every pound weight deficient.

Fine for selling barrels, &c., light of weight, or not branded.

70. Weighers shall receive for weighing every barrel, one penny, and every half barrel, one half penny, from the person employing them.

Weighers' fees.

71. When any barrel or half barrel shall, after having been branded, be emptied of its contents, the brands thereon shall be erased before the same shall be refilled for the purpose of exportation or sale, and any person refilling any such barrel or half barrel without first erasing the brands, shall be liable to a penalty not exceeding five shillings for every barrel, and two shillings and six pence for every half barrel.

Fine for improperly refilling empty branded barrels, &c.

72. To prevent any damage or loss sustained in unpacking flour or meal to ascertain the tare of the barrels or half barrels, the weigher may affix a tare according to his judgment without unpacking or weighing the same, which judgment shall be final unless disputed by the buyer or seller, in which case the barrel or half barrel may be unpacked, but the reasonable expense attending the same shall be paid by the party complaining.

Tare of barrels, &c., how ascertained.

73. If any weigher shall brand any barrel or half barrel contrary to these provisions, he shall be liable to a penalty of forty shillings for every barrel, and twenty shillings for every half barrel; and every weigher offending in any other manner, shall be liable to a penalty of ten pounds.

Fine upon weighers for misconduct.

74. These provisions shall not extend to the weighing of barrels or packages of flour and meal manufactured within the province, if branded with the name of the proprietor of the mill where manufactured, and which shall

Home manufactured flour excepted, if weighed and branded by the proprietor of the mills

**CHAP. 85.** have the nett weight thereof distinctly branded thereon, unless the purchaser shall require the same to be weighed by the public weigher; and if any such flour or meal shall be sold without being so marked, or the barrel or package so branded shall not contain the full weight branded thereon, the proprietor of such mill shall be liable to a penalty not exceeding twenty shillings for each barrel, and ten shillings for each half barrel, and six pence for every pound weight deficient.

Wheat flour  
warehoused for  
exportation ex-  
cepted.

75. These provisions shall not extend to wheaten flour which may be warehoused and shall be taken therefrom for exportation.

Weighers, how  
appointed;  
their returns.

76. The sessions may, upon the recommendation of the grand jury, annually appoint weighers of flour and meal for their respective counties or for particular townships or districts therein in manner as township officers are appointed, who, when sworn, shall have the same authority and perform the same duty as the weighers of flour and meal in the city of Halifax, and every weigher shall make a quarterly return to the provincial secretary's office of all flour and meal weighed by him, to be made up to the last days of March, June, September, and December, and delivered within one month thereafter.

Vegetables, how  
to be sold; stan-  
dard weight,  
&c.

77. Potatoes and all edible roots, shall hereafter be sold by weight, and the standard bushel thereof shall be as follows: potatoes and turnips, sixty pounds. All other edible roots, forty pounds.

#### TARE ON SUGAR.

Tare on sugar,  
how ascertain-  
ed

78. The tare to be allowed on the sale of brown or raw sugar, shall, upon every barrel, be twenty two pounds; and upon every other package of the weight of fourteen hundred pounds or less, eleven pounds for every hundred pounds of gross weight; and upon every package of such sugar above the weight of fourteen hundred pounds, the tare shall be ten pounds for every hundred pounds of gross weight.

Fine for not al-  
lowing tare on  
sale.

79. Any person who shall not allow the full tare as herein prescribed, shall forfeit two shillings and six pence for every hundred weight of the sugar upon which such full tare shall not be allowed.

#### COAL AND SALT.

Coals, how sold.

80. Coals sold from shipboard, by retail, shall be sold by the ton weight of two thousand two hundred and forty pounds avoirdupois, and its subdivisions.

Coal and salt to  
be measured.

81. All coal or salt sold from shipboard by retail in this province, shall be weighed or measured by officers appointed for the purpose.

Liable to forfeit  
if delivered  
without being  
measured.

82. If such coal or salt shall be delivered to any truckman or other person without having been weighed or measured according to the two last sections, the seller shall

forfeit the same or the value thereof to the use of the poor. CHAP. 85.

83. The measurers of coal shall receive from the seller five pence for every ton, and measurers of salt shall receive two pence for every hogshead which they shall respectively measure. Fees of measurers.

84. If any measurer of coal or salt shall undertake to attend the admeasurement of coal or salt from more than one vessel at the same time, he shall forfeit a sum not exceeding forty shillings for each offence; and for any neglect or misconduct other than the offence last mentioned, a sum not exceeding three pounds. Fine upon measurers for misconduct.

#### SOLE LEATHER.

85. Every inspector of sole leather shall provide himself with proper scales and weights, and shall weigh every side of sole leather presented to him for inspection, and shall impress thereon:— Inspectors of sole leather shall keep scales and weights; their duty on inspection; marks and numbers to be impressed.

- 1 °. His own surname, and the name of the place for which he is inspector.
- 2 °. The word "best" if the leather be manufactured of good hides and in the best manner.
- 3 °. The word "good" if the leather be manufactured of good hides in a merchantable manner.
- 4 °. The word "damaged" if the leather be manufactured of damaged hides in a merchantable manner.
- 5 °. The word "bad" if the leather be not of one of the qualities above mentioned.
- 6 °. The weight of the side shall also be distinctly impressed thereon, either in figures or in words at length.

86. The inspector shall make such a deduction as he shall think reasonable from the actual weight of every side of sole leather inspected by him which shall not be perfectly dry; and he shall receive three pence for every side of sole leather which he shall inspect, weigh and stamp. Deductions from weight when leather is not dry; inspectors' fees.

87. If any person shall offer for sale any sole leather which shall not have been duly stamped, he shall forfeit a sum not exceeding five shillings for every side. Fine for offering for sale unstamped sole leather.

88. If any inspector shall violate his duty, he shall forfeit a sum not exceeding twenty shillings for every offence. Fine for violation of duty by inspector.

#### HAY.

89. Hay may be weighed in scales, or by steel-yards, duly stamped by the clerk of the market; and weighers shall receive at the rate of a penny for every hundred weight of hay weighed by them; and four pence for every mile they shall be required to travel, if the distance shall exceed one mile. Hay; how weighed; weighers' fees.

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## CORDWOOD.

Cordwood for retail; its quality and dimensions.

90. Every stick of cordwood intended for retail shall measure four feet in length, accounting half the scarf, and be sound hardwood, and every cord shall be of the full length of eight feet, and four feet high, and piled close.

Cordwood from shipboard to be measured; measurers' fees.

91. All cordwood sold from shipboard shall be surveyed and measured before sale by an officer appointed for the purpose, who shall receive four pence from the seller for every cord by him surveyed and measured.

Fine for selling without being measured.

92. Persons selling such cordwood without having the same surveyed and measured under the last preceding section, shall forfeit the same, or the value thereof.

Undimensioned wood to be rejected.

93. All sticks of such wood not of the requisite length, shall be rejected by the measurer.

Provisions in case of rotten or crooked wood.

94. Persons offering any cordwood for sale, shall pile all the crooked and rotten sticks, if any, separately; and if on the survey the measurer shall find any rotten wood, or any crooked sticks in the cord which shall prevent the same being piled close, such crooked or rotten sticks shall be rejected, and the deficiency in the cord made good before sale thereof.

Fine for measurer violating his duty.

95. If any measurer shall violate his duty, he shall forfeit a sum not exceeding twenty shillings for every offence.

## LUMBER.

Boards to be of four qualities; their description.

96. In the survey of boards there shall be four qualities, viz. :—

First.—Clear boards at least one inch in thickness.

Second.—Merchantable boards of first quality, sawed of equal thickness throughout, and, when not hardwood, squared at the edges with a saw; to be free from rots, waness, worm holes and auger holes; at least seven-eighths of an inch in thickness, and containing not less than ten superficial feet.

Third.—Merchantable boards of second quality, of the same dimensions, and free from rots, shakes and worm holes; and

Fourth.—Refuse, to include all other descriptions of boards.

Dimension deals defined.

97. All dimension deals shall be twelve, fourteen, sixteen, eighteen, twenty, and twenty-one feet long, nine, eleven, and twelve inches wide, and three inches thick, respectively, having an allowance of from one to two inches in the length, from a quarter to half an inch in the breadth, and from one-eighth to a quarter of an inch in the thickness: they shall be smooth and fair, of equal width and thickness throughout, butted at both ends with a saw, free from rots, sap, stains, large knots, rents, shakes, worm and auger holes, and shall have the stubshot sawn off.

Plank for exportation; their size and quality

98. All plank intended for exportation, except hardwood plank, shall be from ten to twenty feet in length, nine

inches in breadth, and three inches and one-eighth in thickness, and of the same quality as dimension deals. CHAP. 85.

99. All ton timber for exportation shall be straight lined and squared, and with not more than one inch of wane on the edges, without offsets or joints, square, butted at both ends, and free from all marks of scoring, rots, splits or worm holes which may be detrimental to the same. Ton timber for exportation; its size and quality.

100. Merchantable spruce or pine timber shall be sixteen feet, and hardwood timber ten feet in length at least, and at least ten inches square; and where it does not exceed sixteen feet in length, the ends shall be of equal size, and all ton timber shall be measured by the girth, one quarter part thereof to be taken as the side of the square. Merchantable spruce, pine and hardwood timber; the size and quantity.

101. In the survey of shingles there shall be three qualities, viz.: Shingles to be of three qualities; their descriptions.

No. 1.—Pine or cedar shingles not less than eighteen inches long, four inches wide, and three-eighths of an inch thick at the butt, and clear of sap, slash, shakes, twists and worm holes.

No. 2.—Pine, cedar, spruce or hemlock shingles not less than sixteen inches long, three and a half inches wide, and from a quarter to a quarter and a sixteenth of an inch thick, to be free from sap, slash, shakes and worm holes; and

No. 3.—Refuse, to include all other descriptions of shingles.

No. 1 and 2 shingles shall be put up in bundles not less than twenty-five tiers or courses twenty inches wide, four bundles to be considered as a thousand.

All shipping shingles for exportation shall be half an inch thick at the butt and extend the same thickness three-fourths of the length, and be shaved from thence to the point, and from four to four and a half inches wide.

102. Clapboards shall be four feet four inches long, five inches wide, and half an inch thick at the back. Clapboards; their length and description.

103. Lathwood shall be of fresh growth, straight rift, free from bark, heart and knots, and measured by the cord. Lathwood; description of, and how measured.

104. Hogshead staves shall be forty-two inches long, from three and a half to five and a half inches wide, and three quarters of an inch thick on the thinnest edge, and not more than one inch on the back. Staves; their description and mode of calculation.

Barrel staves shall be thirty-two inches long and half an inch thick on the thinnest edge, and not exceeding three quarters of an inch on the back: to be of good rift, fairly split, free from twists, knot holes, rotten knots, worm holes and shakes, and shall be calculated by the tale of twelve hundred to the thousand.

105. Upon any contract or bargain for a quantity of timber or lumber for exportation, the same shall be understood to mean that which is hereinbefore described, and the purchaser shall not be obliged to receive any other unless Timber, lumber and shingles purchased for exportation shall be as respectively described.

**CHAP. 85.** under a special written agreement specifying what he actually is to receive.

Duty of lumber  
measurers on a  
survey.

106. The surveyors of lumber shall, when required, diligently examine and survey every description of lumber described in any of the preceding sections whether for sale or exportation in their respective districts, and shall mark the same as directed by this section at the time of the survey; but if it shall have been previously surveyed in the province, he shall only re-survey and mark anew the same when he shall have any doubt of the measure; and on every survey he shall furnish the seller and the purchaser each with a certificate thereof specifying the quality and dimensions, and on every stick of ton timber shall mark in figures the contents in cubic feet, the initials of his name, and the private mark of the purchaser; and on all deals and plank shall mark in lead on the ends, the length, breadth, thickness, and superficial contents and his own private mark; and on all boards the superficial contents and his private mark.

Fees of surveyors  
of lumber.

107. The surveyors of lumber shall receive the following fees, viz: for measuring and surveying all ton timber, three pence per ton, together with four pence for every mile they shall necessarily travel in coming to the place of the survey.

For every thousand superficial feet of deals, plank, scantlings and boards respectively, nine pence for surveying and three pence for marking; and for viewing only where the same shall have been previously surveyed and the surveyor shall doubt the measure, three pence.

For every cord of lathwood, six pence.

For every thousand shingles, three pence; and for culling and repacking, six pence.

For every thousand hogshead staves, one shilling and six pence.

For every thousand barrel staves, nine pence.

Surveyors certificates; their effect; provisions in cases of dispute.

108. The surveyor's certificate shall be binding between the seller and purchaser, but in case they disagree, either party may call in three other surveyors who are in no way interested in the matter in dispute, to re-survey the same, and their decision shall be final. If the first survey be confirmed, the expense of the second shall fall upon the party by whom it was had, but if the first survey is not established, then the surveyor shall bear the expense of the second survey.

Fees of surveyor payable by seller; seller's duty on survey.

109. The surveyor's fees shall, in all cases, be paid by the seller, who shall remove all obstacles in the way of the surveyor which may prevent him from viewing and measuring with facility any timber or lumber which he may be required to survey, and shall, if necessary, have the same canted. But the purchaser, upon any special agreement therefor, or if he shall require a fresh survey, shall pay the surveyor's fees.

110. All timber, lumber, and shingles, shall be surveyed and marked, as prescribed by this chapter, before delivery on sale or shipment for exportation, and if any person shall violate this provision, he shall forfeit the article or the value thereof; but in the city of Halifax entire cargoes of lumber sea borne may be disposed of without the intervention of a surveyor between the first buyer and seller.

111. Upon the survey of shingles, clapboards and staves, respectively, those which are deficient in quality or dimensions shall be rejected.

112. All shingles and clapboards exposed to sale by quantities in bundles, and not holding the number they are marked for, shall, unless it appear that part thereof have been accidentally shaken out after packing, be forfeited.

113. Any person who shall, without the permission of the owner of any timber or lumber, alter, deface, or destroy the marks of a surveyor of lumber thereon, shall forfeit a sum not exceeding twenty shillings for each offence.

114. Any surveyor of lumber violating any of these provisions, shall forfeit a sum not exceeding five pounds for each offence.

115. All prosecutions under these provisions shall be commenced within twelve months from the time of the commission of the offence.

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Timber, lumber and shingles forfeited if sold without being surveyed; cargoes in the city of Halifax excepted.

Shingles, clapboards and staves found defective, to be rejected.

Shingles and clapboards forfeited when offered for sale deficient in the marked quantity.

Fine for destroying surveyor's marks on timber, &c.

Fine for lumber surveyor violating his duty.

Limitation of actions.

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## CHAPTER 86.

### OF WEIGHTS AND MEASURES.

1. Weights and measures shall be according to the standard now in use.

2. The clerk of the peace shall be furnished at the expense of each county or district, with a set of standard weights and measures, which shall be accessible to every person at all reasonable times for the purpose of assay.

3. The clerks of the market, and in places where no such officers are appointed, the town clerk shall keep a set of weights and measures, long, liquid and dry, which shall be stamped by the clerk of the peace with the letter S, and they shall be standard weights and measures.

4. Every inhabitant of each town respectively, making use of weights and measures in the sale of any commodity, shall, in one week after public notice given by the clerks of the market for such town, bring, or cause to be brought, their weights and measures to be assayed. for each of which assay the clerk shall have two pence for his trouble, and shall cause such weights and measures to be branded and

Standard of weights and measures.

Clerks of peace to be furnished with sets of standard weights and measures.

Clerks of markets to keep stamped weights and measures.

All weights and measures to be assayed and stamped.

Clerk's fees.

**CHAP. 87.** stamped with the initial letter of the town where such assay shall be made.

Inspection of weights and measures; liable to be seized when not stamped or branded.

5. The clerks may inspect all weights and measures, and once in three months, or oftener, visit every inhabitant selling publicly by weights and measures, and shall have full power and authority to seize all such not stamped or branded as aforesaid, and may assay and mark and dispose of the same for their own use as satisfaction for their trouble therein.

Penalty.

6. The penalty for selling by weights or measures, not so branded, shall be twenty shillings for each offence, and for selling by weight or measures less than the standard, ten pounds.

## TITLE XXII.

### OF CORPORATIONS.

#### CHAPTER 87.

##### OF GENERAL PROVISIONS RESPECTING CORPORATIONS.

Corporations; their powers and privileges

1. All corporations shall, where no other provision is specially made, be capable in their corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which they may alter at pleasure, to elect in such manner as they may deem proper all necessary officers, and to fix their compensation and to define their duties, and to make bye-laws and regulations not contrary to law nor repugnant to the charter or act by which any such corporation may be created, for their own government and the due management of their affairs.

Bye-laws and proceedings to be regulated thereby.

2. All corporations may by their bye-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of members which shall constitute a quorum, the number of shares which shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers, and the purchase, conveyance and sale of their real and personal estate; and they may annex penalties to their bye-laws not exceeding in any case the sum of five pounds for any one offence.

Proceedings, how recorded when required by the act of incorporation.

3. When any charter or act of incorporation shall direct that the bye-laws and list of shareholders, or either of them, shall be registered, no bye-law of the incorporation shall be



in force until a copy thereof, and also, if required by the charter or act of incorporation, a list of the names of all the members of the corporation, with the amount of the stock held by each member respectively, certified under the hand of the president and secretary, or if the company shall not have been organized, under the hands of three at least of the members of the company, of whom one at least shall have been named in the charter or act of incorporation, shall be recorded in the office of the registrar of deeds in in such county as may be directed by such act or charter; and no subsequent bye-law, nor any subscription of additional stock, nor the transfer of any stock or shares in the corporation, except by devise or by descent, or other act of law, shall be effectual, until a certificate thereof, under the hand of the president and secretary, shall be recorded in the same office; and in all cases bye-laws relating to the real estate of the corporation shall, before they become effectual, be recorded in manner above mentioned in the office of the registry of deeds for the county or district in which such real estate may be situate.

4. The first meeting of all corporations shall, unless otherwise provided in their charters or acts of incorporation, be called by notice signed by any one or more of the persons named in the charter or act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member, or left at his place of residence, or published in some newspaper of the county where the corporation may be established, or where its principal place of business shall be situate, or if there be no newspaper in the county, then in two of the Halifax newspapers.

First meeting,  
how called.

5. Whenever by reason of the death, absence or disability of the officers of any corporation there shall be no person authorized to call or preside at a meeting thereof, any justice of the peace may, on a written application of three or more of the members, issue a warrant to any one of such members, directing him to call a meeting of the corporation by giving the notice as required by law, and the justice may in the same warrant direct such person to preside at such meeting if there shall be no officer present legally authorized to preside thereat.

How called in  
special cases.

6. Such corporation when so assembled may elect officers to fill all vacancies then existing, and may act upon such other business as might by law be transacted at regular meetings of the corporation.

Powers and duties of corporation when assembled.

7. Notwithstanding the corporation may hold real estate, the shares of the stockholders shall be deemed to be personal property for all purposes.

Shares to be personal property.

8. The real estate of the company may be sold under execution in the same manner as personal estate, and the

Real estate to be sold as personal property.

**CHAP. 87.** sheriff shall immediately after the sale execute a deed to the purchaser, which shall convey all the estate and interest of the company in the real estate so sold and conveyed.

Acts to expire unless put in operation within three years.

9. All acts or charters of incorporation shall expire, unless the company thereby established shall go into operation within three years from the passing thereof, unless otherwise specially provided therein.

Charters to continue three years after expiration, for closing concerns.

10. All corporations whose charters after they shall have gone into operation shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued as bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations were established.

Trustees may be appointed to wind up business within the three years.

11. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the supreme court on application of any creditor of such corporation, or of any member at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the corporation, and to collect the debts and property due and belonging thereto, with power to prosecute and defend suits in the name of the corporation, and to appoint agents under them, and to do all other acts which might be done by such corporation if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the power of such trustees may be continued beyond the three years and as long as the court shall think necessary.

Officers and members how sued.

12. When any officer or member of a corporation is liable for any debts of the corporation, or for acts in relation to its business, or to contribute for money paid by other officers or members on account of any such debts or acts, he may be sued therefor in the supreme court.

Liability of individual members.

13. No member of any corporation shall be relieved from individual liability for its debts or obligations; but each member thereof shall be liable as a partner to the same extent as if no corporation existed; and in case any execution issued on any judgment against the corporation shall be returned unsatisfied, the individual real and personal estate of every member of the corporation shall be liable to respond such judgment under execution issued thereon in the same manner as if the same were a private debt due by such member, unless the special act creating the corporation shall exempt its members from such liability; and any member who shall be so compelled to pay any monies on account of the debts of the corporation, shall be

entitled to credit therefor, in the books of the corporation. CHAP. 87.

14. The directors or board of managers of any such corporation, the liability of whose members shall be limited by the act or charter of incorporation, unless otherwise specially directed therein, shall in all cases be personally liable for any responsibility incurred by them on account of the corporation beyond the amount of the stock subscribed without the sanction of the company to be obtained at a meeting thereof held in accordance with the bye laws, unless such larger amount of dealing be specially authorized by the act or charter of incorporation; but this section shall not extend to insurance companies.

Liability of directors, &c. personally in special cases for overtrading, &c.

15. The acts of incorporated companies performed within the scope of their charters or acts creating them, shall be valid, notwithstanding they may not be done under, or be authenticated by the seal of such corporations.

Acts of companies valid without seal.

16. No corporation shall issue notes or bills for payment of money, for the purpose of circulating the same as money, or engage in any banking or insurance business unless especially authorized to do so by its act of incorporation, and if any corporation, not so authorized, shall issue such bills or notes, or shall engage in any banking or insurance business, its charter shall be thereby rendered void.

No company to engage in banking or insurance business unless specially authorized.

17. Whenever in any act or charter of incorporation any disputes or matters of controversy in which the corporation may be interested, or any damages to which they may become liable, shall be directed to be settled or ascertained by arbitration, the mode of proceeding on such arbitration, unless otherwise prescribed, shall be as follows, viz: unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party shall, by writing under the hand of the parties interested, or on behalf of the corporation under the hand of the president or one of the directors and the secretary, appoint an arbitrator to decide the matter in question, and after such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of any of the parties operate as a revocation thereof; and if either party shall fail to appoint an arbitrator within fourteen days after service upon him of such written request, a judge of the supreme court at the instance of the party making such request may appoint an arbitrator to act on behalf of both parties, who may proceed to hear and determine the matters in question, and his award shall be final. If any arbitrator, after his appointment, die, or become incapable from absence or otherwise, or refuse, or for seven days neglect to act as arbitrator, the party by whom he was nominated, or a judge of the supreme court, may appoint

Arbitrations, how conducted where a corporation is a party.

CHAP. 87. in writing some other person to act in his place, and if for seven days after such substituted arbitrator shall have received notice in writing from the other party for that purpose he fail to do so, the other arbitrator may proceed to hear and determine the matters in question.

Where two arbitrators shall have been appointed, they shall, before entering upon the matters referred to them, appoint by writing under their hands an umpire to decide in case they shall differ, and if the umpire shall die, refuse, or for seven days neglect to act, they shall forthwith appoint another umpire in his place, whose award, together with that of one or both of the arbitrators, shall be final.

The arbitrators or umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the matters referred to them, and may examine the parties and their witnesses on oath, and administer the oaths necessary for that purpose.

Unless otherwise provided in the act or charter of incorporation, the costs attending such arbitration shall be paid by such party or by both parties in such proportions as may be directed in the award.

The submission to any such arbitration may be by rule or order of any court.

Abstract of receipts, &c. of all joint stock incorporated companies to be filed, &c.

18. All joint stock incorporated companies doing business in this province, by agents or otherwise, shall, once in every year, produce and file, in the provincial secretary's office, an abstract of all their receipts, expenditures, profits and losses, within the province, and when required by the governor in council, such rules, bye-laws, accounts, and such other of their proceedings as shall be specified in such requisition.

Penalty.

19. Any such corporate body refusing or neglecting to furnish such abstract, or to comply with such requisition, shall forfeit a penalty of five pounds for every month during which such default shall continue.

Insurance corporations to make annual returns to office of provincial secretary.

20. On or before the last day of February in every year, a return shall be made into the provincial secretary's office, by the president, agent, or manager, of every company, corporate body, or agency, doing business as insurers in this province, of the business of insurance upon lives, against fire, and upon all marine risks done by them respectively, between the first day of January and the 31st day of December preceding such return, both days being included, which return shall comprehend the number of policies entered into, the number of policies renewed, the amount insured, and the premiums paid, and in case of insurance against fire, the nature of the property insured, whether real or personal, and its situation, whether in the city of Halifax or in other parts of the province; in case of marine risks, the ports to which the vessels insured belong, where it can be known,

and shall also state the capital and other security for the payment of losses, and where the same is situated ; and in case of companies and corporate bodies out of Nova Scotia, whether there is any security or capital within the province, for the payment of losses, and the nature, permanency, and amount thereof, which returns shall be certified to be true, by the president, agent, or manager of every such company, corporate body, or agency respectively ; and every such president, agent, or manager, neglecting to make such return or knowingly make a false or defective return, shall forfeit fifty pounds.

21. All acts of incorporation of wharf, pier, or break-water companies, heretofore passed by the legislature, whether temporary or perpetual, and also all such acts of incorporation hereafter to be passed previous to the session of the general assembly, in the year one thousand eight hundred and seventy-five, shall continue in force until the thirty-first day of December, in that year, and no longer unless renewed by act of the legislature.

Acts of incorporated pier companies, &c., to continue to 31st December, 1875.

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## CHAPTER 88.

### OF AGRICULTURAL AND LAND CORPORATIONS.

1. Whenever twenty persons or more shall raise ten pounds per annum, or upwards, to be applied for the improvement of agriculture, they shall thereupon become a corporate body by such name as they shall think fit, with all the privileges and obligations in chapter eighty-seven, but such privileges shall continue only so long as there are twenty members or more in the society, and they shall annually raise the sum of ten pounds at the least and apply it for the improvement of the local agriculture.

Agricultural corporations, how organized.

2. Whenever any British subjects desire to form an association for the purchase and improvement of crown lands on the lines of the contemplated trunk line of railroad from Halifax to Quebec, they may transmit the names of such persons, not less than twenty, as they wish to represent them, to the commissioners of lands and emigration, to be transmitted to the lieutenant-governor of this province, who shall thereupon, if, with the advice of council, it be determined to invest such persons with corporate powers, direct their names to be inserted in the royal gazette, and a patent to issue, clothing such persons and their co-partners, with the privileges and legal liabilities of a corporation, upon the following terms, subject to such restrictions as may, by the governor in council, be deemed necessary :

Formation of an association for improvement of lands.

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Privileges, liabilities, and restrictions of the company.

First—The name of the company, and the names of its directors, to be lodged in the office of the provincial secretary, with an impression of its common seal.

Second—The directors to be liable to the whole extent of their fortunes for the debts of the company, being vested with power to sue and be sued in their corporate capacity.

Third—The shareholders to be liable only to the extent of their shares.

Fourth—The company to purchase fifty thousand acres of crown lands on the line of railroad, at such price as may be determined upon by the government, with power to purchase any further quantity, when one-half of the original purchase has been sold and settled.

Fifth—The lands to be laid off in lots of one hundred acres, at the expense of the government, and numbered on the plans from one to five hundred, it being provided in the general grant, that every lot on which there is not a dwelling house actually occupied, and at least five acres of land cleared and improved, at the end of ten years from the date of its purchase, shall revert to the government, and become a part of the public domain, upon a declaration of the governor in council to that effect, without office found.

Sixth—Where the lands purchased are in one block, and are not included in any township, they shall be formed into a township, and the inhabitants, whenever they shall number one hundred heads of families, shall be invested, by law, with all the privileges of township organization.

Seventh—The capital of the company shall be limited to fifty thousand pounds, but may be increased by one pound for every acre of land purchased from the provincial government above the quantity specified in the fourth condition.

Power of company over land.

3. The company shall have power over such lands as they shall purchase—over mines not subject to legal reservations—over the standing timber, mill sites, and water privileges; and may lay off and sell such lands in town-lots or blocks of less or more than one hundred acres, at their option, and for the general advantage.

Company may contract for railways running through their lands.

4. The company may enter into contracts with any commissioners appointed by the provincial government, to construct so much of the railway as will run through the lands purchased, and to work and repair such railway after it is made; but no greater amount shall be charged for the construction and working of such sections of the railway than is paid for constructing and working other portions of the line.

## TITLE XXIII.

## OF THE POOR.

## CHAPTER 89.

## OF THE SETTLEMENT AND SUPPORT OF THE POOR.

1. The words "township" and "settlement" when used in this title shall be held to mean any district set off and established as a district for the support of the poor.

Definition of the word township.

2. The grand jury shall annually at the sessions nominate ten freeholders out of every township, of whom the court shall appoint five to be overseers of the poor; and if any person so appointed shall cease to reside in the township, or shall die within the period for which he was appointed, any two justices for the county may appoint another to act instead until the next meeting of the grand jury and court of sessions.

Overseers of poor, how appointed.

3. Every person who hath lived as an hired servant one whole year therein under an agreement to serve the same master one whole year then next before application for relief, or hath executed a public annual office therein, or hath been assessed and paid his share of poor and county rates in the township during one year at one time, shall be entitled to a settlement; and any person who shall have resided in any poor district for five years consecutively after arriving at the age of twenty-one years, and who, during that time, shall not have received aid from the overseers of the poor as a pauper, shall have a settlement on such poor district; and all persons under the age of twenty-one years who have served an apprenticeship within any poor district to any trade for the space of two years, shall have a settlement therein.

Settlement, how gained.

Persons entitled to a settlement on the district.

Under age.

4. The settlement of any legitimate child shall be that of the father, if the father have any; if not, that of the mother, if the mother have any; illegitimate children shall have the settlement of the mother if the mother have any. But in case a child has no settlement by parentage, the birth place of such child shall be the place of settlement.

Settlement of children.

5. A married woman shall have the settlement of her husband, if the husband have any; if not, her own settlement, if she have any, shall not be suspended by her marriage.

Settlement of married women.

6. A legal settlement shall cease when a new one is gained, and shall not revive.

Settlement to cease when new one acquired.

7. When a poor district shall be divided or a new district created, the settlement of any person dwelling within such divided or newly created poor district, shall be within

In case of a division of an old or the erection of a new district.

**CHAP. 89.** the limits of the district in which such person may have dwelt at the time of such division or creation.

Proceedings preparatory to the removal of a pauper.

8. Any person applying to the overseers of poor of any township for relief who shall not have obtained a settlement therein, shall be required to declare on oath before a justice of the peace his last place of residence, and if he be found to have gained a settlement within the province a copy of the declaration certified by the justice, with the amount of expense incurred, shall be transmitted to the overseers of the poor of the township to which such person belongs.

If the overseers of the place of his settlement refuse to remove him, a warrant for his removal may issue.

9. If such last mentioned overseers refuse or neglect to remove such person, two justices, by a warrant, shall cause such person to be removed to the township where a last settlement has been obtained; and the overseers of the poor there shall receive such person and pay to the overseers of the first named township the necessary expense incurred about his removal. If the overseers of the last named township have no money in hand to pay such expense, they shall stand charged therewith until the next assessment made on the township to which such person belongs.

Persons near of kin, and able, required to maintain their poor relations.

10. The father, grandfather, mother, grandmother, children, and grandchildren respectively, of every old, blind, lame, impotent, or other poor person not able to work, being of sufficient ability, shall relieve and maintain at their own charge, every such poor person, as a general or special sessions shall direct, and in case of refusal shall forfeit five shillings per week for such poor person, to be sued for in the name of the overseers of the poor.

The property of persons forsaking their families may, if necessary, be seized and sold for their support.

11. Where any husband or father shall forsake his wife or children, or any widow shall forsake her children and leave them a public charge, two justices on the application of the overseers of the township, shall issue a warrant to seize the goods, and to let out and receive the annual rents and profits of the lands of such husband, father or widow, towards the maintenance of such wife, child, or children; and when the seizure shall be confirmed by the sessions any two overseers may, as occasion shall require, dispose at public sale of such goods or so much thereof as shall be necessary, and shall apply the proceeds towards the maintenance of such destitute persons.

Children to be supported where deceased parents have gained a settlement.

12. The children of deceased parents who have gained a settlement in any township, shall, if paupers, be supported by such township.

Appeals provided for parties aggrieved.

13. If any overseers on behalf of the township or any other person shall feel aggrieved by any proceedings under this chapter, such overseers or person may appeal to the next sessions to be held for the county where the township is or the person shall reside, and the sessions shall hear and determine the same, and their order shall be final.



14. If the justices, on an appeal concerning the settlement of a poor person, determine that such poor person was unduly removed, they shall then or at a future sessions order to be paid to the appellants, any money that may have been paid by such appellants, or may be due from them as overseers on account of such poor person between the time of the undue removal and the determination of the appeal, the same to be recovered as hereinafter provided.

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Proceedings on appeal where a person has been unduly removed.

15. Upon the determination of an appeal concerning the settlement of a poor person, or upon proof of notice of an appeal given by the proper officer to the overseers of the poor, though the appeal be not prosecuted, the justices shall then or at a future sessions, order to the successful party on a trial, or to the party notified if not further prosecuted, such costs as in their discretion are reasonable, to be taxed and allowed according to the rates adopted in the supreme court, which shall be paid by the unsuccessful party or the party giving such notice.

Costs on appeal, how taxed and allowed.

16. If the overseers or other person ordered to pay such sum of money or costs, shall, after service of a copy of such order, refuse to pay the same, the party in whose favor such order is made may sue for and recover the amount as if it were a private debt with costs; and the production and proof on the trial of the order or copy thereof and of the service thereof, shall be sufficient proof of the debt.

Amount ordered to be paid, how recovered;

17. Every township shall be liable to pay any expense which shall necessarily be incurred for the relief of a pauper, by any person who is not liable by law for his support, after notice and request made to the overseers of the township, and until provision shall be made by them.

Townships liable for support of poor after notice.

18. If any person shall bring any poor and indigent person into any township where such person has not a lawful settlement, knowing him to be poor and indigent, and shall leave him therein with intent to charge such township with his support, he shall forfeit a sum not exceeding twenty pounds for every such offence.

Penalty for improperly bringing a pauper into a township.

19. The inhabitants of every township liable to pay poor rates shall hold two meetings annually if necessary, to provide for the support of their poor, which shall be held on the first Mondays of April and November.

Town meetings, and the days for holding.

20. The overseers of the poor in the several townships shall at least ten days before the times appointed for holding meetings to provide for the support of the poor, cause advertisements to be posted up in at least five of the most public places in the township, notifying the inhabitants to meet on the several days respectively for that purpose, and in case of neglect such overseers shall forfeit ten pounds.

Overseers to notify the meetings by advertisements.

21. The inhabitants present at such meetings having first chosen a chairman to preside, shall vote such sums of money as they shall judge necessary for the support of the poor for the current year or until the next meeting, and

Proceedings at meetings; money to be voted; assessors chosen.

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incidental expenses connected therewith; and shall choose so many collectors as they may deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk, to be called the clerk of such poor district, who shall act as clerk to the overseers of the poor for the district; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting, and added to the amount to be assessed on the district.

Meetings may be adjourned if necessary.

22. If the business of the meeting cannot be completed on the days above respectively named, the chairman with the consent of the majority of those present, shall adjourn the meeting as occasion may require to conclude the business.

Deficiencies of money may be voted at subsequent meeting.

23. If the money voted at any meeting shall be insufficient for the support of the poor, the inhabitants, at their next meeting, shall vote sufficient to make good the deficiency.

Poor houses may be built or hired; title how vested; poor how managed.

24. The inhabitants, if deemed advisable, may, at such meeting, determine to erect or hire a building for a poor house, and may vote money for that purpose and for the annual repairs and other necessary expenses connected therewith; and thereupon the overseers shall proceed to hire or erect a building as directed, the title and interest in which, when conveyed to them, shall vest in them and their successors in office as a body corporate. The overseers shall have the control and management of the poor house and the supervision and government of the inmates, and may appoint the officers and keepers thereof, and may purchase materials upon which the labor of the poor may be profitably employed. They shall annually submit an account of their proceedings and of the general state of the institution, and of their receipts and expenditures, for the examination and audit of the sessions.

Proceedings to collect rates shall be by general warrant of distress: form given, fees, &c.

25. Separate suits shall not in future be brought against defaulters, but every collector shall make a general return to a justice within the township, or if none reside there to any justice of the county, of every person upon his list, who, after demand made, shall not have paid his rate; and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that the demand has been made, and that the rate is unpaid; and thereupon such justice shall forthwith issue a general warrant of distress against the several defaulters in the form in the schedule, directed to a constable not being such collector, commanding him to levy upon the goods of each person named in the warrant the sum due by such person, with constable's and justice's fees. The constable shall forthwith execute the warrant, and pay over the amount collected to the collector, who shall thereupon pay the same to the overseers. The justice's fee for such war-

rant shall be three shillings and six pence, and the constable's fee for each person in the warrant shall be one shilling, but the constable shall have no travelling fees or poundage, and the justice's fee shall be apportioned among the several persons, if more than one, in the warrant.

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26. The justices in general or special sessions, as the case may be, may relieve appellants as they shall see fit, and may order the overseers of the poor to refund any excess of rates collected.

Appellants to be relieved by the sessions.

27. No person shall be assessed for the support of the poor unless in the opinion of the assessors he is able to pay a rate of at least one shilling annually.

Parties liable to be assessed.

28. If any person think himself over-rated he may appeal to the next sessions or to the next special sessions to be held for hearing such appeals, in the county or district wherein the assessment was made; and the order of such court of appeal shall be final.

Over-rated persons may appeal.

29. The overseers shall apply all sums of money voted and received by them for the purposes specified; and any collector who shall neglect to pay over to the overseers any sum by him collected may be sued by them, and the amount shall be recovered as if it were a private debt.

Appropriation of monies; collectors may be sued by overseer.

30. The overseers of the poor shall within one month after the expiration of their office render to the clerk of the peace of the county in which they reside, to be laid before a general or special sessions, an account of all money received and the particulars of all expenditures by them for the support of the poor, and shall account for the same on oath, if required, before such sessions. In case there is no clerk and treasurer for the district, they shall enter their proceedings in a book to be kept for the purpose, and at the expiration of their office shall deliver the same, and any money in hand unexpended to their successors.

Accounts of overseers, when and how rendered.

31. The general or special sessions shall examine the accounts of overseers of the poor when so submitted, and shall allow or disallow the same as shall seem proper, and determine the just balance that may be due thereon.

Sessions to audit the accounts.

32. Every person appointed an overseer of poor who shall refuse to serve shall forfeit five pounds, to be recovered by the overseers of poor next in office for the same place.

Fine for refusal to serve as overseer.

33. Overseers of poor who shall not within one month after the expiration of their office render to the clerk of the peace an account of all sums of money received and expended by them, shall forfeit five pounds.

Fine for neglecting to render accounts as required.

34. If the inhabitants of any township shall neglect to meet as required, or, having met, shall neglect to make adequate provision for the support of their poor, the justices in session or any special sessions called for the purpose, shall, on the application of the overseers of poor for such township, amerce the same in a sum necessary for that purpose.

Townships may be amerced by the sessions, in case of neglect to assess for the support of poor.

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Fine for collectors refusing to serve; appointment of others. Collectors to account and pay over to overseers once every three months.

Fine for collector neglecting duty.

Persons receiving aid shall refund the amount if able.

Assessors not exempt from assessments; fine for neglecting to assess themselves.

Commissions to collectors.

Forfeitures, how applied.

Clerk and treasurer may be appointed; bonds to be given.

Duty of clerk.

Duty of treasurer.

35. Every person appointed a collector who shall refuse to serve shall forfeit forty shillings, and another collector shall be forthwith appointed in his place.

36. Every collector shall, once in every three months, account with and pay to the overseers all money received by him; and upon neglect so to account and pay, the same may be recovered by the overseers as a private debt.

37. Every collector who shall neglect for thirty days after acceptance of office to perform the duty thereof, shall forfeit five pounds.

38. When any person shall apply for and obtain relief from the overseers, and it shall happen that such person was at the time possessed of or entitled to any property, out of which the expenses so incurred may be repaid, the overseers may demand and recover from such person a repayment of the expenses so incurred, as if it were a private debt; and any money recovered shall be accounted for by such overseers as other public money.

39. No person being an assessor shall on that account be exempt from assessments; and any assessor who shall neglect to assess himself in a just proportion, shall forfeit five pounds.

40. The sessions shall establish the rate of commission to be allowed to collectors of poor rates, but the same shall not exceed five per cent.

41. All forfeitures under this chapter, when recovered, shall be applied to the support of the poor of the township.

42. The inhabitants at one of their meetings may, if they see fit, provide a salary for an officer to be called clerk and treasurer of the district, and thereupon may appoint a person, not being an overseer, assessor or collector, to fill the office. He shall give a bond to the overseers by their name of office, with two sureties, in double the amount of the annual assessment, or thereabouts, conditioned for the faithful discharge of his duty, and shall be sworn into office.

43. The clerk shall be under the direction of the town meeting while in session, and shall keep a correct record of its proceedings, from time to time, in a book to be furnished him for that purpose, which book shall be open for inspection to all rate payers at all reasonable times. He shall assist the assessors when required, in writing out and copying rate bills; he shall assist the overseers in making up their accounts, and shall audit and check the same.

44. The treasurer shall be under the direction of the township-meeting while in session, and he shall be authorised to give receipts and discharges to collectors for monies paid by them to him, and he shall pay over monies so received upon orders addressed to him in that behalf by the overseers; he shall file away for future reference all accounts, papers, and vouchers relating to his office, and produce the

same when required by the town meeting or the overseers, and shall generally discharge the duties of clerk and treasurer to the district; he shall not receive or take any commissions or other remuneration except his salary, which shall not be required to be voted annually, but shall be continued until otherwise altered by a vote of the town meeting.

45. This chapter shall extend to the city of Halifax in all cases where its provisions are not inconsistent with those in the act concerning the city, passed in the session of 1851.

Chapter applicable to city of Halifax where not inconsistent with act of incorporation.

46. The meeting may appoint one and the same person to be clerk and treasurer if they see fit.

Same person may be clerk and treasurer.

#### SCHEDULE.

##### *Form of general warrant of distress.*

County of } To A. B., one of the constables of the said  
 \_\_\_\_\_, } county.

Whereas by a rate and assessment made in conformity with law, the persons named in the schedule have been assessed for poor rates for a period ending the — day of —. And whereas it appears to me, one of the justices of the peace for such county, upon the oath of C. D., one of the collectors for the township of —, that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in the schedule hereto annexed, remain unpaid. These are therefore to require you forthwith to make distress of the goods and chattels of the persons mentioned in the schedule; and if within the space of five days next after such distress by you taken, the sums in the schedule set opposite their respective names, together with their proportion of justice's and constable's fees, and the necessary charges of taking and keeping the distress be not paid by each of them respectively, that then you do sell the goods and chattels of such of them as shall not have paid such sums with fees as above mentioned; and out of the monies arising from such sale you do forthwith pay over the sums so due by them respectively to the said C. D., the collector, together with the justice's and constable's fees, if any, by him paid; and that you do render to the owners of the goods respectively upon demand the surplus remaining from such sale, the necessary charges of taking, keeping and selling the distress, being first deducted. And if no such distress can be made, that then you certify the same to me.

Given under my hand and seal the — day of —,  
 A. D. 18—.

(Signed)

E. F., J. P. (Seal.)

CHAP. 90.**CHAPTER 90.****OF POOR DISTRICTS.**

Poor districts confirmed.

1. Poor districts as now established shall so continue until altered by law.

Proceedings for dividing districts; sessions may make orders for shewing cause.

2. If twenty or more of the rate payers within any township established for the support of poor, shall, by petition, apply to the court of sessions, stating their desire that such township should be divided into two or more districts, and setting forth the proposed boundaries thereof, the court may, if they think fit, pass an order calling upon the parties interested to shew cause at the next sessions why such division should not be made.

Orders to be posted.

3. Copies of such order, setting forth particularly such proposed boundaries, shall be posted up in at least five of the most public places within the township sought to be divided, for at least thirty days next previous to the ensuing sessions.

Orders may be made dividing townships into districts, with names, &c.

4. At such sessions the court may, if they think fit, make an order dividing the township, either by the boundaries so proposed, or by such other boundaries as may be deemed proper, into as many districts as may be thought necessary for the future support of the poor within the same, with a name or designation to each.

Sessions may by order, adjust expenses and the support of present paupers.

5. The sessions shall thereupon also ascertain the number of paupers then chargeable on the whole township divided, and the amount required for their support, and, by order, direct the proportion to be borne by each of such new districts; and thereafter the expenses of paupers shall be chargeable on the district in which a settlement shall have been gained.

Sessions may request expenses of subsequent orders.

6. The court of sessions may at any time alter or make anew any order in relation to the expenses of paupers, chargeable at the date of their first order on the whole township, thereby to effect a more equal distribution of such expenses rendered necessary by any increase or diminution thereof.

Rates pending at such division not thereby invalidated.

7. All rates, assessments, suits or actions, pending at the date of such first order, may be prosecuted, levied and collected, as if such division had not been made.

## CHAPTER 91.

## OF THE MAINTENANCE OF BASTARD CHILDREN.

1. If any woman shall become pregnant with a bastard child likely to become chargeable to any township, she shall make oath in writing before a justice for the county where she resides that she is so pregnant, and who is the father of the child; and such justice shall forthwith issue his warrant to apprehend the reputed father and cause him to be brought before him or some other justice of the county.

Information of woman pregnant with a bastard child; how taken, and justices warrants thereon.

2. The reputed father when brought before a justice, shall be required to enter into a bond, with a surety, to indemnify such township until after the birth of the child and until an order of filiation shall be made thereon, or till the reputed father be discharged on examination and hearing preparatory to the passing such order; and in default shall be committed to jail to remain until such examination and hearing can be had or such bond given.

Reputed father to enter into bonds until after the birth.

3. As soon as convenient after the birth of the child, two justices, on application of an overseer of the poor or some substantial householder of such township, shall issue a warrant to bring the mother and reputed father before them at a time and place therein mentioned, and shall hear the evidence of the mother and of any other person, except the reputed father, who may be produced by the mother or reputed father, under oath to corroborate or invalidate the testimony of the mother, as the case may be, and shall either discharge the reputed father or make an order of filiation to indemnify the township for the expenses connected with the lying in and maintenance of the mother and the birth and maintenance of the child to the date of the order, and that the reputed father pay such sum weekly as they shall consider right, respect being had to his ability, towards the support of the bastard child while chargeable to such township.

Hearing after the birth and order of filiation.

4. If the person against whom any warrant shall issue under the provisions of this chapter shall not be found within the jurisdiction of the justice or justices issuing the same, or if he shall be suspected to be in any place within this province, a justice of the county or place where such person shall be, or be suspected to be, upon proof made upon oath of the handwriting of the justice or justices issuing the warrant, may make an endorsement (as nearly as may be in the form hereto annexed,) upon such warrant, signed with his name, and authorizing the execution thereof as thereon endorsed, and the carrying of the person therein named, when apprehended, before the justice justices who first issued the warrant.

Where reputed father not found or is in another jurisdiction, warrant may be endorsed over

## CHAP. 91.

Reputed father shall give a bond to fulfil the order or pay twenty pounds, or suffer six months imprisonment.

Information within three months after birth, and justices warrant thereon.

When the reputed father cannot be served, the order of filiation may be made in his absence; proceedings thereon.

Such order may be subsequently confirmed or reversed; proceedings thereon.

Appeal from order of filiation.

Power of justices to control the expenses in making an order of filiation, and to make further orders.

5. The reputed father shall then enter into a bond with one surety to fulfil the order of filiation, or shall pay to the overseers of the poor, twenty pounds for the support of each such child, or other town uses; and, in default, shall be forthwith committed to jail for a time not to exceed six months, or until he shall have entered into such bond or paid the twenty pounds.

6. If the mother of a bastard child shall not previously to its birth have made oath in writing before a justice disclosing the reputed father, any justice may at any time within three months after the birth, on application of an overseer of the poor of the township where the child has been, or is likely to become chargeable, take the oath of the mother in writing, declaring who is the father of such child; and, thereupon, two justices shall issue a warrant to bring the reputed father and the mother before them at a time and place therein named, and such proceedings shall be had thereon as directed in cases where the mother has disclosed the name of the father before the birth.

7. If any reputed father shall conceal himself or so avoid service of a warrant that he cannot be brought before the justices as therein directed for hearing and examination, then they may make up their order of filiation in his absence and issue their warrant to bring him before them at a subsequent day and place therein mentioned, to shew cause why he should not obey the order and enter into a bond to indemnify the township from the charge of such child.

8. At the time and place appointed the justices shall proceed to confirm, reverse, modify, or make a new order of filiation, as may seem right, and thereupon the reputed father shall immediately enter into a bond with one surety to perform the order so confirmed, modified, or made anew, or shall pay twenty pounds for the support of the child, or other town uses; and in default shall be liable to the penalties and imprisonment before prescribed for non-performance of an order of filiation.

9. If a reputed father think himself aggrieved by an order of filiation, he may appeal to the next supreme court to be held in the county, except in Halifax where the appeal shall be to the next general sessions, where the whole matter may be heard and tried by a jury and the order of filiation confirmed or quashed; and the decision of such court shall be final; but before such appeal shall be granted, the reputed father shall enter into a bond with one surety approved by the justices making the order, to perform the order of filiation, if confirmed, and in such case to pay the costs incurred by the overseers in consequence of the appeal.

10. Upon the examination and hearing preparatory to making an order of filiation, the justices may direct that the mother shall bear a part or the whole of the expense of the maintenance of such child, either by nursing the child



or as otherwise directed in the order of filiation, or make any other order in relation thereto. CHAP. 91.

11. The overseers for any township may sue in their own names upon any bond entered into under this chapter, whether made to them or their predecessors in office; and such suit shall not abate by the death or removal from office of such overseers of poor or any of them. Overseers may sue bonds in their own names; death or removal from office shall not abate such suit.

12. The following forms shall be used and adhered to as nearly as may be:— Forms.

*Examination of mother previous to birth of child.*

County of \_\_\_\_\_ ss.

The examination of A. B., of \_\_\_\_\_ in the county of \_\_\_\_\_, taken on oath before me, who deposes that she is with child, which is likely to be born a bastard, and to be chargeable to the township of \_\_\_\_\_ and that C. D. of \_\_\_\_\_ is the father of such child.

A. B.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—

E. F., J. P.

*Warrant to apprehend the reputed father before the birth.*

County of \_\_\_\_\_ ss.

To you of the constables of the said county.

Whereas A. B. of \_\_\_\_\_, in the said county, bath by her examination in writing, taken upon oath before me this day, declared herself to be with child, which is likely to be born a bastard, and to be chargeable to the township of \_\_\_\_\_ and that C. D. of \_\_\_\_\_ is the father of such child, I do hereby command you to apprehend the said C. D. and bring him before me, or some other justice for the said county, to find security to perform any order of filiation that may be made; or in default thereof to commit him to jail, there to remain until an order of filiation shall be made.

E. F., J. P.

*Form of a commitment where a reputed father when brought up before birth of child, refuses to enter into bond of indemnity, to be endorsed on the warrant.*

Whereas the within named C. D. now before me, hath refused to enter into a sufficient bond to perform an order of filiation if made, I hereby order that he be committed to jail, there to remain until he shall have given such bond, or be brought up for further examination in the premises. Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—

E. F., J. P. (Seal.)

CHAP. 91.*Endorsement backing a warrant.*

County of \_\_\_\_\_.

Whereas proof upon oath has this day been made before me \_\_\_\_\_, a justice of the peace for the county of \_\_\_\_\_, that the name of \_\_\_\_\_, to the within warrant subscribed, is the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize A. B., who bringeth me this warrant, and all other persons to whom the same was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers in this county, to execute the same within this county, and to take the said C. D., if apprehended within this county, before the justice [or justices, as the case may be,] who issued such warrant, to be further dealt with according to law.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., justice of the peace for \_\_\_\_\_.

*Examination of mother after the birth of child.*

County of \_\_\_\_\_, ss.

The examination of A. B., of \_\_\_\_\_, in the said county \_\_\_\_\_, taken upon oath before me, who deposeth that on the \_\_\_\_\_ day of \_\_\_\_\_, last past, at \_\_\_\_\_, she, the said A. B. was delivered of a [*male or female*] bastard child, which is likely to become chargeable to the township of \_\_\_\_\_, and that C. D. of \_\_\_\_\_, is the father of such child.

A. B.

Sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P.

*Bond of indemnification.*

Know all men by these presents that we, C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_, and G. H. of \_\_\_\_\_, in the same county \_\_\_\_\_, are held and firmly bound unto the overseers of the poor for the township of \_\_\_\_\_, in the said county, and their successors in office, in \_\_\_\_\_ pounds, to be paid to the said overseers of the poor or their successors in office; for which payment well and truly to be made we bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

Whereas A. B. of \_\_\_\_\_, hath declared on oath that she is with child, which is likely to be born a bastard and to be chargeable to the township of \_\_\_\_\_, and the above bounden C. D. is the father of such child.

Now the condition of this obligation is such, that if the said C. D., his executors or administrators, do and shall

perform any order of filiation that may be made upon him CHAP. 91.  
in the premises, then this obligation to be void.

Signed, sealed and delivered, }  
in presence of }  
J. K.

C. D. (Seal.)

G. H. (Seal.)

*Warrant to bring up mother and reputed father after birth  
of child.*

County of \_\_\_\_\_, ss.

To any of the constables of the said county.

Whereas A. B. of \_\_\_\_\_, in the said county \_\_\_\_\_, hath by her examination in writing on oath, taken before us, declared that on the \_\_\_\_\_ day of \_\_\_\_\_ last past, she was delivered of a [*male or female*] bastard child, in the township of \_\_\_\_\_, and that C. D. of \_\_\_\_\_, is the father of such child, and that such child is now living and chargeable to the township of \_\_\_\_\_, and the overseers of the poor of such township have applied to us to issue this warrant:

These are to command you that you bring the said A. B. and the said C. D. respectively before us at the \_\_\_\_\_ of \_\_\_\_\_, in the said county, on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_, to be by us further examined, that we may make such order thereon as to right may appertain, and also that you do personally attend at the same time and place.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_,  
A. D. 18—.

E. F., J. P. (Seal.)

L. M., J. P. (Seal.)

*Order of filiation.*

County of \_\_\_\_\_, ss.

The order of E. F. and L. M. esquires, two justices for the said county, concerning a [*male or female*] bastard child lately born in the township of \_\_\_\_\_, of A. B.

Whereas upon the oath of the said A. B. it hath appeared unto us that on the \_\_\_\_\_ day of \_\_\_\_\_ last past, she was delivered of a [*male or female*] bastard child in the township of \_\_\_\_\_, and that such child is now chargeable to the township of \_\_\_\_\_, and likely so to continue, and that C. D. of \_\_\_\_\_ is the father of such child.

And whereas the said C. D. hath been brought before us by our warrant, [*or "hath refused to appear" as the case may be.*] to answer the premises, but hath not shewn sufficient cause why he shall not be deemed to be the father of the child:

Wherefore upon an investigation of the matter as well upon the oath of the said A. B. as otherwise, we hereby adjudge the said C. D. to be the father of such child, and

CHAP. 91. thereupon we order as well for the relief of the township of \_\_\_\_\_ as for the sustenance of such child, that the said C. D. shall forthwith, upon notice to him given of this our order, pay to the overseers of the poor for the said township, the sum of \_\_\_\_\_ towards the lying in of the said A. B. and the maintenance of such child up to this date.

And further that the said C. D. shall pay to the overseers of the poor of the said township for the time being, the sum of \_\_\_\_\_ weekly from the date hereof during so long time as the child shall remain chargeable to such township, towards the maintenance of such child. And we order that the said A. B. shall also pay to the overseers of the poor of the township the sum of \_\_\_\_\_ weekly so long as the child shall be chargeable to the township in case she shall not herself take care of the child. Given under our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (Seal.)

L. M., J. P. (Seal.)

*Commitment to be endorsed upon the order of filiation.*

County of \_\_\_\_\_ ss.

Whereas C. D., within named, hath refused to comply with the within order, or to give sufficient bonds to the overseers of the poor to indemnify the township of \_\_\_\_\_ in the said county, in respect of the support of the child within referred to, we hereby direct the high sheriff of the county or the jailer, to receive the said C. D., and commit him to jail, there to remain in close confinement for the space of \_\_\_\_\_ or until he shall have given such bond, or shall otherwise be removed according to law. Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

E. F., J. P. (Seal.)

L. M., J. P. (Seal.)

*Warrant to apprehend reputed father after order of filiation, where he shall have avoided service of previous warrant.*

County of \_\_\_\_\_ ss.

To any of the constables of the said county.

Whereas a warrant was issued by us, to bring before us, on the \_\_\_\_\_ day of \_\_\_\_\_, A. B. of \_\_\_\_\_, and C. D. of \_\_\_\_\_, which said A. B. appeared under the said warrant, but the said C. D. could not be found; and on hearing the evidence then adduced before us, we did make an order of filiation in the absence of the said C. D., but he the said C. D. has not complied therewith: these are therefore to command you to bring the said C. D. before us, at the \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, that he may be examined by us touching such order of filiation, and shew cause why he should not comply with such order,

and enter into bonds for the performance thereof, and otherwise to be dealt with according to law. Given under our hands and seals this — day of —, A. D. 18—.

E. F., J. P. (Seal.)

L. M., J. P. (Seal.)

The form of commitment the same as that under the order of filiation, where the father shall have been present.

*Bond to abide and fulfil the order of filiation.*

Know all men by these presents, that we, C. D. of —, in the county of —, and G. H. of —, in the same county —, are held and firmly bound unto the overseers of the poor for the township of —, in the said county, in — pounds, to be paid to the said overseers of the poor, and their successors in office, or their certain attorney, executors, administrators and assigns, for which payment to be well and truly made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this — day of —, A. D. 18—.

Whereas by an order of filiation made by — and —, esquires, two justices of the county aforesaid, in the matter of a bastard child, lately begotten on A. B., the said C. D. hath been adjudged to be the father of such child, and to obey such order of filiation. Now the condition of this obligation is such that if the said C. D., his executors or administrators, do well and truly obey such order of filiation, then this obligation shall become void.

Signed, sealed, and delivered, } C. D. (Seal.)

in presence of } G. H. (Seal.)

J. K.

*The like, where an appeal from such order shall have been made to the supreme court.*

Know all men by these presents, that we C. D. of —, in the county of —, and G. H. of —, in the same county —, are held and firmly bound unto the overseers of the poor for the township of —, in the said county, in — pounds, to be paid to the said overseers of the poor, and their successors in office for the time being, of the said township of —, or their certain attorney, executors, administrators and assigns, for which payment to be well and truly made, we bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this — day of —, A. D. 18—.

Whereas by an order of filiation duly made by — and —, esquires, justices of the peace for the county aforesaid, in the matter of a bastard child, lately begotten

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of A. B., the said C. D. hath been adjudged to be the father of such child, and to obey an order of filiation made in that behalf, from which order the said C. D. hath appealed to the supreme court [*or sessions at Halifax.*] Now the condition of this obligation is such, that in case such order shall be confirmed by the court, then if the said C. D., his executors or administrators, do pay all costs and charges which may be legally incurred by the overseers of the poor for the said township, in consequence of such appeal, and also do obey such order so confirmed, then this obligation shall become void.

Signed, sealed, and delivered, } C. D. (Seal.)  
 in the presence of } G. H. (Seal.)  
 J. K.

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## TITLE XXIV.

### OF CERTAIN BIRDS AND ANIMALS.

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#### CHAPTER 92.

##### OF THE PRESERVATION OF USEFUL BIRDS AND ANIMALS.

Partridge, snipe  
and woodcock  
not to be killed  
between the  
first of March  
and the first of  
September.

1. No person shall take or kill any partridge, snipe, or woodcock, or shall sell, buy, or have the same in his possession, between the first of March and the first of September in any year; but Indians and poor settlers may kill them for their own use at any season.

Fine for offence

2. Every offender shall forfeit ten shillings for each offence.

Penalty for kill-  
ing moose,  
when.

3. No person shall take or kill any moose, or shall offer for sale, or have in his possession any moose flesh between the first day of February and the first day of September in each year, under a penalty of not more than five pounds, nor less than forty shillings; the same to be recovered in the name of the party suing for the same, in a summary manner, before a justice of the peace; and in case of non-payment, the party to be confined in the county jail for a period of not more than six days, nor less than two days.

Pheasants not  
allowed to be  
killed.

4. It shall not be lawful for any person to take or kill, within this province, any pheasant, or to buy, sell, or have in his possession any dead pheasant that has been so taken or killed.

Dead pheasants  
&c.

5. Any dead pheasant found in the possession of any person within this province shall be presumed to have been taken or killed by such person contrary to this chapter, until proof to the contrary be given by such person.

6. Every person offending against the fourth section, shall forfeit the sum of forty shillings for each offence, to be recovered in the same manner in which similar amounts are now by law recoverable, and to be appropriated to the use of the prosecutor.

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Fines.

7. The sessions may make orders respecting the setting of snares or traps for catching moose, and for their preservation, and to affix penalties not to exceed five pounds for the breach of such orders respectively.

Moose preserved by order of sessions.

8. Any person may destroy any snare made or existing in violation of such orders.

Snares in violation of such orders may be destroyed.

9. If the penalties incurred under the first, second, seventh, and tenth sections be not paid with costs, the offender shall be committed to jail, there to remain one day for every five shillings thereof, or until the amount be paid.

Imprisonment provided where fines are not paid.

10. Any person who shall keep a dog known to kill or accustomed to worry sheep or lambs, after notice shall pay ten shillings to the owner for every sheep or lamb killed, and shall also forfeit twenty shillings for each offence.

Fines for keeping dogs accustomed to kill sheep.

11. The fourth, fifth, and sixth sections shall be in force for the period of five years, from the 18th day of April, 1856, and from thence to the end of the then next session of the general assembly.

Duration of sections fourth, fifth and sixth.

12. It shall not be lawful for any person to take any oysters from beds where they have been placed for propagation, or to injure or destroy them, or wilfully obstruct their growth therein, in any part of this province: and every person who shall so take, injure, destroy, or obstruct the same, shall forfeit and pay for each offence ten shillings in addition to the sum of ten shillings for every bushel of oysters, including the shells so taken, injured, or destroyed.

Oysters placed in beds not to be disturbed.

Penalty.

13. The penalty imposed under the preceding section may be recovered by any person who will sue for the same, in the same manner as private debts of a similar amount are now recoverable, and shall be appropriated to the use of the prosecutor.

Recovery of penalty.

14. Sections twelve and thirteen shall be in force for three years after the first day of May 1857, and from thence to the end of the then next session of the general assembly.

Duration of sections twelve and thirteen.

15. The sessions may make regulations respecting the taking of oysters in any of the bays, creeks, or rivers of this province, and may impose penalties for the breach of such regulations; provided such penalties do not exceed twenty shillings for each offence.

Sessions may make regulations.

Proviso.

16. The penalties imposed for breach of such regulations may be sued for as private debts of a similar nature, by any person who may sue for the same, and when recovered shall be appropriated to the use of the prosecutor.

Penalties, how recovered.

17. Sections fifteen and sixteen shall be in force for three years, from the twelfth of April, 1858, and from thence to the end of the then next session of the general assembly.

Duration of sections fifteen and sixteen.

CHAP. 93.**CHAPTER 93.**

## OF THE DESTRUCTION OF NOXIOUS ANIMALS.

Sessions may appoint rewards for killing bears, loup-cerviers, wild cats and wolves.

Preliminary proceedings for obtaining provincial bounty for killing a wolf.

Justice's duty on application; his certificate.

Bounty of five pounds allowed from the treasury,

1. The sessions with the approval of the grand jury, may establish rules and appoint rewards for encouraging the killing of bears, loup-cerviers, wild cats, and wolves; and such rewards shall be a county charge.

2. Every person killing a wolf within the province and intending to claim a bounty therefor, shall produce the head of the animal with the skin and ears entire, to a justice of the peace of the county where taken, and shall make oath of the fact in writing, stating the time and place where such wolf was taken, and shall submit to any further examination required by such justice; but no bounty shall be allowed for any wolf taken out of the womb of the mother.

3. If the justice shall be satisfied of the truth of the statement, he shall cut off and burn the ears and scalp of such wolf, and deliver to the person applying, a certificate of the facts, annexing thereto the affidavit taken, and shall number the certificates issued by him each year and mark the number and year thereon.

4. Upon the certificate with the affidavit annexed, being transmitted to the office of the provincial secretary, a bounty of five pounds shall be paid out of the treasury to the party entitled.

**TITLE XXV.**

## OF THE FISHERIES.

**CHAPTER 94.**

## OF THE COAST AND DEEP SEA FISHERIES.

Revenue officers may board vessels hovering within three miles of the coast, &c.

Proceedings where the master, bound elsewhere, refuses on notice to depart.

1. Officers of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbor in the province, or hovering within three marine miles of any of the coasts or harbors thereof, and stay on board so long as she may remain within such place or distance.

2. If such vessel or boat be bound elsewhere and shall continue within such harbor, or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such



vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

3. If the vessel or boat shall be foreign and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within three marine miles of such coasts or harbors, such vessel or boat, and the cargo, shall be forfeited.

Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.

4. All goods, vessels and boats liable to forfeiture may be seized and secured by any of such officers or persons so commissioned; and every person opposing them, or any one aiding such opposition, shall forfeit two hundred pounds.

Vessels and goods forfeited liable to seizure; penalty for obstructing officers.

5. Goods, vessels, and boats, seized as liable to forfeiture under this chapter, shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized, are directed to be secured and kept by law.

Custody of vessels and goods seized.

6. All good, vessels, and boats, condemned as forfeited under this chapter, shall by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the produce of such sale shall be applied as follows: the amount chargeable for the custody of the property seized, shall first be deducted, and paid over for that service, one half of the remainder shall be paid to the officer or person seizing the same without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the province; but the board of revenue may nevertheless direct that any vessel, boat, or goods, seized and forfeited, shall be destroyed, or reserved for the public service.

Condemned vessels and goods, how disposed of, and the proceeds how applied.

7. All penalties or forfeitures hereunder shall be prosecuted and recovered in the court of vice admiralty.

Penalties and forfeitures, how prosecuted.

8. If any goods, vessel, or boat, shall be seized as forfeited under this chapter, the judge of the vice admiralty, with the consent of the persons seizing the same, may order re-delivery thereof, on security by bond, to be made by the party, with two sureties, to the use of her majesty. In case the property shall be condemned, the value thereof shall be paid into the court, and distributed as above directed.

Vessels and goods to be re-delivered on security.

9. All suits for the recovery of penalties or forfeitures shall be in the name of her majesty, and shall be prosecuted by the advocate general, or in case of his absence by the solicitor general. If a dispute arise whether any person is authorised to seize under this chapter, oral evidence may be heard thereupon.

Suits, how brought and prosecuted; oral evidence admissible as authority of seizing officers.

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10. If any seizure take place under this chapter, and a dispute arise, the proof touching the illegality thereof, shall be upon the owner or claimant.

Burden of proof in cases of seizure to rest with claimant.

Claims of property seized to be under oath.

11. No claim to anything seized under this chapter, and returned into the court of vice admiralty for adjudication, shall be admitted, unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed; which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

Security to be given before claim entered.

12. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding sixty pounds to answer and pay costs occasioned by such claim; and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

Month's notice to officer before action.

13. No writ shall be sued out against any officer or other person authorized to seize under this chapter for any thing done thereunder, until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

Limitation of action against seizing officers.

14. Every such action shall be brought within three months after the cause thereof has arisen.

Certificate of probable cause of seizure shall prevent the recovery of costs, &c.

15. If on any information or suit brought to trial under this chapter on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than two pence damages, nor any costs of suit, nor shall the defendant be fined more than one shilling.

Amends may be tendered within one month.

16. The seizing officer may within one month after notice of action received, tender amends to the party complaining or his attorney or agent, and plead such tender.

Limitation of actions for penalties, &c.

17. All actions for the recovery of penalties or forfeitures imposed by this chapter must be commenced within three years after the offence committed.

Appeals within what time to be prosecuted.

18. No appeal shall be prosecuted from any decree or sentence of any court in this province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19. All coasting vessels under sixty tons burthen, owned in this province, and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern post and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern post and rudder.

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Coasting vessels to have a narrow piece of plank or iron extending aft of the stern post.

20. Any owner or master of a coasting vessel not so furnished or built, running foul of any net set off the harbors, bays and rivers of the coast, shall, upon due proof thereof, forfeit five pounds, to be recovered by the party injured to his own use as a private debt; leaving to the party grieved, nevertheless, his rights at common law for any further damage.

Forfeiture for destroying nets where coasters are not so provided.

21. In this chapter "vessels" shall include ships; and "harbors" shall include ports, bays and creeks.

Definition of terms.

22. The first eighteen sections are suspended, as regards citizens and inhabitants, of the United States of America, and shall continue so suspended and not in force so long as the treaty between her majesty and that country, signed on the fifth day of June, 1854, shall continue and be in force.

Suspension of first eighteen sections.

23. The master of any vessel, registered and belonging to this province, and bound from any port therein, to be employed in the deep sea fishery, shall, before proceeding on such fishing voyage, enter into an agreement in writing with every person on board, apprentices excepted, which agreement shall express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the crew of such vessel, shall be divided among them in proportion to the quantity or number of fish which they may respectively have caught; which agreement, in addition to the signatures of the master and crew, shall be countersigned by the owner of such fishing vessel, or his agent, and shall be as nearly as possible in the form given in the annexed schedule.

Agreement to be entered into between master and crew.

Terms of agreement.

24. Any person having engaged for a voyage or for the fishing season, as before provided, who shall, while the agreement therefor continues in force, desert or absent himself from the vessel in which he shipped, without leave of the master, shall be liable to the same penalties and forfeitures imposed on the like offences under chapter seventy-six; and every master of a fishing vessel taking any person on a deep sea voyage without entering into the before required agreement, shall be liable to the penalty imposed on that offence by the same chapter.

Penalties for desertion.

CHAP. 95.

*Schedule in this chapter referred to.*

Form of agreement.

An agreement made in pursuance of an act of the general assembly of Nova Scotia, passed in the sixteenth year of the reign of her present majesty, entitled "an act relating to the deep sea fishery," between ———, master of the ship ———, of the port of ———, of the burthen of ——— tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board said ship in the capacities set opposite their respective names, on a fishing voyage from the port ——— to ———; [*here the intended voyage is to be described, and the duration of the same, and the nature of the same as nearly as can be done, and if the same is to continue for the fishing season,*] and back to the port of ———; and the said crew agree to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores, and cargo thereof; in consideration of which services, to be duly, honestly, faithfully and carefully performed, the said master doth hereby promise and agree with the said crew; [*here insert the particular agreement with reference to the division of the fish among the sharesmen at end of voyage.*] In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

Place and time of entry.			Men's name.	Age.	Place of birth.	Quality.	Am't of shares.	Sureties.	Witness to execution.
Day.	Month.	Year.							

CHAPTER 95.

OF RIVER FISHERIES.

Time for taking salmon.

1. Hereafter the time for the taking of salmon in any of the rivers of this province, except in salt water, below low water mark, shall be regulated by the sessions.

Fisheries on rivers running through private hands to be regulated by sessions.

2. The sessions shall annually appoint such and so many places on the rivers and streams as may be attended with the least inconvenience to the owners of the soil, or the rivers, as resorts for the purpose of taking fish; but the

same, and the enactments herein contained, shall not extend CHAP. 95.  
to any species of fish taken from the sea except salmon,  
bass, shad, alewives, and gaspereaux.

3. In cases where a river shall be the dividing line between two counties, the orders and regulations of the sessions in each county shall have force and effect only to the centre of the channel of the river being such dividing line. Sessions's orders to extend to the centre of the channel of a river which divides counties.

4. The sessions may from time to time make orders for the setting and drifting of nets, the erecting and placing of wears, and generally for the conducting of fisheries in all the bays, harbors, rivers, streams, or creeks, or on the shores thereof, or those of any of the counties, to be enforced by penalties not exceeding ten pounds for breach of any such order; and shall appoint overseers for such fisheries and define the limits of their jurisdiction, and the overseers shall see such orders carried into effect. Sessions to make orders respecting the setting or drifting of nets, erecting of wears, &c.; to appoint overseers.

5. No person shall by spearing or sweeping with net or seine, take, or attempt to take any salmon in any river, stream, lake, or water course, above where the tide usually rises and falls; and nets for taking salmon above the usual rise and fall of the tide, shall be set or placed only on one side of such river, stream, lake or watercourse, and at such times as shall be fixed by the regulations of the sessions. No stake, seine, wear, net, or other contrivance for taking salmon, shall be set or placed within one quarter of a mile next below any mill or dam erected across any such river, stream or watercourse; and no net for taking salmon shall extend more than one third of the distance in a straight line across such river, stream or water course. Salmon fisheries in rivers regulated and protected.

6. Any person who shall violate the provisions of the last section, shall forfeit a sum not exceeding ten pounds, and in addition all spears, implements, canoes, boats, nets, seines, wears, and other contrivances used or employed in, about or preparatory to the taking of salmon contrary to the preceding section, or to any orders of sessions made or to be made thereunder, shall be liable to forfeiture; and the same may be seized at once under warrant of any justice and detained until the trial of the offender, when they may be declared forfeited, and ordered to be sold at public auction. If upon appeal from the judgment of the justice the owner or possessor of the articles so declared forfeited shall give security to pay into such justice's hands the value thereof, to be by him estimated, in case the judgment appealed from shall be confirmed, then such owner or possessor shall be entitled to their immediate restoration. Fine and forfeiture for violation of last section; trial of offender; appeal.

7. Every person discovered at night with a spear and torch, or a torch only, in or about any river, stream, lake, or watercourse, above the rise and fall of the tide, either in a boat or canoe, or otherwise, and apparently equipped for taking or spearing salmon, shall be considered in the act of Persons equipped by night for fishing to be considered in the act of fishing.

**CHAP. 96.** spearing salmon; and the burthen of disproving the same shall be upon the party so discovered.

Wardens, ap-  
pointment of;  
how sworn, &c.

8. The sessions in the several counties or districts may appoint wardens of the river fisheries if they shall think such officers necessary; and such wardens shall be sworn to the faithful discharge of their duties before any general or special sessions, or before a justice of the peace, and the affidavit shall be filed with the clerk of the peace.

Compensation  
for.

9. The grand jury may provide such compensation as they may deem adequate for such wardens, to be confirmed by the sessions, and to form a county charge.

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## TITLE XXVI.

### CHAPTER 96.

#### OF THE ENCOURAGEMENT OF AGRICULTURE AND RURAL ECONOMY.

Central board  
of agriculture,  
how appointed.

1. The governor in council shall appoint a central board of agriculture at Halifax, to consist of eleven persons, seven of whom shall be resident in Halifax or its vicinity, and one each in the eastern, middle and western divisions of the province and in Cape Breton; four of whom shall be a quorum.

Board entitled  
to draw certain  
sums of money;  
application  
thereof and ac-  
counts.

2. The board shall be entitled to draw out of the treasury two hundred pounds annually for two years, out of which they may expend a sum not exceeding seventy-five pounds annually for the salaries of their officers, and a further sum not exceeding twenty-five pounds for their incidental expenses; and shall lay out the balance in such way as they shall deem best for promoting agricultural improvement; and they shall exhibit an account of such expenditure, with proper vouchers, every year to the legislature.

Duty of the  
board.

3. The board shall open and carry on a correspondence with the several agricultural societies already formed, or which may hereafter be formed in this province; and shall aid and direct them as far as may be required in prosecuting their several objects; and shall likewise inspect and audit the accounts to be rendered by the several societies of the application and expenditure of their funds as hereafter mentioned; and from the reports to be furnished by the societies, and from such other sources of information as may be accessible to the board, shall furnish to the legislature, at every session, a general report of the progress of

agriculture throughout the province, and of the expenditure of all monies granted therefor. CHAP. 96.

4. The sum of fifty pounds for each of the counties, making eight hundred and fifty pounds in all, may be applied annually for the next two years, as follows:—the board in each year shall ascertain whether the agricultural societies that now are, or hereafter may be, formed in the several counties, ought to receive a proportion. and shall likewise determine what proportion, if any, each one of such societies shall receive out of the grant of fifty pounds, such proportion to be regulated by the board, with reference to the numbers and contributions of the members of each society, and to its local influence and usefulness, and so as one society, if there be no more than one in any of the counties, may receive with the approval of the board, the whole of such grant; and the president and secretary of each society shall be entitled to draw out of the treasury, for the purposes of this chapter the sum that may have been assigned to it by the board; but no society shall be entitled to any portion of such grant, which shall not raise annually by private contributions, the sum of ten pounds at the least; and not more than four societies shall receive any proportion of the grant in any one county; and in all cases where a central county society, with a branch or branches in the county, shall be formed, and approved of by the central board, the sum of fifty pounds shall be given to such central society for distribution, for the purposes of this chapter, in all cases where the sum of twenty pounds shall have been raised by the central society and branch or branches thereof jointly in manner before mentioned.

Fifty pounds granted to each county; how to be divided, and on what conditions.

5. The sums so assigned and paid to the several societies shall be applied and expended by them in the importation of live stock, implements, or seeds, in the offering of judicious premiums, or in such other agricultural objects and uses as may from time to time be recommended by the board, or in the absence of such recommendation, as in the judgment of each society may be best adapted to its local position and wants; but no part of such sum shall be applied in the expense of managing the societies.

Application of grants.

6. Each one of the societies throughout the province shall render to the board on or before the thirty-first day of December in every year, a full and exact account, verified by the oath of the president or secretary, of the expenditure of the sum so assigned and paid to such society out of the grant, as also of the amount and appropriation of the funds contributed by or belonging to such society, with a report of its proceedings for the past year; and any society which shall neglect or refuse to furnish such account and report, unless excused by the board, shall not be entitled in any year thereafter to receive any proportion of the grant.

Accounts of societies to be rendered under oath.

- CHAP. 96.** 7. The justices in general sessions in each county, shall have power to make rules and regulations for the destruction and prevention of the growth of weeds injurious to agriculture, which rules and regulations shall have the force of law.
- Regulations, how made.**
8. The sessions shall appoint inspectors or officers to carry such rules and regulations into effect; and they shall affix penalties to the violation of such rules and regulations, not to exceed five pounds, and shall make such rules and regulations applicable to all lands, highways, streets, lanes, and cemeteries, whether owned or in possession of commissioners, trustees, incorporations, or private individuals, and to lands owned by individuals, trustees, or incorporations, absent from the county or province. And all monies or fines payable by such non-resident persons, whether private individuals, trustees, or incorporations, under and by virtue of this chapter or such regulations, may be sued for and recovered in the supreme court in the name of such inspector or officer, although such fines or monies may be under the sum of five pounds, either by a writ of summons, or in case of individuals, trustees, or incorporations, absent from the province, by a writ of attachment, briefly setting forth the cause of action. And all fines and monies payable under and by virtue of this chapter, or such rules and regulations, by individuals, trustees, commissioners, or incorporations resident within the county, shall be sued for and recovered before one or two justices in the name of the inspector, in the same manner and with like costs as if the same were a private debt.
- Inspectors; penalties.**
- Application of rules.**
- Fines, how recovered.**
9. The general sessions shall annually appoint such inspectors, who shall be sworn to the faithful discharge of their duty; and the sessions shall fix the limits of the districts within which such inspectors shall act, and shall make rules and regulations applicable to such districts, and have power to affix penalties for the neglect or non-performance of the duties of such inspectors; which fines or penalties shall be sued for and recovered by the clerk of the peace for the time being, in the same manner and with like costs as if the same were a private debt.
- Duty of inspectors.**
- Districts.**
- Penalties for inspectors.**
10. The sessions shall provide for the remuneration of such inspectors to be appointed as hereinbefore directed, either out of the fines and penalties recovered hereunder, or out of the county treasury, or otherwise as they shall see fit.
- Remuneration.**
11. All fines and penalties recovered under the seventh and eighth sections, or such rules and regulations, shall be paid into the county treasury.
- Fines, &c., to be paid into the county treasury.**



## TITLE XXVII.

## OF CERTAIN MUNICIPAL REGULATIONS.

## CHAPTER 97.

## OF TRUSTEES OF PUBLIC PROPERTY.

1. The grand jury in each county or district shall recommend six persons resident therein, out of whom the sessions shall appoint three, to be trustees of public property; and the sessions, upon the recommendation of the grand jury, may remove them or any of them, and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number required. The clerk of the peace shall keep a record of such appointments, removals and vacancies, and the dates thereof. Such trustees shall be a body corporate by the name of "the trustees of public property for the county [or district] of \_\_\_\_\_."

Trustees of public property appointed by sessions; record to be kept; trustees a body corporate.

2. All lands granted, conveyed, reserved or dedicated, or which may have been procured, or, for twenty years before the passing of this chapter, shall have been used for public purposes in the county or district, whether for the site of any court house, jail, or lock-up house, or for the public purposes of the county or district generally, with the buildings and appurtenances thereon or thereto belonging, and all lands and buildings hereafter procured or given for the public purposes of the county or district generally, shall vest in such trustees on their appointment, for the public uses for which the same may have been originally intended.

Lands and property vested in trustees.

3. All such lands and buildings shall be leased and managed by the trustees, under and subject to the control of the sessions.

Lands to be leased subject to control of sessions.

4. No lease shall be made hereunder for a longer period than seven years.

Leases limited to seven years.

5. The trustees may make bye-laws for the better regulation of such lands and buildings, and affix penalties for breach thereof; but no bye-law shall be in force until approved by the sessions and filed with the clerk of the peace.

Bye-laws, how made.

6. The trustees shall annually render their accounts in writing to the sessions, to be by them audited, and when approved they shall be filed by the clerk of the peace.

Accounts of trustees to be rendered annually.

7. Penalties incurred under the bye-laws, and rents due to the trustees, may be recovered by them in like manner as if they were private debts due them; and the trustees

Penalties and rents, how recovered.

**CHAP. 98.** shall pay into the county treasury all monies that they may receive hereunder.

Expenses of trustees to form a county charge.

8. The expenses of the trustees in the execution of the trust, shall, when approved by the sessions, form a county charge.

Lands and property exempted from the operation of this chapter.

9. Nothing herein contained shall affect any place of divine worship, burial ground, college, academy, school, or any land thereto belonging, or any land belonging to any religious congregation or society, or any lands vested in the supervisors of public grounds, under chapter 68; or shall deprive any person of any right lawfully acquired, nor shall any thing herein contained affect any lands or buildings now vested in trustees, or the necessary control of the sheriff over the court house and jail.

Trustees of school lands, appointment of.

10. The sessions in each county shall have power to appoint trustees of school lands in any township or district in this province where none are now appointed.

Vacancies, how filled.

11. Whenever any vacancy shall occur, by death or removal from the county, incompetency, or refusal to act, of any trustees already appointed to take charge of any school lands in any township or district in this province, the sessions may appoint trustees to fill such vacancy, who shall have the same power as the original trustees.

## CHAPTER 98.

### OF PUBLIC MARKETS.

Existing public markets confirmed; sessions may establish others.

1. Public markets, where now by law established, are confirmed; and upon the recommendation of the grand jury, the sessions may establish new public markets, and may procure and fit up a market house as directed in chapter 46.

Sessions to appoint officers, make bye-laws, and generally control the markets.

2. The sessions may direct the days of the week and hours on which public markets shall be held, and may appoint keepers of the market who shall also act as clerks thereof, and shall be sworn into office, and have the powers of constables so far as regards keeping order in the market, and shall be removable by the sessions. The sessions shall also establish the pay of such keepers and clerks, and fix the rates of stalls or standings in the markets, and make bye-laws for the regulation of markets and impose penalties for breaches thereof, not exceeding ten shillings for every offence. The keepers and clerks shall bring actions for such penalties in their own names, and shall be competent witnesses to prove the offence.

Rents and penalties, how applied.

3. The rent of the stalls and standings in the markets, together with the whole amount of the penalties recovered

under the preceding section, shall be applied under the direction of the sessions to the repairs of the market house. CHAP. 99.

4. The keepers and clerks shall annually render their accounts in writing to the sessions, to be by them audited, and when approved they shall be filed by the clerk of the peace. Accounts to be rendered annually.

## CHAPTER 99.

### OF FIRES AND FIREWARDS.

1. The provisions of this chapter shall extend to the city of Halifax and the following towns, viz: Windsor, Bridgetown, Annapolis, Digby, Yarmouth, Shelburne, Liverpool, Lunenburg, Chester, Dartmouth, Pictou, New Glasgow, Antigonishe, and Sydney, Cape Breton. Places to which the provisions of this chapter extend.

2. The extent of such towns, for the purposes of this chapter, shall be confined to the limits within which the commissioners of streets have jurisdiction, but may be altered by the sessions, and the sessions may also divide the towns into different wards, and may appoint such limits where there are no commissioners of streets. Limits of towns and places defined.

3. In Halifax appointments and other proceedings which, as respects other places, are hereinafter directed to be made and taken by the sessions, shall be made and taken by the city council; and prosecutions, which in other places are directed to be instituted before a justice of the peace, shall be instituted before the mayor's court, or the mayor and one of the aldermen; and penalties directed to be recovered in the name of the firewards, may be recovered in the name of the city; and nothing herein contained shall affect any powers conferred upon the city council by the acts respecting the incorporation of the city. Provisions of chapter, how carried out in Halifax city.

4. The sessions shall annually appoint such number of the inhabitants of every such town as may be deemed necessary to be firewards, who shall be sworn to the faithful discharge of their duties, and shall have a suitable staff assigned them as a badge of office. On any re-appointment of such firewards, it shall not be necessary that they should be again sworn into office. Firewards, how appointed; to be sworn and have a staff as badge of office.

5. Upon the breaking out of a fire, the firewards, taking their badges with them, shall forthwith repair to the spot and use their utmost endeavours to extinguish and prevent the spreading of the fire, and to preserve and secure the property of the inhabitants, and may command the assistance of the inhabitants therein, and in removing property out of any building actually on fire, or in danger thereof, Duty of firewards on breaking out of fire; their powers.

CHAP. 99. and appoint guards to secure and take care of the same; and may command assistance for the pulling down of buildings, or for other services relating thereto, to prevent the further spreading of the fire, and to suppress tumults and disorders; and due obedience shall be yielded unto them for those services, and generally, at such fires; and for any disobedience of their orders, information thereof shall, within ten days next thereafter, be given to a justice of the peace, and the offender shall be liable to a penalty not exceeding forty shillings, and if he shall not pay the same, shall be imprisoned for a period not exceeding ten days.

Buildings may be pulled down in certain cases by proper order; contribution, damages, and mode of recovery.

6. Upon the occurrence of a fire in Halifax four of the firewards, and in the absence of four firewards, three firewards, and in all other places two of the firewards, or in the absence of two firewards any fireward that is present with a justice, may direct any building to be pulled down, if in their judgment the doing so will tend to prevent the further spreading of the fire; and if the pulling down of such building shall have the effect of stopping the fire, or the fire shall stop before it comes to the same, the owner of such building shall receive payment therefor from the rest of the inhabitants, whose houses have not been burnt, in manner following, viz: the owner of the building shall, as soon as may be, make application to the sessions, who, if satisfied of the justice of the claim, shall make an order for a valuation of the damages so sustained, to be made by three indifferent persons; and such persons shall be sworn before a justice of the peace to the faithful discharge of their duties, and they or any two of them shall make return of their proceedings to the sessions; whereupon the court shall appoint two or more assessors, who shall tax the houses that have not been burnt in such proportions as shall be deemed just according to their value, for paying the damages sustained by the owner of the building so pulled down, and also the charges for valuation, taxation and collection, to be settled before the making of the assessment; and the assessors shall also report their proceedings upon oath to the sessions; and the court shall thereupon issue an order for collecting the monies so assessed, and in case of non-payment the same shall be levied by warrant of distress, to be issued by the sessions upon application by the collectors; and, when the assessments are collected, the sessions shall order payment to be made to the claimant of his damages, according to the approved report of the appraisers, and also the payment of the charges hereinbefore mentioned; but, if the building pulled down shall be the building where the fire begun, or if any other building shall be pulled down, or be begun to be pulled down, which shall be on fire at the time the orders are given for pulling the same down, or which shall take fire while such orders are being

carried into execution, the owner of such building shall not be entitled to any compensation therefor. CHAP. 99.

7. The word "sessions" whenever used in the preceding section, shall mean either a general or special sessions. Sessions to mean general or special sessions.

8. Buildings constructed of stone or brick and covered with incombustible materials shall be exempted from taxation under the sixth section; and such buildings when covered with combustible materials shall be liable to an assessment upon half the value thereof only. Fire-proof buildings not taxable under sixth section; other buildings partly fire-proof, how taxed.

9. No person shall, at a fire, break open any building or attempt to pull the same down, or order others so to do, unless orders therefor shall have been first given by the owner of the building, or as previously provided; and any person violating this provision shall for every offence forfeit a sum not exceeding five pounds. Fine for breaking open buildings without proper authority.

10. The firewards shall from time to time report to the sessions what number of ladders, hooks, buckets, bags, chains, ropes, axes, and saws are required for service at fires, and the probable expense thereof and of keeping the same in repair; and the sessions shall order such of them to be provided as they may deem necessary; but every fireward shall be at all times provided with two ladders with hooks, one of which ladders shall be at least twenty four feet in length and the other at least sixteen feet in length, one fire hook, two axes, one saw, twelve leather buckets, and twelve large bags, which shall be, by the firewards, deposited in the most convenient places in each district, and where, on the alarm of fire, the inhabitants of the district shall assemble and proceed, under the direction of the firewards, with such of the implements as may be deemed necessary, to the place of danger. Duty of firewards as regards fire implements.

11. The district of which each fireward shall have charge shall be numbered, and the implements in the last section mentioned shall be marked with the number of the district to which they belong, and within twenty-four hours after the extinguishing of any fire the different implements shall be delivered at their place of deposit; and if thereafter any of such implements shall be found in the possession of any person, he shall forfeit a sum not exceeding forty shillings; and any person who shall use such implements except at a fire or on an alarm thereof, shall forfeit a like sum. Districts and implements to be numbered; provision for safety of implements.

12. The sessions may appoint such number of firemen for each town as they may deem necessary, who shall, under the firewards, have the charge of the fire implements hereinbefore mentioned, and shall be obliged to keep them in good order and fit for service; and upon an alarm of fire they shall at once repair to the place of deposit of such implements and bring the same to the place where the fire shall have been discovered, and shall there diligently use the same, under the direction of the firewards, in such way, as may be deemed most useful for extinguishing the fire. Firemen, how appointed; their duty.

- CHAP. 99.** 13. One of such firemen, to be appointed by the firewards, shall have the power of a fireward in commanding assistance in taking the fire-implements to or from any fire, and a like penalty shall attach for disobedience of his orders as of those of a fireward.
- A fireman duly appointed by the firewards to have the power of a fireward
14. The sessions may appoint so many fire constables as they may deem necessary, not exceeding six for each district, who shall be sworn into office, and shall at the time of fires, with suitable staves, to be provided them, attend upon the firewards, and act under their directions in subduing the fire, keeping order and preventing thefts; and if any constable so appointed shall neglect to be sworn into office within a reasonable time after being notified of his appointment, or, having been sworn in, shall neglect his duty, he shall forfeit a sum not exceeding forty shillings.
- Fire constables how appointed; their powers and duties.
15. The general sessions for any county may hereafter assess upon a district, to be by them defined, such sum of money as they shall think necessary, to be applied in procuring a fire engine with hose, fire buckets, and other necessary appurtenances for such district; and also such sums as may be required from time to time for keeping the same in repair.
- General sessions may assess for fire engines.
16. Such monies shall be assessed upon houses and buildings, and every description of insurable personal property within such district, by assessors to be appointed by such general sessions, at such times and in such proportions as such general sessions shall direct.
- Property to be assessed.
- Assessors.
17. Such assessors shall appoint one or more collectors, who shall collect such monies, and such monies shall be collected and payment thereof enforced in the same manner as county rates are collected and their payment enforced.
- Collectors; payment how enforced.
18. Such collectors shall pay over the monies by them collected to the county treasurer, and the county treasurer may maintain an action for money had and received against any of such collectors who shall not pay over the monies by him collected.
- To be paid into the county treasury; action against collectors.
19. Any collector or assessor who shall neglect to perform the duties of his office, shall forfeit a sum not exceeding ten pounds, to be recovered in the name of any person who will sue therefor, in the same manner and with the like costs as if it were a private debt due such person.
- Forfeit for neglect of duty; recovery of.
20. The sessions may from time to time appoint such number of engine men as may be deemed necessary, who shall take charge of the fire engines, and shall keep the same in good order and fit for service; and upon an alarm of fire they shall repair with their engines to the place where the fire shall have been discovered, and work the same under the direction of the firewards.
- Engine men, how appointed; their duties.
21. One of the engine men, to be appointed by the firewards, shall have the power of a fireward to command any necessary assistance in taking the engines to and from fires,
- An engine man appointed by the firewards to have the powers of a fireward.

and any person refusing to obey his orders therein, shall be liable to the same fine as hereinbefore imposed for disobeying a fireward. CHAP. 99.

22. Firemen and engine men shall be exempted from the performance of statute labor, except in respect of cattle and teams, and from serving on juries, or in the office of constable; and these exemptions shall extend to persons who shall have actually served as firemen or engine men for a period of sixteen years, and shall have obtained a certificate of such service from the captain or lieutenant of the company, countersigned by the secretary. Firemen and engine men exempted from certain public duties.

23. Upon any vacancy among the firemen or engine men, the same shall be at once reported by the captain to the sessions, that the vacancy may be supplied. Vacancies, how supplied.

24. The firewards may nominate and license chimney sweepers, and if any person shall act in that capacity without being so licensed, he may, on a summary conviction thereof before a justice of the peace, be imprisoned for a period not exceeding one month. Chimneysweepers how appointed and licensed; penalty for acting without license.

25. Licensed chimney sweepers shall enter into bonds with two sureties, to be approved by the firewards, for performing their duties during the term for which they may be appointed, and for conforming to the regulations of the firewards in reference to the sweeping of chimneys. And in case of neglect or refusal to perform their duties, or to comply with such regulations, they shall forfeit, for every offence, not less than five nor more than twenty shillings; and if the penalty shall not be paid within ten days after conviction, and no personal property whereon to levy can be found, the offender may be imprisoned for a period not exceeding ten days, or the bond may be put in suit for the payment of the penalty and costs. Chimneysweepers to give bonds; penalty for neglect of duty, &c.

26. The firewards may make regulations respecting the times and mode of sweeping chimneys; and if a fire shall happen in any building or chimney so as to create alarm or to endanger the neighboring buildings, and the occupants of the building where the fire occurs cannot make it appear that their chimneys have been swept according to such regulations by a licensed sweeper, they shall forfeit ten shillings, to be recovered in the name of any fireward. And any fireward who shall be aware of the offence and shall not prosecute for the penalty within five days thereafter, shall forfeit five pounds. Fines for enforcing regulations respecting the sweeping of chimneys.

27. Any two firewards may demand admittance into any building wherein they have reason to believe there is any dangerous chimney, stove, stove-pipe or funnel; and if in their opinion the same shall be dangerous, they shall order them to be altered or removed in such manner as they shall direct; and if their directions shall not be complied with, the firewards shall cause such removal or alteration to be made at the expense of the occupants of the building; and Power of firewards to enter into buildings and make orders respecting dangerous chimneys.

CHAP. 99. If any person shall refuse admittance to the firewards while acting under this section, or shall not make the removal or alteration by them directed, he shall forfeit a sum not exceeding forty shillings, to be recovered, together with the expenses of removal or alteration, in the name of the firewards, or any of them; and in default of payment the offender may be imprisoned for a period not exceeding ten days.

Their power to remove dangerous combustible materials; penalties incurred, how enforced.

28. If any two firewards shall consider it proper to inspect the placing or situation of any combustible materials, they may demand admittance into any building or place for that purpose; and if they shall deem the same dangerous, they shall direct the occupant of the building or place to remove such materials or alter the placing thereof; and if he shall neglect to obey them, they may make the removal or alteration at his expense; and if any person shall refuse admission to the firewards while acting under this section, or shall not carry out their orders, he shall forfeit forty shillings, in addition to the expense of carrying out the direction of the firewards, to be recovered in the name of the firewards, or of any of them; and if the penalty and expenses shall not be paid with costs, the offender may be imprisoned for a period not exceeding ten days.

Provisions respecting gunpowder; penalties, and their enforcement.

29. No person shall keep at any one time in any one place within the limits of the firewards, or in any vessel or boat, for more than twelve hours after she has reached any wharf within such limits, more than twenty-five pounds of gunpowder; and if any person shall violate the provisions hereof he shall forfeit five shillings for every pound of such gunpowder over twenty-five pounds, to be recovered in the name of the firewards or any of them; but this provision shall not extend to any vessel or boat belonging to her majesty wherein gunpowder may be kept for public purposes; and all prosecutions hereunder shall be commenced within three months after the offence shall be committed.

Warrant to issue, and places broken open if necessary to search for dangerous quantities of gunpowder; proceedings thereunder.

30. Any justice of the peace, upon complaint on oath by a fireward, that he has reasonable cause to suspect that dangerous quantities of gunpowder are kept in any place contrary to the provisions of the last section, may issue his warrant to search therefor in the day time; and if admittance under the warrant shall be refused, and such refusal shall be made appear on oath, the justice may grant a further warrant to break open the place where such gunpowder is supposed to be deposited; and if upon any search a greater quantity than twenty-five pounds of gunpowder shall be found, the fireward may seize and sell such excess at public auction, and the proceeds shall be applied for the purposes of this chapter.

Sessions empowered to make orders and regulations relative to fires.

31. The sessions may make regulations to prevent the occurrence, increase or spreading of fires within the towns in this chapter mentioned, and to prevent the unnecessary



## CHAP. 99.

ringing of fire bells, or the destruction thereof, or of their appurtenances; and shall have the management and control of the engine men and firemen, and may increase or diminish their numbers; and shall have general powers for the due carrying out of the provisions of this chapter, and may affix penalties for breach of any such regulations, not exceeding forty shillings.

32. If any person shall wilfully destroy or injure any public well or pump, or fire plug, or any engine or fire implements, within the limits to which this chapter extends, he shall forfeit five pounds; and in default of payment, and no effects being found whereon to levy, may be imprisoned for not more than ten days.

Fine for injuring public wells or pumps.

33. The firewards shall annually appoint a chairman who shall act as treasurer of the board, and shall submit his accounts annually to the firewards, to be audited and signed by them, and submitted to the sessions for examination and approval.

Chairman to be appointed annually by firewards; his office and duties.

34. All penalties recovered hereunder shall be applied under the direction of the sessions towards the purchasing and keeping in repair of engines and fire implements, and the sinking and keeping in repair of pumps and wells, and generally in carrying out the objects of this chapter; and the sessions may at any time direct new engines and fire implements to be procured for any town herein mentioned which may be within their jurisdiction, and new wells to be sunk and pumps placed therein; and the expenses thereof and of keeping them or those already in use in repair, and all such further sums as may be requisite for the purposes of this chapter, shall be assessed, levied and collected, within the limits of the town where the expense shall be incurred, in the same manner as poor rates are assessed, levied and collected, and shall be paid over to the county treasurer, to be applied under the direction of the sessions for the purposes contemplated.

Application of penalties; fire implements, how provided and repaired; expenses, how levied and collected.

35. Whenever any building or property shall be injured or destroyed by fire, and the cause or origin thereof shall not be known, the mayor of the city of Halifax within the city of Halifax, and the custos or any two justices of the peace in other parts of the province, shall cause an investigation to be made to ascertain the cause or origin of the fire, and the same shall take place before the mayor or two or more aldermen in the city of Halifax, or before two or more justices in other places, who shall have power to enforce the attendance of such persons to give evidence before them as they may require, by summons or warrant under their hands and seals, and to examine them under oath, and the proceedings, and all depositions connected therewith, shall be returned to the prothonotary of the supreme court of the county where the fire has taken place, and be filed by him in his office.

Proceedings on investigations of the origin of fires.

**CHAP. 100.** 36. The word "firewards" when used in this chapter, shall include one or more of them, unless otherwise expressed or repugnant to the context.

Definition of terms.

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## CHAPTER 100.

### OF THE DISCHARGE OF FIRE—ARMS AND FIRE—WORKS.

Fine for unnecessary discharge of fire arms.

1. If any person shall unnecessarily discharge any fire-arms within the city of Halifax, or within any town, or within one hundred yards of any person riding or driving, he shall for every offence forfeit ten shillings on summary conviction before a justice of the peace, and in default of payment shall be imprisoned for twenty-four hours.

Fine for improperly throwing fire-works into certain places, or improperly making bon-fires,

2. If any person shall wantonly throw any fire-works, or permit the same to be thrown, into any street, thoroughfare or passage, or into any building, or shall make any bon-fire within one hundred yards of any building, he shall for every offence forfeit forty shillings, and in default of payment shall be imprisoned for a period not exceeding fourteen days.

Prosecutions to be within eight days.

3. Prosecutions under this chapter must be commenced within eight days after the offence committed.

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## CHAPTER 101.

### OF THE TRANSPORTATION OF GUNPOWDER.

Of the conveyance of gunpowder by land.

1. No person shall convey by land more than one thousand pounds of gunpowder at one time.

Protection where more than fifty lbs. in one cart.

2. More than fifty pounds of gunpowder shall not be placed in any one cart to be land-borne, unless the same shall be completely covered with woollen or hair cloth, exclusive of the package and the covering of the carriage.

Carts not to stop within twenty rods of a dwelling house.

3. No carriage conveying gunpowder shall be stopped less than twenty rods from any dwelling house.

Metallic substances not to be placed on a cart laden with powder.

4. No iron, steel, or metallic substance, other than copper hoops on the casks, shall be placed on any carriage, together with any quantity of gunpowder exceeding fifty pounds.

Quantities over fifty pounds weight, how secured for carriage.

5. No gunpowder exceeding fifty pounds shall be placed in any carriage, but in barrels, half barrels or quarter barrels, tight and well hooped with wood or copper hoops.

6. No more than twenty-five pounds of gunpowder shall be carried from one place to another, unless the package be well hooped and sufficiently wrapped with woollen or hair cloth.

7. If any person shall offend against the provisions of this chapter, he shall forfeit for every offence a sum not exceeding twenty pounds.

8. Nothing in this chapter contain shall affect the carriage of gunpowder for her majesty's service.

**CHAP. 102.**

Quantities over twenty-five pounds, how secured for carriage.

Forfeitures for offences.

Carriage of gunpowder for her majesty's service not to be affected by this chapter.

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## CHAPTER 102.

### OF BURNING WOODS AND MARSHES.

1. The sessions shall make regulations for preventing damage by setting fire to and burning woods, under-brush or marsh lands, at unseasonable times, and shall affix penalties for breach thereof, not exceeding five pounds.

Sessions to make regulations for burning woods, marshes, &c.

2. Prosecutions under this chapter must be commenced within three months after the offence committed.

Limitation of prosecutions.

3. If any person convicted under this chapter shall not pay the penalty and costs, and shall have no goods whereon a levy can be made, he may be imprisoned for a term not exceeding one day for every five shillings of the amount of the judgment unless the same shall be sooner paid.

Imprisonment on conviction for want of goods.

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## CHAPTER 103.

### OF THE CONVEYING OF TIMBER AND LUMBER ON RIVERS, AND THE REMOVAL OF OBSTRUCTIONS THEREFROM.

1. Upon the written application of twenty freeholders resident in the locality of any river, or owning lands thereon, or interested in rafting and driving logs, timber, and lumber, or conveying wood or other articles down such river, setting forth their desire that commissioners should be appointed for clearing and removing obstructions from such river, which application shall be first read at the sessions and approved of by the grand jury and sessions, who shall, in such cases, establish the points in the river between which the powers of the commissioners shall be limited, the clerk of the peace shall return such application into the provincial secretary's office with a certificate of such approval and the limits so established, and thereupon the governor

Commissioners, how appointed; their jurisdiction, how defined.

**CHAP. 103.** in council may appoint three or five commissioners for the purposes of the five succeeding sections of this chapter.

**Powers of commissioners.**

2. The commissioners may remove from the river all obstructions within the limits of their authority, and may erect wing-dams at such places and in such manner as they shall see fit, and do all other acts necessary to facilitate the passage of logs, timber, lumber, wood, and other articles down the river; and for that purpose may enter upon public or private lands, doing no unnecessary damage; and the commissioners or sessions may make regulations to prevent obstruction to rivers by the throwing into them of slabs and other refuse wood from saw mills; and the sessions may impose penalties for the violation of such regulations, and may direct the method of recovering the same.

**Sessions may make regulations regarding refuse from saw mills, &c., being thrown into rivers, &c.**

**Commissioners may borrow money.**

3. The commissioners may borrow upon their own credit, or upon the credit of the tolls arising as hereinafter mentioned, such sums of money not exceeding one thousand pounds in the whole, as may be necessary for the purposes of their appointment.

**Tolls to be established; their application.**

4. When the undertaking is completed the commissioners may collect a toll of such amount, and in such manner, and under such regulations for enforcing payment thereof as the sessions may from time to time direct, upon logs, timber, lumber, wood, and other articles brought down the river within their jurisdiction, and shall apply the tolls to the payment of the amount borrowed with interest, but no toll shall be levied after the amount is liquidated.

**Accounts to be submitted annually and audited by the sessions.**

5. The commissioners shall annually submit an account of their expenditure and proceedings, and of the tolls collected, to the sessions for audit, and when approved it shall be filed by the clerk of the peace.

**Operation of chapter restricted.**

6. Nothing herein contained shall be construed to sanction any claim on the provincial revenue in respect of the monies so borrowed, or to authorize any interference with the navigation or fisheries of the river, further than may be absolutely necessary for the purposes contemplated, or to injure or affect private rights further than as expressly provided.

**Sessions empowered to make regulations.**

7. The sessions shall, when found necessary, make regulations respecting the bringing down of logs, timber, and lumber on rivers, and the seasons of the year at which the same shall be brought down and the removal of obstructions thereto; and also as to the placing and upholding of booms with the consent of the owners of the soil on either side of the river, and the times of continuing such booms, and for preventing the booms from obstructing the navigation of the river, and may fix the rates of boomage that shall be paid to the owners of the booms on articles secured thereby, and the manner in which such boomage shall be collected and applied, whether for the repair of the booms or the use of the owners thereof; and also as to the taking of

articles from one boom to another; and may appoint persons to take charge of the booms and collect such monies as may be due under such regulations, and may impose penalties for breach of such regulations, of not less than five nor more than forty shillings; but nothing herein contained shall authorize the removal of any mill-dam. CHAP. 104.

8. Persons may bring logs, timber and lumber down rivers, in reference to which such regulations have been made; provided they shall in all respects conform to the regulations and do as little damage as possible to the owners of the soil adjoining. Logs, timber and lumber may be brought down rivers under regulations

9. The word "river" when used in this chapter shall include streams running into any river. Definition of the word river.

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## CHAPTER 104.

### OF MADMEN AND VAGRANTS.

1. Any madman may be apprehended under warrant from two justices of the peace, and if his legal settlement shall be in any place within the county, he shall be secured within the same, and there, if necessary, chained; and if such settlement be not within the county, he shall be sent by the justices, by order under their hands, to the place of his last legal settlement, and shall be there secured under a warrant from two justices of the peace for the county to which he shall be so removed; and the charges of removing, maintaining, and curing such person during his restraint, being first proved on oath before two justices, shall be paid out of the proceeds of the personal property, or the rents of the real estate of such person, if any he have, over what will maintain his family; and which property or rents may for that purpose be seized and sold by the overseers of the poor of the place of such person's last legal settlement, under a warrant from two justices; and if such person hath not any property or rents applicable therefor, then such expenses shall be borne by the inhabitants of the district within which such person shall have his last legal settlement, in the same manner as if he were a pauper chargeable to such district. Madmen may be apprehended and sent to the place of their last settlement; expenses how provided for.

2. Persons who unlawfully return to any place whence they have been legally removed as paupers, and idle and wandering persons having no visible means of subsistence, and persons going about to beg alms, shall severally be deemed common vagrants, and may be brought up and summarily convicted by a justice of the peace, and thereupon imprisoned for not more than one month. Common vagrants, who shall be deemed such; how punished.

CHAP. 105.**CHAPTER 105.**

## OF PUBLIC EXHIBITIONS.

License for public exhibitions, how obtained.

1. The clerk of the licenses, with the consent of two justices of the peace, shall grant a license to any person applying, for holding any show, play, or public exhibition, upon such person paying a sum not exceeding twenty-five shillings nor less than five shillings per day, at the discretion of the officer granting the license; the money to be paid for such license before the granting thereof, and to be paid for every day for which the license is granted, to be therein expressed, which license shall not be operative out of the county where granted.

Mode of proceeding where clerk of license absent or living beyond a certain distance.

2. If the clerk of the licenses shall be absent, or shall reside more than five miles from the place where it shall be intended to hold the exhibition, two justices may grant such license under and subject to the payments, restrictions, and regulations in the first section mentioned; and they shall, within thirty days after granting the license, make return thereof to the clerk of the licenses, and at the same time pay over the amount of duties received therefor.

Fees on granting license.

3. The clerk of the licenses or justices granting any such license, shall be entitled to receive therefor a fee of two shillings and six pence.

Fine for exhibition without license, and how recovered.

4. If any person shall hold any show, play, or public exhibition without previously obtaining a license, he shall forfeit five pounds for every day the same shall be held, to be recovered in a summary manner before two justices of the peace, and to be by them, within thirty days after receipt, paid over to the clerk of the licenses.

Clerk of the peace, duty of in relation to fines collected.

5. The clerk of the licenses shall, within ten days before every sittings of the sessions, pay over to the county treasurer, for county purposes, all duties and penalties by him received under this chapter.

City of Halifax exempted from this chapter.

6. The provisions of this chapter shall not extend to the city of Halifax.

**CHAPTER 106.**

## OF STRAY HORSES AND CATTLE.

Stray cattle, &c. how to be dealt with.

1. Whenever any horses or cattle, or any swine or sheep shall stray into the yard, barn, or enclosure of any person, he shall detain the same; and if not claimed within twenty

four hours, he shall forthwith thereafter transmit to the town clerk of the township, or if the place be not within any township, then to the town clerk of the adjoining township, a description of every such animal, with the color, size, ear-mark if any, age, and particular marks thereof, so as the owner may be enabled to recognize it by the description; and shall, at the foot thereof, write a notice of the time and place of finding such animal, and also the place where the same is detained.

2. The town clerk shall file the description and notice, and post up a copy thereof in his office for at least ten days after he has received the same, for which services he shall be entitled to a fee of one shilling for every animal.

Town clerk's duty and fees.

3. If no person shall claim the animals within ten days after such notice posted up, the finder may apply to a justice of the peace, who upon proof of the notice having been duly posted, shall, by order under his hand, direct any constable to sell the animals; and the constable shall forthwith sell the same, having first given notice by advertisements posted in three of the most public places within the township or settlement for at least six days. No sale shall, however, take place between the thirtieth of April and the first of December; but in case there shall not be sufficient time after the receipt of the order to advertise the sale for some day before the first day of May, the constable shall not proceed to sell until after the thirty-first of October.

Proceedings where no claimant appears after due notice.

4. After deducting from the proceeds of sale five per cent. for the constable for his services in advertising and selling, and the reasonable expenses of keeping the animals, together with the town clerk's fee, the balance shall be paid to the overseers of the poor for the place where the animals were found, to be applied to the use of the poor thereof, unless claimed by the owner of the animals within twelve months after sale, in which case it shall be paid to the owner.

Application of proceeds of sale.

5. If the owner shall claim his property before sale, he shall be bound to pay the finder his reasonable expenses of keeping, and also the town clerk's fee, and if advertised the reasonable expense thereof.

Fees payable where property claimed before sale.

6. If any question shall arise between the owner or overseers of the poor, and the finder, either respecting ownership or expenses of keeping, either of the parties may apply to two justices of the peace, who shall determine the matter, and make such order therein as may appear just.

Dispute as to ownership or expenses, how settled.

7. If any person who may have detained any such stray animal, shall not, within a reasonable time, transmit the description and notice to the town clerk as hereinbefore directed, he shall forfeit for every horse or head of cattle not more than forty shillings, and for every hog or sheep not more than twenty shillings.

Fines for detaining cattle, &c., and not proceeding as in this chapter directed.

CHAP. 107.**CHAPTER 107.**OF THE GOING AT LARGE OF INFECTED CATTLE AND OF DOGS,  
AND VICIOUS ANIMALS AND GEESE.

Sessions shall make regulations respecting infected cattle, geese, dogs, &c.

1. The sessions shall make regulations for preventing the going at large of infected horses and cattle, and the spreading of distempers among them; and also as to the going at large of dogs and of vicious animals, and of geese; and shall affix penalties for breach of any such regulations; which penalties shall not exceed as respects horses and cattle, five pounds, and as respects dogs and geese, twenty shillings.

Imprisonment for want of goods to pay fine.

2. If judgment be given for any such penalty and the defendant shall not pay the same, and shall not have goods whereon the same may be levied, he may be imprisoned for a period not exceeding one day for every five shillings of the penalty.

**CHAPTER 108.**

## OF THE GATHERING OF SEA MANURE.

Sessions may make regulations respecting sea manure.

1. The sessions may make regulations with regard to the collecting and taking away of sea manure which may be driven by the sea and lodged upon the shores and beaches; and if any person shall transgress such regulations he shall, for every offence, forfeit a sum not exceeding forty shillings.

Private rights not affected.

2. Nothing in this chapter contained shall extend to take away or abridge any private rights or interests on any of such shores or beaches.

**CHAPTER 109.**

## OF COASTING ON HIGHWAYS.

Sessions may make regulations respecting coasting.

1. The sessions may make regulations for preventing persons from coasting, skating, or sliding on the snow or ice down the hills on highways or streets; and impose a penalty not exceeding five shillings for breach of such regulations.



2. The parents of minors and the masters of apprentices, who shall transgress any such regulation, shall be liable to the penalty therefor.

CHAP. 110.

Parents and masters responsible for penalties.

## CHAPTER 110.

### OF ROADS OVER THE ICE. .

1. The sessions may make regulations for ascertaining the safest track for roads over the ice on harbors, rivers, creeks, lakes, or bogs, and for putting down or continuing bushes or other marks for defining the course of such roads, and to prevent the removal or destruction of such bushes or other marks; and may affix a penalty for breach of any such regulations, not exceeding twenty shillings for each offence, which shall be applied, one half to the person suing, and the other half for county purposes.

Sessions may make regulations respecting tracks and roads over the ice.

2. The expenses incurred in putting down, continuing, repairing and protecting such marks, shall form a county charge.

Expenses to form a county charge.

CHAP. 111.

## PART II.

OF THE ACQUISITION, TRANSMISSION, AND ENJOYMENT OF  
PROPERTY, REAL AND PERSONAL, THE DOMESTIC  
RELATIONS, AND OTHER MATTERS CON-  
NECTED WITH PRIVATE RIGHTS.

## TITLE XXVIII.

OF REAL PROPERTY AND THE ALIENATION THEREOF.

## CHAPTER 111.

OF DEEDS BY MARRIED WOMEN.

Deeds by mar-  
ried women how  
executed.

1. All deeds executed under power of attorney or otherwise, made by a married woman jointly with her husband, or concurred in by a separate conveyance executed by him, of estates to which she is entitled or may have any present or future interest, whether in her own right or by way of dower or otherwise, shall have the same effect as if made by an unmarried woman, if such power of attorney or deed be acknowledged by such married woman before a judge of the supreme court or a justice of the peace, as her free act and deed, and to have been executed without compulsion by her husband, or to that effect; which acknowledgment shall thereupon be certified by such judge or justice in writing, upon such power of attorney or deed.

Deeds how exe-  
cuted abroad.

2. If such married woman reside without this province, such acknowledgment may be taken before the mayor of any city or the judge of any court of record residing at or near the place where such married woman may be, and shall be certified in writing on the power of attorney or deed by such mayor or judge, and his certificate shall be authenticated under the hand and seal of a notary public. If such married woman reside in a foreign country such acknowledgment may be taken before any public minister, ambassador or consul from the court of Great Britain or vice consul there residing, and shall be certified on the power of attorney or deed under the hand and seal of such public functionary.

Acknowledg-  
ments, &c. to be  
registered.

3. Every such acknowledgment and certificate shall be registered with the power of attorney or deed.

4. All deeds and powers of attorney, heretofore executed and acknowledged, and hereafter to be executed and acknowledged by married women in foreign countries, before any mayor or judge of a court of record, and certified in writing on the same, by such mayor or judge, and such certificate being authenticated under the hand and seal of a notary public, shall be valid and effectual to bar the dower or right of any married woman in the lands and premises therein mentioned.

CHAP. 112.

Deeds of married women in foreign countries, when valid.

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## CHAPTER 112.

### OF ESTATES TAIL.

1. All estates-tail are abolished and every estate which would hitherto have been adjudged a fee-tail, shall hereafter be adjudged a fee-simple, and if no valid remainder be limited thereon, shall be a fee-simple absolute, and may be conveyed or devised by the tenant in tail, or otherwise shall descend to his heirs as a fee-simple.

Estates tail abolished.

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## CHAPTER 113.

### OF THE REGISTRY OF DEEDS AND INCUMBRANCES AFFECTING LANDS.

1. The governor in council may appoint a registrar of deeds for every county in the province, and for every district in which such appointments are now made. In case of the contemplated absence from the county of the registrar, or in case of his illness, he may, with the approbation of the governor and council appoint a deputy, who may perform all the duties of the registrar during such absence or illness, and for all his acts the registrar and his sureties shall be responsible.

Registrars of deeds, how appointed; deputies how appointed in certain cases.

2. Fire proof safes shall be provided in the several counties and districts for the preservation of the records, books, and papers of the registry.

Fire-proof safes to be provided.

3. The grand jury and sessions shall provide for the custody and safe keeping of the books of registry, and see that they, with the indices, are placed and kept in good and efficient condition; and shall assess upon the county, with the county rates, such sums as may be necessary from time to time in the premises.

Provision for safe keeping, &c., of books of registry.

## CHAP. 113.

If no assessment, justices may amerce.

Bonds to be given.

Books of registry, how provided; their kind and quality.

Double indexes of the books of registry to be kept.

Double indexes of books of entry to be kept.

Deeds, &c. to be recorded where the lands lie.

Deeds to be copied so as to be transcripts; plans to be entered in the books.

Deeds how proved within the province.

Oaths administered by registrars, judges or justices of the peace; certificate to shew the date.

Deeds how proved where subscribing witness dead or absent.

4. In case the grand jury shall not comply with the foregoing section, the justices in session may amerce the counties respectively, for the necessary amount, and may direct the mode of its application.

5. No registrar shall enter upon the duties of his office until he shall have given bond to her majesty, with such sureties, and to such amount, and in such form as the governor in council may direct, for the faithful performance of the duties of his office, and the indemnifying of all parties who may be injured by his default or misconduct, nor until he shall have satisfied the governor in council that he has provided a suitable place for the custody of all deeds, papers, and books of registry, which may come to his charge or keeping.

6. Every registrar shall furnish well bound books, of a kind to be approved of by the governor in council, as suitable for the registry of deeds and incumbrances affecting lands, and in which books such incumbrances and deeds shall be registered.

7. A double index to the books of registry shall be made and kept by every registrar, including, in case of deeds, the names of all the grantors and grantees, and in case of judgments and attachments, the names of all the plaintiffs and defendants.

8. A double index shall be made and kept in like manner by every registrar, of all deeds proved and lodged in his office, and of all dockets of judgments and attachments lodged therein; in which every deed shall be entered so soon as it is proved and lodged, and every docket of judgment or attachment when lodged.

9. All deeds, judgments and attachments affecting lands, shall be registered in the office of the county or district in which the lands lie.

10. All deeds shall be copied into the books of registry, so as to be, as near as possible, transcripts of the original; and copies of any plans or schedules annexed, shall likewise be entered in the books.

11. Deeds within the province may be proved, first, upon the oath of one of the subscribing witnesses to the due execution thereof by the parties executing the same; or, secondly, upon the personal acknowledgment by the parties, under oath, of the due execution thereof.

12. Such oaths may be administered by the registrar of the county or district, and shall be so certified upon the deed; or they may be administered by a judge of the supreme court, or a justice of the peace, or by any other registrar, who shall sign a certificate thereof, declaring the date of the attestation on the deed, and the same shall be registered thereupon along with such certificate.

13. In case all the subscribing witnesses to the execution of a deed by all or any of the parties thereto, shall be dead or absent from the province, the registrar shall

register the deed upon sufficient proof of such death or absence, and of the hand writing of any one of the subscribing witnesses thereto, to be made before him or any other registrar, or a judge of the supreme court, upon oath, such oath to be endorsed upon the deed or annexed thereto, and registered therewith. CHAP. 113.

14. Deeds may be proved out of the province, as well in foreign countries as in the British dominions, by the oath of a subscribing witness, or the acknowledgment of the parties under oath, as in the eleventh section; such oaths to be administered by a judge of any court of record, by the mayor of any city, by a justice of the peace, or by a notary public, residing respectively at or near the place where the deed is proved; and the attestation, with the date, to be certified under the seal of a court of record, or of a city, or under the hand and seal of a notary public; and where a deed is proved in a foreign country, the oath may be administered by, and the attestation, with the date, certified under the hand and seal of any public minister, ambassador or consul from the court of Great Britain, or vice consul residing at or near the place where the deed is proved. Deeds how proved out of the province.

15. Where a deed shall have been duly proved and lodged, or the docket of a judgment, or the copy of a writ of attachment with the description and appraisal, duly lodged as above, for registry, the time when the same shall have been so proved or lodged shall be accounted the date of the registry of such deed, judgment or attachment, respectively; and the same shall be registered in the same order in which they were so lodged or proved. Deeds, &c. duly proved and lodged for registry held registered from the time of being lodged.

16. The registry of a deed executed by virtue of a power of attorney shall not be valid unless such power or a deed subsequently confirming the authority given thereby, shall be registered in the office of the county or district where the lands lie. When a deed is executed under a power of attorney, the power must be registered.

17. Process of subpoena may be issued out of the supreme court as in ordinary cases, and with the necessary variation in form, to compel the attendance of any witness to, or the production of any deed for proof thereof, that the same be registered; and the court or a judge shall have the like power to punish any disobedience to such subpoena in the same manner and to the same extent as in other cases; but no witness shall be compelled to produce under such subpoena any deed which he would not be compelled to produce on a trial. A subpoena may issue to compel the attendance of a witness on the production of a deed for proof and registry.

18. The certificate of registry endorsed on any deed, docket of judgment or attachment, and signed by the registrar, shall be taken and allowed in all courts, as evidence of the registry. Certificate of registry to be received in evidence.

19. Deeds or mortgages of lands duly executed, but not registered, shall be void against any subsequent purchaser, or mortgagee for valuable consideration, who shall first register his deed or mortgage of such lands. Deeds to have priority from date of registry.

## CHAP. 113.

Mortgage, &c., shall not be tacked.

20. No mortgage, judgment, or other incumbrance affecting lands, shall have any priority or effect by reason of being held by or vested in the same person with another mortgage or incumbrance of prior date and registry.

Mortgages how released.

21. Mortgages shall no longer be discharged by certificate of release, but the release itself shall refer to the registry of the mortgage, and need not contain the description of the premises at full length; and the same shall be recorded like other deeds, and a marginal note thereof shall be made by the registrar, without further fee, on the book of registry of the mortgage referring to the registry of the release.

Judgments to bind lands from date of registry.

22. Judgments duly recovered and docketed shall bind the lands of the party against whom the judgment shall have passed only from and after the registry thereof in the county or district wherein the lands are situate; and deeds or mortgages of such lands, duly executed but not registered, shall be void against the judgment creditor, who shall first register his judgment.

Dockets of judgment, their contents how registered.

23. The docket of a judgment to be registered shall contain the names of the parties, the amount recovered, the signature of the judge, and the time of signing; and a copy of such docket, certified under the seal of the court and the hand of the prothonotary where the judgment was recovered, being lodged for registry, shall be entered in the books without further proof.

Writs of attachment; lands how bound thereby; how registered.

24. Lands levied upon under writs of attachment shall be bound thereby only from the time that true copies of the writ and of the description and appraisement of the lands, certified by the sheriff or his deputy, under his hand, shall be lodged for registry in the county or district where the lands lie; which copy shall be recorded without further proof, and shall continue to bind the lands until thirty days after final judgment signed in the cause.

Judgments and attachments how discharged.

25. Judgments and attachments so entered shall be discharged by an entry on the margin of the registry thereof, to be made by the registrar upon the filing of a release duly acknowledged or proved by a subscribing witness to have been executed by the parties by whom the judgment was obtained, or of a certificate under the seal of the court and the hand of the prothonotary that the judgment has been satisfied, or the suit in which the attachment was issued discontinued or set aside.

Leases for more than three years to be recorded, and a reasonable rent to be reserved.

26. Leases of land for a term exceeding three years shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, unless such leases shall have been previously registered, and a reasonable rent reserved in good faith therein.

Future grants of land to be recorded in registry of deeds.

27. Grants of land, made after the thirty-first day of March, 1854, shall not be recorded in the office of the provincial secretary; but instead thereof, shall be recorded in

the office of registry of deeds of the county in which the lands lie. CHAP. 113,

28. The duplicate originals of grants kept in the office of the surveyor general, signed by the governor, shall hereafter be signed also by the provincial secretary.

Duplicate originals of grants to be kept in surveyor general's office.

29. Books similar to those now in use in the secretary's office for the registry of grants, shall be furnished to the various registrars of deeds throughout the province; and grants when completed shall be transmitted, with a duplicate plan, by the surveyor general, to the registrars of deeds, who shall record the same in the books so furnished, and attach thereto the duplicate plan, and shall keep an index of the records thereof in the name of each grantee and shall be entitled to receive from the general revenues a fee of two shillings and six pence for each grant so recorded, payable on or after the thirty first day of December in each year, on their accounts being duly attested to and audited by the surveyor general.

Separate books for grants to be furnished to registrars; and grants in duplicate to be forwarded.

Fees.

30. In the county of Halifax the registrar of deeds shall keep as many contemporaneous registry books as he may find necessary to enable him to register, without delay, the deeds and certificates presented for registration; and he shall not be obliged to record in one book the deeds and certificates in the order in which they are presented.

Registrar at Halifax may keep as many contemporaneous books as may be necessary.

31. The plans of partition of any township, which, on the execution of any writ of partition, were returned to the office of the prothonotary at Halifax, shall be transmitted to the registrar of deeds of the counties in which such townships are situate; such plans shall be certified by the prothonotary at Halifax to be the original plans so returned.

Plans of partition of townships.

32. In all the counties except Halifax the registry books shall be kept at all times, except when in actual use, or when required in any court for the purposes of justice, in the safes provided for the office, and any registrar of deeds who shall offend against this provision, shall incur a penalty of twenty pounds for each offence, and on a second conviction shall be ever after incapable of holding the office of registrar of deeds in any county or district of this province.

Registry books to be kept in safes, except in Halifax.

Penalty.

## CHAP. 114.

## TITLE XXIX.

OF TITLE TO REAL AND PERSONAL PROPERTY BY WILL,  
AND BY DESCENT, AND THE SETTLEMENT OF THE  
ESTATES OF DECEASED PERSONS.

## CHAPTER 114.

OF WILLS OF REAL AND PERSONAL ESTATE.

What property  
may be devised.

1. Any person may devise and bequeath by his will, executed as hereinafter mentioned, all real estate and all personal estate, and all rights and interests in real or personal estate to which he shall be entitled, either at law or in equity, at the time of his death, and which if not so devised or bequeathed, would devolve upon his heirs at law or representatives.

Persons under  
21 years incom-  
petent to make  
a will.

2. No will made by any person under the age of twenty one years, shall be valid.

Wills which  
may be made  
by married wo-  
men.

3. No will made by a married woman subsequent to the first of October, one thousand eight hundred and forty, shall be valid, except a will of personal estate upon which the husband's consent has been expressed in writing, or a will appointing one executor or more to a will whereof she is executrix; or a will of real or personal estate to which she may be entitled for her separate use; or an appointment by will in pursuance of a power to be executed notwithstanding coverture.

Will by a mar-  
ried woman not  
void for a gift  
to her husband.

4. No will nor any devise or bequest in any will made by a married woman shall be void by reason of any devise or bequest, or of any gift or disposition to or for the use or benefit of her husband.

Wills how to be  
executed; for-  
malities requi-  
red.

5. No will shall be valid unless it shall be in writing, signed at the end or foot thereof by the testator, or by some other person in his presence and by his direction: and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Soldiers' and  
sailors' wills of  
personal estate  
may be as here-  
before.

6. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as heretofore.

Power of ap-  
pointment by  
will to be exe-  
cuted as a will.

7. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of



appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. CHAP. 114.

8. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

9. No will shall be invalid on account of the incompetency of the witnesses to prove its execution.

10. All devises, bequests, or appointments, except charges and directions for the payment of debts, to an attesting witness of the will, or to the wife or husband of such person, shall be void, and he shall be admitted to prove the execution of the will, or the validity or invalidity thereof: provided that where there shall happen to be two competent witnesses to the will beside such person, such devise, bequest, or appointment shall not be void.

11. In case by any will any real or personal estate shall be charged with any debt, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

12. No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

13. All wills shall be revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to the heir, executor or administrator, or the person entitled as next of kin.

14. No will shall be revoked by any presumption of an intention to revoke on the ground of an alteration in circumstances.

15. No will or codicil, or any part thereof, shall be revoked otherwise than as above mentioned, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

16. No cancelling by drawing lines across a will, or any part thereof, and no obliteration, interlineation, or other alteration made in any will after the execution thereof, shall be valid, or have any effect, except so far as the words or the effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the

Wills executed as above required, valid without further publication.  
No will to be invalid for the incompetency of the witnesses.

A devise to an attesting witness, the husband or wife of such person, where there are but two witnesses, shall be void.

Debts charged upon real or personal estate shall not disqualify the creditor as a witness.

Executors may be witnesses.

Marriage shall revoke a will except in certain cases specified.

Wills not revoked by presumptions.

Wills how revoked.

Obliterations, interlineations, alterations, &c., in what case and how far they shall affect a will.

**CHAP. 114.** will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, made by himself or some other person in his presence and by his direction, and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Will revoked,  
how revived.

17. No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same. And when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Conveyances  
and other acts  
how far they  
shall affect wills  
previously  
made.

18. No conveyance or other act made or done subsequently to the execution of a will of any real or personal estate therein comprised, except an act by which such will shall be revoked as before mentioned, shall prevent the operation of the will, with respect to such estate or interest in such real or personal estate, as the testator shall have power to dispose of by will at the time of his death.

Wills when to  
take effect; ex-  
ecutors to be  
trustees to fulfil  
testator's con-  
tracts in certain  
cases.

19. Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. If the testator at the time of his death, were liable to perform any contract for the sale and conveyance of any real or personal estate, the executors of his will shall, notwithstanding any devise or bequest of the real or personal estate to which such contract refers, be deemed trustees thereof so far as may be necessary for performing such contract, and shall have power to execute the necessary conveyances for the performance thereof; and the executors shall hold the purchase money subject to such uses and purposes as may in such will be expressed respecting such real or personal estate, or such purchase money, or otherwise for the use and benefit of the estate.

Lapsed legacies  
to be included  
in any residu-  
ary devise.

20. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the life time of the testator, or by reason of the devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will.

Rules for con-  
struing wills of  
real estate in  
certain cases.

21. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a

general manner; and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estate of the testator, or his leasehold estates or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

22. A general devise or bequest of the real or personal estate of the testator, or of the real or personal estate of the testator in any place, or in the possession of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real or personal estate, or any real or personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

General devises how construed.

23. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Devises of real estate without words of limitation to be construed as a devise of a fee simple.

24. In any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will by reason of such person having a prior estate, or of a preceding gift being, without any implication arising from such words, a limitation of an estate-tail to such person or issue, or otherwise. But this chapter shall not extend to cases where such words import if no issue described in a preceding gift, shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

The words "die without leaving issue," &c., how construed.

25. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Devise of real estate to trustees or executors, how construed.

26. Where any person to whom any real estate shall be devised for an estate-tail, or for an estate in quasi entail shall die in the lifetime of the testator leaving issue, who

Devises of estates tail shall not lapse in consequence of the devisee dying

**CHAP. 114.** would be inheritable under such entail if such estate existed and any such issue shall be living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

**Devises to testator's children, &c., who die before him, shall not lapse if they have left issue living.** 27. Where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect, as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

**Penalty for suppressing a will.** 28. Any person suppressing a will shall forfeit, after the lapse of the first thirty days, five pounds for every month he shall so suppress such will.

**Definition of terms.** 29. The words and expressions hereinafter mentioned, which, in their ordinary signification have a more confined or a different meaning, shall, in this chapter, except when the nature of the provision or the context shall exclude such construction, be interpreted as follows, viz: the word "will" shall extend to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, and to any other testamentary disposition; and the words "real estate" shall extend to manors, messuages, lands, rents, and hereditaments, whether freehold or any other tenure whatsoever and wheresoever, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest, other than a chattel interest, therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other stocks or funds, whether in this province or the United Kingdom or elsewhere, to securities for money not being real estates, to debts, rights of action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and to any share or interest therein.

## CHAPTER 115.

## OF THE DESCENT OF REAL AND PERSONAL ESTATE.

1. Where any person shall die entitled to any real estate in fee simple or for the life of another, not having devised the same, it shall descend to his children in equal shares, and in case of the decease of any of his children, to such as shall legally represent them, such representatives to take the share of the deceased parent in equal proportions, and if there be no child of the intestate living at the time of his death, to his other lineal descendants; and if all the descendants shall be in the same degree of kindred they shall share the estate equally, otherwise they shall take according to the right of representation.

Rule of descent of undevise<sup>d</sup> real estate where deceased leaves issue.

2. If the deceased shall leave no issue, one half of his real estate shall go to his father, and the other half to his widow in lieu of dower, and if there be no widow the whole shall go to his father.

Where he leaves no issue.

3. If he shall leave no issue, nor father, one-half of his real estate shall go to the widow, and the other half shall be distributed in equal shares to his mother, brothers, and sisters, and the children of any deceased brother or sister by right of representation; and if there be no widow the whole shall go to his mother, brothers, and sisters, and the children of any deceased brother or sister by right of representation; and where the intestate shall leave no issue, and no widow, father, mother, brother or sister, nor the children of any brother or sister, his estate shall go in equal shares to his next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote, but in no case shall representatives be admitted among collaterals after brother's and sister's children.

Other cases, and as to collateral kindred.

4. If any person shall die leaving several children, or leaving one child and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

Rule in case of unmarried deceased minor children leaving brothers surviving, or their issue.

5. If at the death of such child who shall die under age, and not having been married, all the other children of his parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his parent shall descend to all the issue of the other children.

Method of dividing property under last section.

**CHAP. 115.** of the same parent; and if all the issue are in the same degree of kindred to such child they shall have his estate equally, otherwise they shall take according to the right of representation.

Mode of computing degrees of kindred.

6. The degrees of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

Where intestate hath no kindred the widow shall inherit.

7. If the intestate shall have no kindred, his estate shall go to the widow to her own use.

The interest of deceased in lands held in trust chargeable with debts.

8. The interest of a party in lands held in trust for him in fee simple shall descend and shall be chargeable with his debts in the same manner as if he had died seized of such lands.

Rules for distributing the personal estates of intestates.

9. The personal estate of any person who shall die without having bequeathed the same shall be distributed as follows :

The widow shall be allowed all her paraphernalia, articles of apparel or ornament, according to the degree and estate of her husband, the apparel of the minor children, and also such provisions and other articles as shall be necessary for the reasonable sustenance of herself and the family under her care for the period of ninety days after the death of her husband; and, in addition, such provisions and other necessaries for the use of herself and family, as shall be allowed and ordered by the judge of probate, and such allowance shall be made, as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

The wearing apparel of the deceased, not exceeding ten pounds in value, shall be distributed at the discretion of the executor or administrator among the family of the deceased.

The remaining personal estate, after payment of the debts of the deceased, the charges of his funeral, and the necessary medical and other attendance upon him in his last illness, and the expenses attendant upon the settlement of the estate, shall be distributed, one half to the widow, if any, and the residue among the persons who would be entitled to the real estate, and if there be no widow, then the whole among such persons.

Posthumous children how provided for where testator has made no provision.

10. Any child born after the death of the father, there being no provision made in his will for such child, shall have the like interest in the real and personal estate of his father as if he had died intestate, and all the devisees and legatees in the will shall abate proportionably their respective devises and bequests, the share of the posthumous child to be set out and assigned by the court of probate so as to affect as little as possible the disposition of the property made by the testator.

11. Any real or personal estate given by the intestate as an advancement to any child or grandchild, shall be considered as a portion of the estate of the intestate, so far as regards the division and distribution of the estate of the deceased, and shall be taken by such child or grandchild towards his share of the intestate's estate. CHAP. 115.  
Advancement  
how treated on  
division and  
distribution.

12. If such advancement shall exceed the share of the child or grandchild, so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased. Same subject.

13. If the advancement be in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if in either case it shall exceed the share of real or of personal estate respectively that would have come to the child or grandchild, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him. Advancement  
in real estate  
how to be con-  
sidered and re-  
gulated.

14. All gifts and grants shall be deemed to have been made in advancement if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing, or upon examination before the judge of probate on oath as such, by the child or grandchild, and not otherwise. What gifts or  
grants shall be  
held advance-  
ments.

15. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge or valuation thereof made by the intestate, it shall be considered as of that value in the division and distribution of the estate, otherwise it shall be estimated according to its value when given. Value if stated  
by testator to be  
conclusive.

16. If any child or grandchild so advanced shall die before the intestate leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the child or grandchild so advanced as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them. Advancement  
as among  
grandchildren.

17. Nothing in this chapter contained shall affect the title of a husband as tenant by the curtesy nor that of a widow as tenant in dower. Tenancy by the  
curtesy and in  
dower not af-  
fected hereby.

18. Lands held as dower by the widow shall, after her decease, be divided as hereinbefore directed. Lands set off as dower prior to the act of fifth Victoria, chapter twenty two, shall after the decease of the widow, be divided as before the passing of that act. Lands held in  
dower, how di-  
vided.

**CHAP. 116.**

Estates not devised to be distributed as intestate.

19. All such estate, real or personal, as is not devised in a will shall be distributed as if the testator had died intestate.

**TITLE XXX.****OF TITLES TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.****CHAPTER 116.****OF JOINT TENANCY AND TENANCY IN COMMON.**

An estate to two or more persons, unless declared to be in joint tenancy, shall be a tenancy in common, except when vested in them as trustees or executors.

1. Every estate granted or devised to two or more persons in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in trustees or executors as such shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as estates hereafter to be granted or devised.

**CHAPTER 117.****OF THE SALE OF LANDS UNDER FORECLOSURE OF MORTGAGES.**

In actions for money secured by mortgage defendant may pay into court and have a re conveyance.

1. When actions of ejectment by a mortgagee, or actions on bonds or notes secured by mortgage, or on any covenant in the mortgage, are brought in the supreme court, and no suit touching the same matter is pending in the court of chancery, the person having the right of redemption on appearing as defendant, may pay to the plaintiff or bring into court the amount due with costs, and thereupon the court by a rule may compel the plaintiff to re-convey to such defendant the land mortgaged, and deliver up all writings in his custody relating thereto.

Proceedings where one or more of the mortgagors absent may be as in cases of absent debtors.

2. In case such mortgagor, or any one of several of such mortgagors, be an absent or absconding debtor, a declaration in ejectment or other process may be served upon the tenant, if any, in possession of the lands, and upon any of such defendants who shall not be absent or absconding, and a copy thereof shall also be left at the last place of abode of any of the defendants who may be absent or absconding,



and such service if made the usual time limited by law for CHAP. 117.  
 service of process shall be sufficient to give jurisdiction to the court, and the plaintiff may proceed to final judgment and sale of the lands as hereinafter mentioned; but before such declaration shall be served the same affidavit shall be made and filed in the office of the prothonotary of the county where the declaration is returnable, as is necessary in ordinary cases of proceeding against absent or absconding debtors. In cases under this section it shall not be necessary to wait two terms before going to trial as in other cases against absent or absconding debtors.

3. In case any persons beside the mortgagor are interested in the lands who would require to be made defendants, if proceedings were had in chancery, then, in addition to the service of process upon the defendant, or proceedings in the second section mentioned where he is an absent or absconding debtor, a notice in writing shall be served on all such persons, their attorneys or agents, specifying the proceedings that have been or are about to be taken, and requiring them to appear at the supreme court to protect their interests; which notice shall be served the same length of time as is required in notices of trial.

Notice to be given to such parties as in chancery would be defendants.

4. In case the defendant shall neglect to pay the amount found due to the plaintiff by the court, with costs, the court may order the lands mortgaged to be advertised by handbills in the county for at least thirty days, and thereafter to be sold at public auction by the sheriff of the county wherein the lands lie.

Sale of mortgaged premises.

5. In case the defendant shall be an absent or absconding debtor, he shall be entitled to a re-hearing at any time within three years after judgment; and the plaintiff, upon obtaining a rule for the sale of the mortgaged lands, shall give security for the re-payment of the sums levied, if judgment should be reversed on such re-hearing.

Re-hearing provided where defendant is an absent debtor.

6. The deed shall be executed and delivered by the sheriff to the purchaser, and shall be taken as presumptive evidence of the requisitions of this chapter having been complied with, and on being recorded in the books of registry for the county in which the lands lie, shall be sufficient to convey all the estate and interest of the mortgagor in the lands therein described, and the court may award a writ of possession upon judgment being had.

Sheriff's deed, its effect; when recorded shall convey mortgagor's right; writ of possession may issue.

7. The sheriff shall, out of the proceeds of the sale, pay to the plaintiff the sum due to him, and shall pay over the residue, if any, to such person as the court shall direct.

Proceeds of sale how applied.

8. The supreme court shall have the same powers as are possessed by the court of chancery, in reference to the proceedings in such suits, and for the equitable adjustment of the rights of the different parties interested.

Powers of supreme court to adjust equities, &c.

## CHAP. 118.

## CHAPTER 118.

## OF THE SALE OF LANDS TO SATISFY EXECUTION DEBTS.

Judgments to bind lands so soon as recorded, but shall not be levied till after one year.

1. Judgments recovered in the supreme court shall bind the real estate of the debtor from the time such judgment shall be recorded in the books of registry for the county or district wherein such real estate is situate; but no lands shall be levied upon until one year after such registry.

A beneficial interest in lands held in trust may be taken in execution.

2. The interest of the party beneficially interested in lands held in trust for him, may be taken in execution for the payment of his debts in the same manner as if he were seized or possessed of such lands.

Executions as against lands may issue within five years.

3. Execution as against lands may issue at any time within five years from the signing of the judgment, without a *scire facias* or leave of the court.

Execution may be levied upon a part or the whole of any lands as plaintiff shall direct.

4. The plaintiff may order execution to be levied on the whole or any portion of the real estate lying within such county or district.

Subsequent judgment creditors may require prior judgment creditor to levy.

5. Where a judgment has been so registered for the period of one year, and no levy has been made on the real estate bound thereby, any judgment creditor whose judgment has been subsequently registered, may, by a written notice, require the prior judgment creditor to levy on the real estate within three months.

In case of neglect the subsequent creditor shall acquire a preference.

6. If the prior judgment creditor shall not levy, the party giving the notice shall acquire a preference over the judgment creditor to whom such notice had been given.

Lands to be levied upon without appraisal and advertised thirty days; contents of advertisements.

7. The sheriff upon receiving such execution, shall, at the expiration of the one year, levy on such lands without appraisal, and shall cause to be inserted, for thirty days next preceding the day of sale, in the royal gazette newspaper, and also, except in the county of Halifax, in any newspaper which may be published in the county or district wherein the lands are situate, an advertisement containing a description of the lands directed to be levied on, stating that such lands have been taken in execution at the suit of the plaintiff against the defendant, the time and place fixed for such sale, and having appended thereto the name of the sheriff and the attorney of the plaintiff.

Copies of advertisement to be posted twenty days; sale to the highest bidder.

8. The sheriff after causing copies of such advertisement to be posted up in the most public places of the township or settlement wherein the lands lie, for at least twenty days previous to the time appointed for the sale, shall proceed to sell the same by public auction to the highest bidder.

Defendant may, by timely notice, select any particular portion to be first sold.

9. If the defendant, by notice in writing delivered to the sheriff at least ten days previously to the sale, require that certain portions of the land so advertised be first sold, the sheriff shall cause the same to be first put up for sale, and

if a sufficient sum should be realized therefrom to satisfy CHAP. 119. the execution, interest, and expenses, no other part of such lands shall be sold, otherwise he shall proceed with the sale of the remainder.

10. The sheriff shall deliver to the purchaser a deed of such lands, which shall be sufficient to convey to the purchaser all the interest of the defendant in the lands therein described, subject to prior incumbrances. Sheriff's deed; its operation and effect.

11. The sheriff's deed shall be presumptive evidence of the defendant's title having been thereby conveyed to the purchaser. To be presumptive evidence of conveyance of defendant's title.

12. Where the lands so conveyed shall be in the possession of the tenants of the defendant, the purchaser shall become the landlord, and shall have the like rights and remedies against the tenant as the defendant would have had, and shall be entitled to all rents accruing after such purchase. Where lands are in possession of a tenant the purchaser shall become the landlord.

13. Where the sum realized by such sale shall be more than sufficient to satisfy the execution and necessary expenses attendant on such levy and sale, and interest on the amount of the judgment from the date thereof, the surplus shall be retained by the sheriff, to be paid to such person as may be directed by an order of the supreme court, or any judge thereof. Any surplus money after satisfaction of the execution and expenses to be paid as the court shall direct.

14. Titles to land made by any sheriff previous to the tenth day of April, one thousand eight hundred and forty-one, shall not be invalidated by any irregularity or defect in the proceedings prescribed by statute for the sale of real estate, provided the party shall have been in possession of the land one year at least before such date, and shall have paid the purchase money to the sheriff. Special provisions applicable to titles made previously to 1841.

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## TITLE XXXI.

### OF COPYRIGHTS AND PATENTS.

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#### CHAPTER 119.

##### OF THE LAW OF COPYRIGHT.

1. The author of any map, chart, or book printed, or of any print engraved within this province, who has not transferred the copyright thereof, and any other person who has legally acquired the copyright of any such map, chart, book or print, in order to publish the same, shall have the sole right of publishing such map, chart, book or print, for the Copyrights of authors, how secured.

CHAP. 119. term of twenty-one years from the recording the title or the entry thereof in the office of the secretary of the province; and the author of any map, chart, book or print, not published within the province, his executors, administrators or assigns, shall have the sole right of publishing such map, chart, book or print, for the like term; and if at the expiration of such term, the author of any such map, chart, book or print, shall be living, the same right shall be continued to him for the further period of fourteen years; but he shall cause the title thereof to be a second time recorded and published, within six months before the expiration of the first term of twenty one years; and no person shall be entitled to any right hereunder unless he shall be resident within the province at the time of his application therefor.

Penalties for infringing copy rights by importation.

2. If any other person, after the recording of the title of any map, chart or book, and publishing the same, within the times limited, shall print or import from any other country copies of such map, chart or book, without the consent of the author and proprietor thereof first had in writing signed in the presence of two witnesses, or expose to sale any such copy of such map, chart or book, such offender shall forfeit all copies of such map, chart or book, and all sheets, being part of the same, to the author and proprietor thereof, who shall forthwith destroy the same; and every such offender shall forfeit not less than one nor more than five shillings for every sheet found in his possession, to whosoever will sue for the same.

Penalties for infringing copy rights by imitation or otherwise.

3. If after the recording the title, and entering of any print, any person whosoever shall engrave, etch or work, or in any manner copy or sell, in the whole or in part, by copying, varying, adding to or diminishing from the main design, or shall print, reprint, or import for sale, any such print, or any part thereof, without the consent in writing of the proprietor thereof, signed in the presence of two witnesses, or knowing the same to be so printed, re-printed or imported, without the consent of the proprietor, shall publish, sell, or expose the same to sale, such offender shall forfeit the plates on which such print shall be copied, and all sheets of such print, and all parts thereof, to the proprietor of the original print, who shall forthwith destroy the same; and such offender shall forfeit the sum of twenty shillings for every print found in his custody, either printed, published, or exposed to sale, or otherwise disposed of, to whosoever will sue for the same.

A printed copy of the title to be registered in the provincial secretary's office before publication.

4. No person shall be entitled to benefit under these provisions in cases where any map, chart, book or print, has been already published, unless a printed copy of the title of the same shall, before publication, be deposited in the secretary's office, who shall record the same in a book kept by him for that purpose, in the words following, and

give a copy thereof under his hand, to the author or proprietor, if required: CHAP. 119.

“Province of Nova Scotia.

Be it remembered that on this — day of —, A. D. 18—, A. B. of —, in the said province, has deposited in this office, the title of a map, [*chart, book, or print, as the case may be,*] the copyright whereof he claims in the words following: [*here insert the title,*] in conformity with chapter one hundred and nineteen of the revised statutes.

C. D., provincial secretary.”

For which certificate the secretary shall receive five shillings, and five shillings for every copy, and the author or proprietor shall cause a copy of such record to be inserted in full length in the title page, or in the page following the title page of such book; and if a map, chart, or print, the following words shall be impressed on the face thereof: “entered according to law on the — day of —, 18—, by A. B., of —.”

5. If any person, not having legally acquired the copyright, shall print or publish any map, chart, book or print, and shall insert therein or impress thereon, that the same has been entered according to law, or words purporting the same, he shall forfeit one hundred pounds, to be applied as hereinafter directed.

Penalty for illegally inserting an entry as registered.

6. Actions under this chapter shall be commenced within three years from the time when the cause of action accrued.

Limitation of actions.

7. Any person printing or publishing any manuscript, without the consent of the author or proprietor thereof if resident in this province, shall be liable to such author or proprietor for all damage occasioned thereby, to be recovered by a special action on the case.

Printing or publishing a manuscript without the author's consent, actionable.

8. The proprietor of any map, chart, book, or print, entitled to the rights and privileges hereby conferred, shall, within six months from the publication thereof, deposit one copy thereof in the library of the legislative council, and one copy in that of the house of assembly.

Proprietors of protected works required to furnish copies to the legislative libraries.

9. All books shall be admitted into this province duty free, except re-prints of books the copyright whereof is protected by the acts of the imperial parliament.

All books may be imported duty free except reprints of books protected by imperial act.

10. On the importation of any reprint of books, bound or in covers, the copyright of which is protected by the acts of the imperial parliament, there shall be paid an *ad valorem* duty of twenty per cent., but this duty shall not extend to newspapers or other regular periodicals containing extracts only from such books. The duty when collected shall be paid into the treasury and remitted by the governor to the commissioners of customs at London, with a detailed account thereof, once a year, that the same may be paid to the registered proprietor of the copyright of the books respectively;

Duties collected on books protected by imperial acts, how remitted to the proprietor.

**CHAP. 120.** such reprints, however, shall not be liable to duty unless the originals shall have been registered according to the provisions of the imperial act passed in the fifth and sixth years of her majesty's reign, intituled "an act to amend the law of copyright."

Fine for improperly importing, selling, or having dutiable re-prints, how recovered, how applied; re-prints forfeited, &c.

11. Any person who shall import or bring into the province for sale, use or hire, any reprints hereby made liable to duty without paying the same, or shall knowingly sell, publish or expose to sale, or let to hire, or have in his possession any such reprint, shall be liable to a penalty of five pounds and double the value of every copy of such reprint, which may be sued for before two justices of the peace as an ordinary debt, two pounds thereof to go to the officer who shall sue for the same, and the remainder to be paid into the treasury and remitted for the registered proprietor of the copyright; and every reprint imported contrary to these provisions shall be forfeited and sold, and one half of the proceeds thereof shall be paid into the treasury to the use of the registered proprietor, and the other to the seizing officer.

Reprints imported to be stamped.

12. Each reprint on its importation shall be stamped by the officer before whom the entry is made, and the form of the stamp shall be furnished by the receiver general to the several outports if required.

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## CHAPTER 120.

### OF PATENTS FOR USEFUL INVENTIONS.

Letters patent how and by whom to be obtained.

1. Whenever any person resident in the province, and who shall have resided therein for the period of one year, or any British subject, who shall have been an inhabitant of Canada, New Brunswick, Prince Edward Island, or Newfoundland, for the space of one year previous to his application, shall apply to the governor alleging that he has discovered any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement thereon not theretofore known or used, and pray that a patent may be granted him for the same, the governor may direct letters patent to be issued, reciting therein the allegations of such petition and giving a short description of such invention, and shall thereupon grant to the person so applying for the same and his representatives, for a term not exceeding fourteen years, the exclusive right of making, using and vending the same to others, which letters patent shall be good and available to the grantee, and shall be recorded in the secretary's office in a book for that purpose, and shall then be delivered to the patentee.

2. Where any letters patent shall be obtained by any person for any such invention, and thereafter any other person shall discover any improvement in the principle or process of any such invention, and shall obtain letters patent for the exclusive right of such improvement, the person who shall obtain such new patent shall not make, use, or vend the original invention, nor shall the original patentee make, use, or vend any such improvement. CHAP. 120.  
Patentees of improvements not to use any original invention; original patentee not to use the improved patent.

3. The simple change of the form or proportions of any machine or composition of matter shall not be deemed a discovery or improvement within the meaning of this chapter. Changes of form or proportions not deemed an improvement.

4. Persons applying for letters patent, on delivering in their petition, shall pay into the secretary's office twenty shillings, to be applied as other fees payable therein. Fees on patents.

5. Any person may receive from the secretary's office any copy of such letters patent, or of the petition whereon the same were granted, or of any paper or drawing connected therewith, on paying six pence a folio, and a reasonable fee for every copy of such drawings. Copies of letters patent and drawings, how charged for.

6. Before any person shall obtain any letters patent he shall make oath in writing that he verily believes that he is the true inventor or discoverer of the art, machine, or composition of matter, or improvement, for which he solicits letters patent, and that such invention or discovery has not been known in this province or in any other country; which oath shall be delivered in with the petition for such letters patent. Oath preparatory to granting letters patent.

7. The affidavit may be sworn by the person making such application before any judge of the province or colony in which such person shall reside. Affidavit may be made in colony where applicant resides.

8. Before any person shall obtain any letters patent he shall deliver into the secretary's office an intelligible and exact description of such invention, and of the manner of using, or process of compounding the same, so as to enable any person skilled in the science of which it is a branch, to make and use the same; and in case of any machine, shall deliver a model, and explain the principle by which it may be distinguished from other inventions, and shall accompany the whole with drawings and written references where the case admits of drawings, or with specimens of the ingredients sufficient for the purpose of experiment where the invention is a composition of matter, which description, signed by such person and attested by two witnesses, shall be filed in the secretary's office, and copies thereof, certified by the provincial secretary, shall be competent evidence in all courts where matters concerning such letters patent may come in question; but the governor may, upon special grounds being shewn, dispense with the delivery of the model at the secretary's office if he shall deem it right to do so. Descriptions, explanations, and models to be deposited in the provincial secretary's office.

## CHAP. 121.

Patentee's rights may be assigned; assignments to be recorded.

Actions for illegally using or selling a patent

Defence how pleaded, and what may be given in evidence.

9. Any patentee may assign all his right in such invention and discovery to any person; and the assignee thereof, having recorded such assignment in the secretary's office, shall stand in the stead of the original patentee as well as regards all his rights as all his liabilities; and the assignee of any such assignee shall also be considered to be in the stead of the original patentee.

10. Whenever any letters patent shall be granted to any person, and any other person, without the consent of the patentee or his representatives first had in writing, shall make, use, or sell the invention or discovery whereof the exclusive right is secured to such patentee, the person so offending shall be answerable to him or his representatives in damages.

11. The defendant in such action may give this chapter and every special matter in evidence to prove that the specification filed by the patentee does not contain the whole truth relative to the invention or discovery alleged to have been made by him, or contains more than is necessary to produce the described effect, which concealment or addition shall fully appear to have been fraudulently made, or that the invention or discovery so secured by letters patent was not originally discovered by the patentee, but had been in use or had been described in some public work anterior to the supposed invention or discovery of such patentee, or that such patentee had surreptitiously obtained such letters patent for the invention or discovery of some other person, in either of which cases, upon proof thereof, the verdict shall be found and judgment entered thereon for the defendant with costs, and such letters patent, by the court, shall thereupon be adjudged void.

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## TITLE XXXII.

### CHAPTER 121.

#### OF THE PREVENTION OF FRAUDS AND PERJURIES.

Leases and estates in land, not in writing, to be estates at will, except as to leases under three years.

1. All leases, estates, or other interests in land not put in writing and signed by the parties creating or making the same, or their agents thereunto authorized by writing, shall have the force of leases or estates at will only, except leases not exceeding the term of three years from the making thereof whereupon the rent reserved shall amount to two thirds at least of the annual value of the lands demised.



2. No interest in land shall be assigned, granted or surrendered, except by act and operation of law, unless it be by deed or note in writing, signed by the party assigning, granting or surrendering the same, or by his agent thereunto authorized by writing.

CHAP. 122.

Interest in lands assignable only by deed or note in writing.

3. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge a defendant upon any special promise to answer for the debt, default or miscarriage of another person, or whereby to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands or any interest therein, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof shall be in writing, signed by the party to be charged therewith, or some other person authorized by him.

Previous contracts and agreements which require to be in writing and signed by the party chargeable.

4. No contract for the sale of any goods for the price of ten pounds or upwards shall be good, except the buyer accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the bargain be made and signed by the parties to be charged by such contract, or by their agents thereunto authorized.

Contracts for goods above ten pounds not valid unless the buyer accept a part, give earnest money, or a note in writing be signed.

5. No declaration or creation of a trust in lands shall be valid unless it shall be in writing, signed by the party entitled to declare or create the trust, or by his last will; but this provision shall not extend to any trusts in lands arising or resulting by implication or construction of law, or which may be transferred or extinguished by act or operation of law.

Declarations and creations of trust in lands to be in writing; implied and resulting trusts excepted.

6. No grant or assignment of any trust shall be valid unless it shall be in writing, signed by the party granting or assigning the same, or by his last will.

Assignment of trusts to be in writing.

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## TITLE XXXIII.

### OF THE DOMESTIC RELATIONS.

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#### CHAPTER 122.

##### OF MARRIAGE AND THE SOLEMNIZATION THEREOF.

1. Every duly ordained minister of any body of christians resident within this province, engaged in missionary labors, or officiating for any congregation of christians, may solemnize

Every resident ordained officiating minister may solemnize marriage.

**CHAP. 123.** nize marriage by license, although he should not be the settled minister of a congregation; and every duly ordained minister of any congregation of christians may solemnize marriage by publication of bans or by license.

License to issue as heretofore.

2. The governor may direct marriage licenses to such ministers in the forms and with the bonds heretofore used, and authorizing them to solemnize marriages between persons on whose behalf such license shall be required without publication of bans, according to the rites of the church to which the minister shall belong.

Penalty for solemnizing marriage without publication of bans or license.

3. Any person who shall officiate in the solemnization of any marriage, unless notice of such marriage shall have been previously given publicly during the time of divine service at three several meetings at a place of public worship on two or more Sundays in the place or places where the parties or one of them shall reside, or unless a license shall have been obtained under the hand and seal of the governor, shall forfeit fifty pounds.

Penalty for ministers refusing to publish bans.

4. The officiating minister of any congregation at the place where either of the parties desiring to be married shall reside, who shall refuse or neglect to give such notice after having been requested to do so, shall forfeit fifty pounds, and shall be liable to an action for damages at the suit of either of the parties aggrieved, unless in cases where compliance would be inconsistent with the rules and discipline of the church or congregation to which such parties shall respectively belong.

Penalties when received to be paid into the treasury.

5. The penalties imposed by this chapter shall, when recovered, be paid into the treasury for the use of the province.

## CHAPTER 123.

### OF THE REGISTRY OF BIRTHS, MARRIAGES AND DEATHS.

Registry of births, marriages and deaths, by whom and how kept; returns to whom and how made.

1. Every person who may baptize, marry, or perform the burial service, shall keep a registry, shewing the names and ages of the persons whom he shall have baptized and married, or who have been born, or who have died within his cure or belonging to his congregation; a return of which, in duplicate, under his hand, shall be by him forwarded to the clerk of the peace in the county where he shall reside or officiate at the time, within ten days after the first day of January in every year; one of which returns shall be filed in the office of the clerk of the peace as a public record, and the other shall be transmitted by the clerk of the peace to the board of registration and statistics at Halifax. Parents, in case their children shall not be

baptized within one year after their birth, shall within that period give notice to the town clerk, who shall keep a register of such birth similar to that required to be kept by persons who may baptize, and shall make returns thereof to the clerk of the peace, at the times and in the manner hereinbefore prescribed. CHAP. 124.

2. Any person neglecting to keep the register, or to make the returns as required by this chapter, and any clerk of the peace neglecting to transmit such return as herein directed, shall for each offence forfeit five pounds. Fines for neglect of duty.

## CHAPTER 124.

### OF GUARDIANS AND WARDS.

1. The father of unmarried children under the age of twenty-one years may by any instrument in writing, executed in the presence of two witnesses, dispose of the custody and tuition of such children, or of any child who at the time of his father's death may be unborn, so long as they shall respectively remain under the age of twenty-one years, or for any shorter period; and the father may make such disposition, though he be not himself of the age of twenty-one years. Guardians may be appointed by the father.

2. Judges of probate may appoint guardians to minors where none have been appointed by the father, the next of kin to be appointed if any of them shall apply, unless on special cause shewn the judge of probate shall decide to the contrary, otherwise such person as the judge shall think proper; but if the minor be of the age of fourteen years, or having had a guardian appointed by the judge of probate shall arrive at the age of fourteen years, he may appoint his own guardian, and such appointment shall be confirmed by the judge of probate, on the guardian giving the security hereinafter specified. Guardians when and how appointed by judge of probate.

3. All guardians appointed under the provisions of this chapter shall have the exclusive control of their wards, and may maintain actions against any person who shall take them away or detain them, and shall recover damages for their benefit. They may take possession of all their property, real and personal, receive the rents and profits thereof, and manage the same during the period of their guardianship, and may maintain all actions at law or in equity in relation thereto as such children could do if of full age. Power of guardian.

4. Every guardian appointed by the judge of probate, or nominated by the minor and confirmed by him, shall, Bonds to be given; their conditions.

**CHAP. 125.** previous to the letters of guardianship being issued, file in the probate court a bond, with two sureties to be approved of by the judge, and to be taken in his name, with a condition that he will faithfully manage and dispose to the best advantage of the property of the minor committed to his care, that he will not commit waste thereon, and will render a just account thereof to the court of probate when required, and to the ward when he shall come of age.

Letters how applied for and when granted.

5. No letters of guardianship shall be granted by any judge of probate unless application therefor be made by the minor or some near relation of his, or by the executors or administrators of an estate in which the minor is interested; and the judge upon such application may appoint guardians in any suit pending before him, for the purposes of such suit, without requiring a bond.

Apprenticeships entered upon not affected hereby.

6. The provisions of this chapter shall not affect any apprenticeship which may legally have been entered into by or on behalf of any minor, or by any overseers or commissioners of the poor.

## CHAPTER 125.

### OF MASTERS, APPRENTICES AND SERVANTS.

Minors may be bound as apprentices or servants.

1. All children under the age of fourteen years may be bound as apprentices or servants until that age, and all minors above the age of fourteen years, may be bound as apprentices or servants; females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years, in the manner prescribed in this chapter.

Under fourteen years, how bound.

2. Children under the age of fourteen years may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian, and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of two justices of the peace.

Above fourteen, how bound.

3. Minors above the age of fourteen years may be bound in the same manner, provided that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

Indenture to be of two parts, sealed and certified in certain cases.

4. No minor shall be bound otherwise than by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the justices of the peace, their approbation shall be certified in writing, signed by them upon each part of the indenture.

5. One part of the indenture shall be kept for the use of the minor by his parent or guardian when executed by them respectively, and when made with the approbation of two justices of the peace, it shall be deposited with the town clerk or clerk of the peace, and be safely kept in his office for the use of the minor.

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Custody of minor's part.

6. The overseers of the poor may bind as apprentices or servants, the minor children of any poor person, who has become chargeable to the district, as having a lawful settlement therein, or who is supported there in whole or in part at the charge of the district; and also all minor children, who are themselves chargeable to the district as having a lawful settlement therein, or as poor persons supported by the district.

Overseers of poor may bind out pauper minors.

7. Such children whether under or above the age of fourteen years may be bound, females to the age of eighteen year, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write and cypher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable.

Terms of contract of indenture.

8. No minor shall be bound by the overseers unless by an indenture of two parts, sealed and delivered by the overseers and by the master, one part of which shall be deposited with the town clerk or clerk of the peace, and be safely kept by him for the use of the minor.

Minors how bound by overseers.

9. All considerations of money or other things paid or allowed by the master upon any contract of service or apprenticeship made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

Money, &amp;c. paid or allowed by master to be for the apprentice.

10. Parents and guardians, and overseers, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of contract, on the part of their masters.

Duty of parents, guardians and overseers, respecting children bound out.

11. In case of any misconduct or neglect of the master, a complaint may be made in writing by the parents, guardian, or overseers, to any two justices of the peace for the county in which the master resides, setting forth the facts and circumstances of the case; and the justices, after having duly notified the master, shall proceed to hear and determine the same.

Proceedings for misconduct of master.

12. After a full hearing of the parties, or of the complainants alone, if the master shall neglect to appear, the justices may order that the minor be discharged from his apprenticeship or service, and give the costs of suit against the master, and may award execution accordingly, and the minor may be thereupon bound out anew.

Hearing, and power of justices to afford redress.

## CHAP. 125.

Proceedings  
where com-  
plaint is dis-  
missed.

13. If the complaint shall not be maintained, the justices shall award costs for the master against the complainants, and shall issue execution accordingly, excepting, that in case of such a complaint by overseers, the justices shall not award costs against them, unless it shall appear that the complaint was made without reasonable cause.

Appeal for per-  
sons aggrieved.

14. Any person feeling himself aggrieved by the order of any justices under the three preceding sections, may appeal therefrom to the supreme court at its next term in the county, and such appeal shall be granted and determined in the same manner as in civil suits.

Apprentice ab-  
sconding or  
guilty of mis-  
conduct, how  
punished.

15. If any apprentice or servant bound, as in this chapter, shall unlawfully depart from the service of his master, or shall be guilty of any gross misbehaviour, or refusal to do his duty, or wilful neglect thereof, any justice of the peace, upon complaint on oath made to him by the master, or by any one on his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before the same or any other justice; and if the complaint shall be supported, the justice may order the offender to be returned to his master, or may commit him to the common jail for a term not exceeding twenty days, unless sooner discharged by his master.

## PART III.

OF COURTS AND JUDICIAL OFFICERS, AND PROCEEDINGS  
IN SPECIAL CASES.

## TITLE XXXIV.

## OF COURTS AND JUDICIAL OFFICERS.

## CHAPTER 126.

## OF THE SUPREME COURT AND ITS OFFICERS.

1. The supreme court shall have within this province the same powers as are exercised by the courts of queen's bench, common pleas, and exchequer in England. Powers of the supreme court.
2. The terms and sittings of such court at Halifax shall be held as follows, that is to say: There shall be two terms of such court at Halifax annually—one to commence on the third Tuesday of July, and to continue for two weeks, if the business of the court shall require such continuance; and the other to commence on the first Tuesday of December, and to continue for four weeks, if the business of the court shall require such continuance; and the court is authorized to extend each of such terms for a further period of three days, if they shall see fit so to do; and there shall be two sittings of the supreme court at Halifax annually; one to commence on the last Tuesday of October, and to continue for four weeks, if business shall require such continuance; and the other to commence on the fourth Tuesday of April, and to continue for three weeks if the business of the court shall require such continuance; and the court or the presiding judge is authorized to extend each of such sittings for a further period of three days, if such extension should be deemed necessary, and for such further time as may be requisite in consequence of any trial being protracted beyond the periods now provided. Commencement and duration of terms. Extension. Sittings, commencement and duration of.
3. The grand jury shall attend at the sittings and shall not be required to attend at the terms of such court; and all jurors required to attend such sittings shall be subject to the penalties for non-attendance now by law established. Extension. Grand and petit jury, attendance of.

CHAP. 126. 4. The supreme court shall sit twice a year in the other  
 Sittings in other counties, when held, &c. counties at the times and places following, viz:

## LUNENBURG.

At Lunenburg on the fourth Tuesday of April, and on the third Tuesday of October.

## QUEENS.

At Liverpool on the Tuesday after the fourth Tuesday of April and second Tuesday of October.

## SHELburnE.

At Shelburne on the second Wednesday after the fourth Tuesday of April, and on the second Wednesday after the last Tuesday of September.

At Barrington on the third Wednesday after the fourth Tuesday of April.

## YARMOUTH.

At Tusket on the third Tuesday after the fourth Tuesday of April.

At Yarmouth on the last Tuesday of September.

## HANTS.

At Windsor on the first Tuesday of June, and on the third Tuesday of October.

## KINGS.

At Kentville on the second Tuesday of June, and on the second Tuesday of October.

## ANNAPOLIS.

At Annapolis on the third Tuesday of June, and on the first Tuesday of October.

## DIGBY.

At Digby on the fourth Tuesday of June, and on the last Tuesday of September.

## CUMBERLAND.

At Amherst on the third Tuesday of June, and on the first Tuesday of October.

## COLCHESTER.

At Truro on the second Tuesday of June, and on the second Tuesday of October.

## PICTOU.

At Pictou on the first Tuesday of June, and on the third Tuesday of October.

## CAPE BRETON.

At Sydney on the first Tuesday of June, and on the first Tuesday of October.



## VICTORIA.

## CHAP. 126.

At Baddeck on the second Tuesday of June, and on the second Tuesday of October.

## INVERNESS.

At Port Hood on the third Tuesday of June, and on the third Tuesday of October.

## RICHMOND.

At Arichat on the second Tuesday next after the fourth Tuesday of June, and on the fourth Tuesday of October.

## GUYSBOROUGH.

At Guysborough on the Tuesday next after the fourth Tuesday of June, and on the Tuesday next after the fourth Tuesday of October.

## SYDNEY.

At Antigonishe on the fourth Tuesday of June, and on the second Tuesday next after the fourth Tuesday of October.

5. The respective terms or sittings of the supreme court, in the preceding section mentioned, shall continue so long as the business shall require; but the same shall not be continued longer than the Saturday before the day hereby appointed for opening the court at the next place to which the judge presiding at such court shall be about to proceed on his circuit, nor longer than the second Saturday after the first day of such terms or sittings respectively.

Duration of terms or sittings.

6. If the business at Annapolis be not disposed of at the rising of the court, at the spring term to be held in each alternate year, the presiding judge shall have power to adjourn the court until the Tuesday after the fourth Tuesday of June; and the court shall meet at such adjourned day, and continue to sit until all the causes for trial shall have been called, and the jury shall be summoned, and shall attend at such adjourned sittings, but such adjournment shall only take place once in two years.

Adjourned sittings at Annapolis.

7. The presiding judge at Digby shall have power in each alternate year to extend the spring sittings of the supreme court until all the causes for trial shall have been called.

Extension of sittings at Digby.

8. The presiding judge may direct one or more additional panels of jurors to be drawn and summoned to attend such continued sittings in the same manner as jurors are now drawn and summoned, for the second week of such term.

Jurors for extended sittings.

9. In case any judge shall be prevented from arriving at the place on the day appointed for holding the court, the sheriff shall give public notice at the court house that the court will meet on the following day; and the sheriff shall

When a judge shall not arrive the sheriff shall give notice of attendance at the following day.

**CHAP. 126.** continue to give such notice from day to day for three successive days, unless the judge shall in the meanwhile arrive.

Powers of court on last day of sittings; power of extending the sittings.

Prothonotary not to part with original papers without a judge's order.

Deputy prothonotaries not to give certified copies of papers unless by a judge's orders.

Statements of fines to be furnished by the prothonotaries on the first day of term, and returns to be made, &c.

Calendar of criminal causes and depositions to be sent to the grand jury; indictments when made out.

Prothonotaries not bound to issue executions till fees are paid.

Commissioners for taking affidavits and recognizances of bail, how appointed.

Powers of commissioners.

10. On the last day of the sittings after term the judges shall exercise the same powers as in term. Motions relating to the business of the then sittings to have precedence.

11. The prothonotary shall not permit any original paper to be taken out of his custody without a written order from a judge, which order shall be filed.

12. The prothonotaries shall not transmit original papers to the officers in Halifax without special order from a judge, but shall, when required by any suitor or his attorney, provide certified copies to be used in place of the originals.

13. On the first day of each term the prothonotary and clerk of the crown shall make out and deliver in open court a correct statement of all fines which shall have been imposed by the court at the preceding term or sittings, together with a statement of all such as have been collected and paid to him by the sheriff since the last preceding term; and he shall annually return to the board of statistics a return in triplicate of all convictions had before, and of all fines and forfeitures imposed by, the supreme court, the amounts collected and the appropriation thereof, under a penalty of five pounds.

14. A calendar of the criminal causes shall be sent by the clerk of the crown to the grand jury in each term, together with the depositions taken in each cause, and the names of the different witnesses; and the indictments are not to be made out, except in Halifax, until the grand jury shall so direct.

15. The prothonotary shall not be obliged to issue any execution until the fees and costs due him on the judgment are paid.

16. The commissioners for taking affidavits to hold to bail and recognizances of bail in the several counties, shall be appointed by the governor in council.

17. Such commissioners shall have authority to allow writs of certiorari, and also to take affidavits in causes depending in court, and affidavits for holding to bail, and on which to found writs of attachment, and of summons against absent or absconding debtors, and specially to endorse writs in manner as now practised by judges of the supreme court, and subject to the same rules. They shall have the same power as the judges in relation to the rendering by bail of their principal, and they shall also have power to take the examination of witnesses aged, infirm, or about to leave the province, and to administer oaths to such witnesses.

## CHAPTER 127.

## OF PROCEEDINGS IN EQUITY.

## GENERAL PRINCIPLES AND RULES

1. The supreme court shall have jurisdiction in all cases heretofore cognizable and determinable by the court of chancery, and shall exercise the like powers, and apply the same principles of equity as justice may require, and as have heretofore been administered in that court. And all writs which at present issue out of chancery, shall henceforth issue out of the supreme court.

Chancery jurisdiction given to supreme court.

2. In all cases heretofore determinable in chancery, and henceforth to be conducted in the supreme court, the practice of the supreme court now, or hereafter to be established, as far as it is applicable thereto, shall be observed, except in so far as the practice is altered or modified by this chapter; and in any case to which such practice, and the provisions of this chapter shall not apply, but in no other, the practice of the English chancery shall be adopted.

Practice of supreme court to be observed, &c.

3. The court of chancery is abolished, and all suits remaining undetermined in chancery, together with all the rolls, records, and proceedings of the court, shall be transferred to the supreme court; and such suits shall be there heard and determined according to the provisions of this chapter, but with such modifications thereof as may appear to be right and proper, and for the attainment of justice in the hearing and trying of such suits so remaining undetermined in chancery. In such causes the proceedings up to the first day of August, 1855, shall continue of unimpaired efficacy and effect in the further progress of the cause, and the costs of all proceedings up to that period shall be allowed as if this chapter had not passed.

Chancery court abolished, &c.

4. All suits heretofore cognizable in chancery shall be commenced in the same manner as personal actions by writ of summons, in which the cause of action, and the relief or remedy sought by the plaintiff, shall be briefly and clearly stated, and it shall not be necessary that the same should be set forth in any technical or formal language or manner, or that any technical or formal statement should be used.

Suits, how commenced, &c.

5. The plea or answer of the defendant shall in like manner be briefly and distinctly stated, and there shall be no further pleading after the defence, unless by the special leave of the court or a judge, on an application to allow such further pleadings, which shall only be allowed in case the real question, whether of fact or of law, between the parties cannot conveniently be raised and put in issue by amending the previous pleadings.

Plea.

**CHAP. 127.** 6. Either party may demur to the pleading of the adverse party, on the same grounds, and such demurrers shall be heard and determined on the same principles as obtain in the supreme court.

**Demurrer.** 7. When the facts in such pleading are complicated, and the issues to be tried are indistinct or obscure, it shall be competent for the court or a judge to settle the issues in fact, to be tried in such cases as hereinafter provided.

**Issue when facts are complicated.** 8. The same rule shall apply to the trial of all issues in fact, under this chapter, and to the obtaining and granting of new trials, as are now in force in the supreme court, or may hereafter be established therein.

**Trial of issues.** 9. On the final hearing of such cases the court shall give judgment according as the very right of the cause and matter in law shall appear unto them, and so as to afford unto the parties a complete remedy upon the principles which prevail in courts of equity, and may be applicable to the particular case.

**Judgment.** 10. The court or a judge shall have power to order any disputed fact to be tried by a jury, at such place and time as they or he shall think fit, and to direct inquiries, where a judge himself cannot conduct the enquiry, into matters of fact, and account, by masters to be appointed in that behalf by the governor and council, on the same principles as referencences have heretofore been conducted before a master in chancery. Every report of a master must be submitted to the court or a judge, and may be confirmed, modified, or set aside, as he or they shall think fit, after hearing the parties; but no written exceptions shall be filed.

**Power of court as regards matter of fact and account.** 11. The judges in term at Halifax may make, and they are hereby required, from time to time, to make general rules for facilitating the practice of the court under this chapter, and the effectual execution thereof; but such rules shall not go into operation until they shall have been published in the royal gazette.

**Judges may make general rules.** **MORTGAGES.** 12. It shall be competent for a mortgagor to bring suit for the redemption of his mortgage, and for a mortgagee to bring suit for the foreclosure thereof, on the same principles as now obtain in the court of chancery.

**Foreclosure.** **SPECIFIC PERFORMANCE, ETC.** 13. The plaintiff in any suit to be brought under this chapter, may claim from the defendant, a specific performance of his contract, and the court shall award or refuse the same, according to the right and justice of the case, and the principles which obtain in courts of equity.

**Specific performance.** 14. Where a party to any cause shall neglect or refuse, after an order has passed therefor, to execute or acknowledge an instrument, such instrument may be executed or

**When party refuses to execute an instrument.**

acknowledged by a master, and when confirmed by the court, shall have the same efficacy as if made by the party so neglecting or refusing. CHAP. 127.

15. The court or a judge shall have power, if they or he shall see fit so to do, upon the application of the plaintiff, in any action for the detention of any chattels, to order that execution shall issue for the return of the chattels detained, without giving the defendant the option of retaining such chattels, upon paying the value assessed; and that if the said chattels cannot be found, and unless the court or a judge shall otherwise order, the sheriff shall levy on all the defendant's lands and chattels, till the defendant render such chattels, or, at the option of the plaintiff, that he cause to be made, of the defendant's lands or chattels, the assessed value of such chattels: provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to levy for the damages, costs, and interest in such action.

Court may order execution for return of chattels.

#### WRITS OF MANDAMUS.

16. In all cases in which the plaintiff shall claim that the defendant ought to fulfil any duty, in the fulfilment of which the plaintiff is personally interested, the plaintiff may bring his action by issuing a writ of summons, claiming, either together with any demand which may now be enforced in such action, or separately, a writ of mandamus, commanding the defendant to fulfil such duty.

Action for mandamus.

17. The writ in such action shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains, or may sustain, damages by the non-performance of such duty, and that performance thereof has been demanded by him, and refused or neglected.

Form of writ.

18. The pleadings and other proceedings in any action in which a writ of mandamus is claimed, shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

Pleading.

19. In case judgment shall be given to the plaintiff, that a mandamus do issue, it shall be lawful for the court, if it shall see fit, besides issuing execution in the ordinary way, for the costs and damages, also to issue a peremptory writ of mandamus to the defendant, commanding him forthwith to perform the duty to be enforced.

Judgment and execution.

20. The writ need not recite the declaration or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party, and not to the sheriff, and may be issued in term or vacation, and returnable forthwith; and no return thereto, except that of compliance, shall be

Form of execution.

**CHAP. 127.** allowed; but time to return it may, upon sufficient ground, be allowed by the court or a judge, either with or without terms.

**Effect of writ.** 21. The writ of mandamus so issued as aforesaid, shall have the same force and effect as a peremptory writ of mandamus issued out of the court of queen's bench at Westminster, and in case of disobedience may be enforced by attachment.

**Court may direct the act to be done, at expense of defendant.** 22. The court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the court, at the expense of the defendant; and upon the act being done the amount of such expense may be ascertained by the court, either by writ of enquiry or reference to a master, as the court or a judge may order, and the court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

**Mandamus may be granted as heretofore.** 23. Nothing herein contained shall take away the jurisdiction of the supreme court to grant writs of mandamus as heretofore, nor shall any writ of mandamus issued out of that court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this chapter.

**Rule for mandamus.** 24. Upon application, by motion, for any writ of mandamus in the supreme court, the rule may, in all cases, be absolute in the first instance, if the court shall think fit; and the writ may bear date on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it by the court or a judge, either with or without terms.

#### WRITS OF INJUNCTION.

**Suit for injunction.** 25. In all cases of breach of contract or other injury where the party injured is entitled to maintain and has brought an action, he may, in like case and manner as hereinbefore provided, with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and he may also, in the same action, include a claim for damages or other redress.

**Writ of summons.** 26. The writ of summons in such action shall be in the same form as the writ of summons in any personal action; but on every such writ and copy thereof there shall be endorsed a notice, that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

**Proceedings.** 27. The proceedings in such action shall be the same, as

nearly as may be, and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action, judgment may be given, that the writ of injunction do or do not issue, as justice may require; and in case of disobedience, such writ of injunction may be enforced by attachment by the court, or when the court shall not be sitting, by a judge. CHAP. 127.

28. It shall be lawful for the plaintiff, at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the court, or a judge, for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the court or judge upon such terms as to the duration of the writ, keeping account, giving security or otherwise, as to such court or judge shall seem reasonable and just; and in case of disobedience such writ may be enforced by attachment by the court, or when the court shall not be sitting, by a judge; provided always, that any order for a writ of injunction made by a judge, or any writ issued by virtue thereof, may be discharged or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order. Writ of injunction, when and how issued, &c.  
  
How enforced.

29. It shall be lawful for the defendant in any action, to plead by way of defence thereto, any matter which would entitle him to have a perpetual injunction in a court of equity against the maintenance of such action; and the matter of such defence shall, if proved, or if judgment pass by default, be a bar to such action, and the defendant shall have judgment thereon, with costs. Effect of plea entitling right to perpetual injunction.

30. In any action in which a right shall be involved, it shall be lawful for the supreme court or a judge, by a summary order, in the nature of an injunction, to be made on motion in the cause, to restrain, prevent or modify the exercise of such right by any party in the action, until a judgment shall be had establishing such right, or until such other earlier time as to the court or a judge shall seem fit, and on such terms, if any, as the court or judge may require, and in like manner as it would have been competent to the court of chancery to have done, if such right had been contested in a suit pending therein; and in like manner to renew, vary or set aside such order from time to time as the case may require; and it shall be lawful for the court or a judge, at the time of making such restraining order, if he or they shall see fit, or if it shall be required by the party against whom such order is made, to direct that an issue shall be submitted to the jury, who shall try Order of the court in the nature of an injunction.

CHAP. 127. the principal matter respecting the existence or extent of such right; referring it to the jury also to try and inquire whether any damage or injury has been sustained by the party so injured, by the granting of such order, and the amount of such damage, if any, and such jury shall find upon the issue accordingly, and their finding shall be returned with the other findings in the case, and judgment and execution shall be given and had for the amount so found, together with the costs of the defendant occasioned by the trial of such issue.

## EQUITABLE DEFENCES.

**Equitable defences.** 31. It shall be lawful for a plaintiff in replevin, or for the defendant in any cause in the supreme court in which, if judgment were obtained, he would have been entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the court shall receive such defence by way of plea, provided that such plea shall begin with the words, "for defence on equitable grounds," or words to the like effect.

**Replication.** 32. The plaintiff may reply, by leave of the court or a judge in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds, provided that such replication shall begin with the words, "for replication on equitable grounds," or words to the like effect.

**Particulars of demand.** 33. When such plea or replication on equitable grounds is put in, the particulars of demand and set-off may be obtained as in other cases.

**Equitable defences may be set up.** 34. On the trial of any action of ejectment, the defendant may set up any equitable defence which would be available in the court of chancery, in case the subject matter were under adjudication in that court; and if the plaintiff shall claim title under a mortgage or other contract, or the defence be founded on any defeazance, bond for a deed, contract, or other agreement, whether the action be brought for the foreclosure of a mortgage, or otherwise, the defendant may give in evidence, tender payment, set off or other equitable defence, if he shall, at the time of filing his plea, or subsequently by leave of the court or a judge, who are hereby empowered to grant such leave in any stage of the cause, have given notice in writing of the nature of the defence on which he intends to rely; and particulars of demand and set off may be obtained as in other actions; and in all such cases the defendant having the right of redemption or equitable estate in the lands, may pay to the plaintiff or bring into court the amount due with costs; and thereupon, the court, by rule, or a judge, by order, may compel the lessor of the plaintiff to make such conveyance or lease as may be agreeable to equity.

**Tender, payment, set off; when pleadable.**

**Particulars of demand and set off.**

**Right of redemption; release of.**

**Sale and distribution of proceeds.**

35. If the justice of the case require it, the court or a judge may make an order for the sale of the premises



sought to be recovered or any part thereof, and for the application of the proceeds, and for the release or other re-conveyance of the same, or any part thereof, at any time before the sale: provided always, that before the court or a judge shall order such distribution of the proceeds, it shall be made appear, that all persons interested have had reasonable notice, by advertisement or otherwise, of such application. CHAP. 127.

36. In case the plaintiff or any defendant shall refuse or neglect to make or perfect any such conveyance, the court or a judge may order such conveyance to be made by the sheriff, which when confirmed by the court or a judge, shall have the same operation and effect as if made by a master of the court of chancery under a decree or order of that court. Non-compliance with order for sale or re-conveyance.

37. Where the proceedings are had under the three last sections, no writ of possession shall issue without the leave of the court or a judge. Writ of possession not issued without leave.

38. Any defendant having an equitable defence of which he might avail himself under section thirty four, and neglecting or refusing so to do, shall not be at liberty, without leave of the supreme court or a judge thereof, to apply for relief in equity. Proceedings in equity, when barred by proceedings hereunder.

#### REAL ESTATE OF INFANTS.

39. An infant seized of real estate, or entitled to any term of years in lands, may, by his next friend or guardian, petition the court or a judge for an order to sell or dispose of the said property, who shall proceed in a summary way, on affidavits, to enquire into the merits of such application; and if the disposal of such property, or any part thereof, be necessary for the support of such infant, or for his education, or if the interest of the infant will be substantially promoted by such disposal, on account of any part of his said property being exposed to waste or dilapidation, or being wholly unproductive, or for any other reasonable cause, the court or a judge may, on the filing of a bond by such guardian or next friend, or other person approved of by the court or judge, in case he be not already a lawfully appointed guardian, with such sureties, in such form, and on such terms and conditions as shall be directed, order the letting for a term of years, the sale or other disposal of such real estate or interest, whether possessory or reversionary, by such guardian or next friend, in such manner, and with such restrictions as shall be deemed expedient, but not in any case contrary to any last will or conveyance by which such estate or term was devised or conveyed to such infant. Court may order sale of real estate of infants; when.

40. All sales, leases, or conveyances made in good faith by any guardian or next friend, in pursuance of such order, shall be as effectual as if made by such infant after he had Effect of conveyances by guardian, &c.

CHAP. 127. attained the age of twenty-one years; and it shall not be necessary in the conveyance to recite any part of the proceedings required by this chapter, but the same shall briefly refer to the order and the sale, leasing, or other disposal of such property. The party making the sale shall file a report thereof with the prothonotary of the county in which the lands are situate.

Application of proceeds.

41. Upon any order for the sale of any property being made as aforesaid, the court or a judge may make such order for the investment, disposal, and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same for the infant's benefit; but in no case shall the principal money be disposed of unless it shall be required for the support or education of the infant, and in no case shall such principal be disposed of for any purpose, if the nett proceeds accruing to each infant thereon shall amount to one hundred pounds.

Infant's interest in proceeds.

42. No sale made as aforesaid shall give to any such infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold.

Conveyance.

43. Every conveyance made under the above provisions, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded, were rightly had.

#### PERPETUATING TESTIMONY.

Suits for perpetuating testimony.

44. When a person shall be desirous to perpetuate the testimony of any witness, he may issue a writ of summons, which shall set forth briefly his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the testimony, and the names of all parties interested or supposed to be interested therein, and the names of the witnesses proposed to be examined, which shall be served on the parties interested, or supposed so to be. A notice shall be served on such parties with the writ, or subsequent to the service thereof, which shall state when and where, and before whom, the examination of each witness shall take place; but no witness shall be examined under these provisions unless the parties supposed to be interested shall have had at least ten days' notice of such examination.

Examination of witnesses.

45. The examination of the witnesses shall be taken before a commissioner for the examination of witnesses *de bene esse*, and in the same way as such examinations now take place, unless on application to a court or a judge, a special commissioner be appointed, when the examination shall take place before such special commissioner.

Deposition and certificates of commissioner.

46. After the commissioner shall have engrossed the deposition of each witness, it shall be read to him, and he shall subscribe it, and the commissioner shall certify the time, place, and manner of his taking the deposition, and who attended at the taking thereof, and that the same was

taken by him in perpetual remembrance of the facts stated CHAP. 127.  
therein.

47. The deposition and certificate, together with a true copy of the notice of examination, and an affidavit of the service of such notice, stating upon whom and when the same was served, shall be filed in the office of the prothonotary of the county in which the examination shall have taken place, within ten days after the examinations. To be filed in prothonotary's office.

48. If any suit shall, either at the time of taking such deposition, or at any time afterwards, be pending between the person at whose instance it was taken, and the person named in the writ, or any of them, who were so notified, or any persons claiming under either of the said parties respectively, concerning the title, claim, or interest set forth in the writ, the deposition so taken, or a certified copy of it from the prothonotary's office, may be used in such suits in the same manner, and subject to the same conditions and objections, as if it had been originally in and for such suit. In what suit the deposition may be used.

49. Any witness may be subpoenaed and compelled to give his testimony in perpetual remembrance of a thing as hereinbefore prescribed, in like manner and under the same penalties as witnesses subpoenaed to attend and give evidence on the trial of a cause. Attendance of witnesses enforced.

50. All costs incurred under these provisions on both sides, shall, in the first instance, be paid by the party seeking to perpetuate testimony; but in case the deposition shall thereafter be used in any suit, and he shall therein obtain a judgment, it shall be discretionary with the court, or a judge, to allow the costs to be costs in that suit, to be taxed against and payable by the party against whom the judgment shall be so obtained. Costs.

#### ASSIGNMENT OF CHUSES IN ACTION.

51. Any assignee, by writing signed by the assignor of the entire interest in any chose in action founded on any contract for payment of money only, or in any judgment, decree, or order for the payment of money only, and who would have been entitled to maintain a suit in equity, as such assignee, to enforce such contract or the payment of such money; and the executor or administrator of such assignee shall be entitled, in his own name, to maintain such personal action in the supreme court, and have such final judgment and execution in as full a manner as the person originally entitled to such chose in action, judgment, decree or order, and whose interest has been assigned, might have had or done; and such assignee shall be so entitled, whether he shall derive immediately or remotely from the person so originally possessed of such right to sue thereon, and shall be considered to all intents and purposes, and whether for the purpose of releasing such right, or discharging or satis- f Assignee of choses in action may sue.

**CHAP. 127.** fying such judgment, decree or order, or otherwise, as the person originally entitled to the same had heretofore been; and it shall be lawful for any defendant, in any action brought by the person so originally entitled, or by any such assignee as aforesaid, to plead by way of defence that the interest of the plaintiff in such action had been theretofore assigned in the manner prescribed by this chapter: provided, that nothing herein contained shall operate at law to transfer the right to the benefit of any bond, covenant, or agreement, collateral in its nature, unless the assignment thereof shall be made to the person entitled to the subject matter to which such bond, covenant, or agreement, is so collateral, or to some person as trustee for him; and that nothing in the foregoing provision contained shall apply to any covenant running with the land.

Assignor not to release or sue.

52. Upon the execution of any such assignment, the right of the assignor to release or sue upon such chose in action, judgment, decree or order, shall wholly cease and determine; and in case it shall happen that there shall have been more than one assignment made by the same person, the assignment thereof first made *bona fide* shall operate to transfer the right to release or sue upon the same, unless the second assignment thereof shall have been accepted *bona fide* accompanied by the possession of the instrument assigned, and without knowledge of the first assignment.

Notice of assignment to be given before action.

53. No action shall be brought upon any such assignment by such assignee, unless a notice in writing signed by him, his agent or attorney, stating the right of the assignee, and specifying his demand thereunder, shall have been served on the party to be sued, or left at his last place of abode, at least fourteen days before the commencement of such action.

Effect of release by assignor without notice.

54. In any case in which a release of a chose in action, or a release of execution in any judgment, decree or order, shall have been executed by the assignor thereof, or payment shall have been made to him after the assignment thereof, and no notice of such assignment shall have been received by the person liable to be sued in relation to such chose in action, judgment, decree or order, it shall be lawful for such person, anything in this chapter to the contrary notwithstanding, to rely on such payment or release, by way of defence to any action brought against him in respect of such chose in action, judgment, decree or order, unless such release had been accepted, or such payment made with intent to defraud such assignee.

Defence against assignor available against assignee.

55. It shall be lawful for any defendant or person liable in respect of any such chose in action, judgment, decree or order, in any action brought in respect thereof by any such assignee, to have the same remedy and defence against the assignee and his representatives which he might have had against the assignor in case no such assignment had been

made, and in case of payment to such assignee, to plead CHAP. 127.  
such payment specially to such assignee.

## PRACTICE.

56. After plea filed, the plaintiff may bring the cause to a hearing before the court, on the writ and plea, in the same way as a suit has heretofore been heard in chancery on bill and answer; but in that case he shall, within fourteen days after the receipt of the plea, or within such further time as may be allowed by a judge, give notice to the defendant of his intention not to produce evidence. Hearing on writ and plea.

57. After a suit shall be at issue, and before proceeding to trial, the court, or a judge, on the application of either party, and eight days' notice to the other, shall determine what issue of fact shall be tried by the jury. Court may determine on the issues to be tried.

58. All interlocutory matters shall be decided by the court on motion, or by any one of the judges at chambers, and all proceedings before a judge at chambers shall be by summons and order. Interlocutory Proceedings.

59. Either party may appeal from any order of a judge at chambers to the whole court, on giving security to the amount of ten pounds to abide the costs of the appeal, which shall always follow the event; but such appeal shall not stay the proceedings on the order. Appeal from order of a judge.

60. Obedience to any judgment, rule or order of the court, or of a judge at chambers, may be enforced by attachment or execution. Judgment, and how enforced.

61. In all cases wherein the subject in controversy, whether it be real, personal or mixed estate, be within the province, or where a trust has been created therein, or which may affect such subject, defendants residing without the jurisdiction of the court may be served with summons in like manner as if they resided within the province; but before the issue of such summons, a judge shall determine the form thereof, and the period to be limited for the appearance of the defendant after the service thereof, and no further proceedings shall be had against such absent parties till it shall be made to appear by affidavit to the court or a judge, that such service has taken place; and the plaintiff shall be at liberty to proceed in such manner, at such time, and subject to such conditions as the court or a judge may see fit. Proceedings where defendant is out of the jurisdiction of the court.

62. In cases of foreclosure, when it shall be made to appear, by affidavit, that a defendant is out of the province, an order may be made by the court or a judge, or prothonotary, for such defendant to appear on a certain day therein named, which order shall be published in the royal gazette, or in such other way, and for such time, as the court or judge, or prothonotary, shall direct; and the publication of such order shall be deemed good service on such defendant. In cases of foreclosure.

**CHAP. 127.** 63. The court shall, in all equitable cases, have the same discretion in awarding or withholding costs, or directing the fund out of which they shall be paid, that is now exercised by the court of chancery.

Discretion of the court regarding costs.

Hearings.

64. The hearings in equitable cases, and arguments therein, shall be governed by the same rules as now prevail in the supreme court.

Power of the court in cases of default of appearance, &c.

65. In cases of default for want of appearance and plea, or where all the material facts of the case which entitle the plaintiff to equitable relief are admitted by the defendant, the court, or a judge at chambers, may thereupon make such order as the right and justice of the case shall require, both as regards the relief prayed for, and the costs of the suit.

Several causes of action may be united.

66. The plaintiff may unite several causes of action in the same writ, whether they be such as have heretofore been denominated legal or equitable, or both. The causes of action so united must accrue in the same right, and affect all the parties to the action, and must not require different places of trial.

Rules regarding parties to suits.

67. No defendant in any suit shall be permitted to object for want of parties, in any case to which the following rules extend :

Rule 1.—Any residuary legatee or next of kin may, without including the remaining residuary legatees or next of kin, have a judgment for the administration of the personal estate of a deceased person.

Rule 2.—Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without including any other legatee or person interested in the proceeds of the estate, have a judgment for the administration of a deceased person.

Rule 3.—Any residuary devisee or heir may, without including any co-residuary devisee or co-heir, have the like judgment.

Rule 4.—Any one of several persons for whom a trust is held under any deed or instrument, may, without including any other of such persons, have a judgment for the execution of the trusts of the deed or instrument.

Rule 5.—In all cases of suits for the protection of property pending litigation, and in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6.—Any executor, or trustee, may obtain a decree against any one legatee, next of kin, or person for whom a trust is held, for the administration of the estate or the execution of trusts.

Rule 7.—In all equitable cases, the court, or a judge, if he or they shall see fit, may require any other person to be made a party to the suit, and may make such order in any

particular case as he or they may deem just, for placing the defendant on the record on the same footing, in regard to costs, as other parties having a common interest with him in the matters in question. CHAP. 127.

Rule 8—In all suits concerning real or personal estate vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner, and to the same extent, as the executors in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trust, parties to the suit with the trustees or executors, but the court or a judge may, upon consideration of the matters on the hearing, if he or they shall think fit, order such persons, or any of them, to be made parties.

68. It shall be competent for the court, or a judge, to dismiss any suit for equitable relief where the plaintiff shall not prosecute it with effect, in such reasonable time as shall be allowed him by an order in that behalf. Suit may be dismissed for want of prosecution.

69. The court, or a judge, may make an order for the appointment of a receiver, when necessary in any suit, which order shall state the amount of security to be given, and the terms and conditions on which the assets shall be held by him. Receiver may be appointed.

70. The hearing of equitable suits may be had at any time in the vacation, on the application of either party, before any three or more of the judges; and for that purpose, and the giving of decisions therein, the court shall be held as being always open. Further directions may be given at chambers. Hearing in vacation.

71. All costs shall be taxed by a judge. Taxation of costs.

72. The fees heretofore allowed in the court of chancery are abolished, and fees in equitable suits shall be taxed and allowed as in the table of fees in the schedule to this chapter. Fees to be those in schedule.

73. Any person taking greater fees shall, for such offence, forfeit to the party aggrieved, ten pounds, and also the amount of such excessive fees. Penalty for taking greater.

74. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence. Action for penalty.

75. The office of the master of the rolls is abolished.

76. This chapter has operation from the first day of August, 1855, and the words "heretofore," "hereafter," "at present," "now," "henceforth," and the like, refer to that date.

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TABLE OF FEES.

Table of fees.

The same fees as now allowed in the supreme court with the following additions, in equitable suits :

Attorney's.

*Attorney's Fees.*

Where the writ exceeds five folios, the court or a judge may allow for the excess, being not more in any case than twenty folios in all, for each folio, . . . . . £0 1 0

Counsel fee for examining each equitable pleading, 0 11 8

Counsel fee in all equitable suits to be taxed in any stage of the cause, at the discretion of the judge, but not to exceed . . . . . 5 0 0

Drawing every brief deemed by the judge necessary in an equitable suit, from £1 to £5, at his discretion.

Every deed in foreclosure and other equitable suits, . . . . . 1 3 4

Every attendance before a master, shewn to have been necessary, by affidavit, and approved of by the judge, . . . . . 0 6 8

All necessary expenses incurred in serving defendants out of the province, in advertising and for postages.

*Master's Fees.*

Every attendance on a reference, shewn to have been necessary, by affidavit, and approved of by the judge, . . . . . 0 6 8

Every report . . . . . 0 6 8

And for every folio beyond six folios, but not to exceed ten folios in all, . . . . . 0 1 0

Administering every oath, and signing jurat, 0 1 6

All necessary travel, going and returning, per mile, 0 0 3

*On sales of land in foreclosure, and other equitable suits.*

Sheriff's.

For sheriff or master attending the sale and receiving and paying over the amount, in lieu of all poundage . . . . . 2 6 8

CHAPTER 128.

OF THE COURT OF MARRIAGE AND DIVORCE.

Of the president and vice president of court of marriage and divorce. 1. The governor shall be president of the court of marriage and divorce, and shall appoint, by warrant under his hand and seal, the chief justice, or any one



of the judges of the supreme court, to be vice president thereof. CHAP. 129.

2. The vice president shall sit as a member of the court when the governor is president, and shall preside in his absence. Vice president's duty.

3. The court shall consist of the president, vice president, and the members of the executive council: but the vice president and any two members of the council shall constitute a court. Court, how constituted.

4. The court shall have jurisdiction over all matters relating to prohibited marriages and divorce, and may declare any marriage null and void for impotence, adultery, cruelty, pre-contract, or kindred within the degrees prohibited in an act made in the thirty second year of king Henry the eighth, entitled an act concerning pre-contracts, and touching degrees of consanguinity; and whenever a sentence of divorce shall be given the court may pronounce such determination as it shall think fit on the rights of the parties or either of them to coheirship or dower. Jurisdiction of the court.

5. The court may direct the examination of witnesses or ally, and declare, by definitive sentence or otherwise, the marriage between the parties in the suit to be null and void from such time as the court may deem proper, and may allow costs and alimony to the wife during the suit, and upon its termination may award costs to either of the parties. Of the examination of witnesses, and the sentence of the court; its power over costs.

6. The court may enforce the performance of any sentence by means of an execution similar to that issued out of the supreme court, and when any property is sold by virtue of such execution, the proceeds thereof, deducting poundage and expences, shall be paid into the registry of the court, to be disposed of as the court may direct. Power of the court to enforce its sentence.

7. The rules, orders, process, and other proceedings of the court, may be signed by the registrar, and the signature of the president or vice president shall not be necessary unless the court shall otherwise order. Rules, orders, &c., how signed.

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## CHAPTER 129.

### OF THE COURT OF ESCHEAT.

1. Before any inquest of office shall be made, notice thereof shall be given in the royal gazette, a copy of which notice shall be fixed at the door of the court house, and in three other public places of the county in which the land is situate, and if any person be living on the lands, a copy Notice of inquest of office, how given.

**CHAP. 130.** of the notice shall also be delivered to him at least three months before the inquest.

Inquisitions where to be returned; traversable in supreme court.

2. One part of every inquisition shall be returned into the office of the surveyor general, and any inquisition may be traversed in the supreme court, having been previously removed thereto by order of a judge.

Tenant neglecting to give landlord information of notice served.

3. If any tenant shall wilfully neglect to give information of the notice to his landlord, in case he shall be within the province, or to his known attorney or agent, in case he shall be absent therefrom, he shall forfeit one hundred pounds, to be recovered by the party injured.

Escheated lands when to be granted.

4. No lands escheated shall be granted to any person before the expiration of one year from the day of the inquest, except to the original owner.

## CHAPTER 130.

### OF THE PROBATE COURT.

Judge and registrar, how appointed and sworn.

1. The judge and registrar of probate in each county, shall be appointed by the governor in council, and hold office during pleasure, and shall be sworn before a judge of the supreme court or the custos of the county.

Judge of county where deceased last dwelt to grant probate, &c.

2. The judge of probate for the county wherein the deceased last dwelt shall have power to grant letters testamentary or letters of administration of his estate.

Probate, &c., where granted when deceased lived out of the province.

3. When the deceased shall die out of the province, the judge of probate for the county wherein any estate of such deceased person may lie, if letters testamentary or letters of administration have not been previously granted within this province, shall have power to grant the same.

Judge may order division of real estate among next of kin.

4. The judge of probate may order the real estate of the testator or intestate, wherever situate within the province, to be divided among the next of kin, and whenever the share or interest of any such person being next of kin, shall have been transferred, the purchaser shall have the same rights and privileges, and be subject to the same liabilities as the person whose share he represents.

Where division of portion cannot be made without prejudice.

5. In cases where the estate is divisible among the children of a testator or intestate, and such division, or the division of any particular portion thereof cannot be made without prejudice to the whole estate, he may order the whole, or after the division of the residue, the whole of such particular portion to the eldest son, and on his refusal, to the other sons successively, and on their refusal to the eldest and other daughters in like succession; such son or daughter paying to the other children their shares of the

value of such estate, or giving satisfactory security for the payment thereof, with six per cent interest thereon. CHAP. 130.

6. Such order for division shall be made upon the application of a party interested, and guardians shall be appointed for such of the parties as shall be under age. Guardians to be appointed for minors.

7. Where there shall be a claim for dower, or the widow shall claim any individual share or right devised by will, the judge of probate shall have power to order the same to be assigned and set off. Assignment of dower, &c., to widow.

8. All divisions and valuations of real estate made under order of the judge of probate, shall be made by five disinterested freeholders, to be appointed by the judge for that purpose, who shall, before acting, be sworn by the judge or registrar, or by a justice of the peace, to the faithful discharge of their duty. Division of real estate, how to be made.

9. No such division or valuation shall be valid, unless three at least of the persons so appointed and sworn shall concur, and the judge shall approve thereof. Three freeholders must concur in division.

10. Before such approval shall be given, the parties interested, or in case one or more of them are minors, the guardians shall have eight days' notice of the time and place appointed to consider the same; and where any one or more of the parties interested shall be absent, or cannot be personally served, publication of such notice in the royal gazette, at least four weeks before the day named, shall be considered sufficient service of notice. Notice to be given before division approved by judge.

11. On the day named in such notice, the judge shall confirm or reject the division, or make such amendments thereof, as he may deem right, and shall tax and award the costs of such division and valuation, and apportion the same among the parties interested in the estate as he shall deem just; and such taxation and order shall have the same effect, and be enforced in the same manner as the taxation and order mentioned in the forty-fifth section. Confirmation of judge and costs.

12. Where such division is made the judge may, if necessary, order a surveyor to prepare a plan to be filed with the registrar. Plans may be ordered by judge.

13. In case the personal estate of the deceased shall be found by the judge on affidavit insufficient for the payment of his debts and legacies, such judge, upon security being given by the administrator or executor, to account for the proceeds of the sale or the sum obtained by mortgaging or leasing the same, may, at his discretion, grant a license for the sale of the whole or such part of the real estate of the deceased as he shall deem necessary, or for the mortgaging or leasing thereof, provided such lease be for a term not exceeding twenty-one years. License for sale mortgage, or letting of real estate where personal property insufficient to pay debts.

14. No such license shall be in force more than one year after the granting thereof. License to be in force for one year only.

15. Every license shall be entered in the registrar's book, and a copy thereof duly certified by the judge or License to be entered and registered;

**CHAP. 130.** registrar shall be registered in the office of the registrar of deeds for the county or district in which the real estate may lie, and such certified copy, or a copy thereof from the registry certified under the hand of such registrar of deeds, shall be evidence of such license in all courts, without further proof.

Certified copy to be evidence.

Security for license to be given by bond.

16. The security to be given by any executor or administrator before the granting of such license, shall be a bond to the judge of the court of probate in a sufficient penalty with two sureties to be approved by him, the bond to be in the form in the schedule.

In case the executor, &c, shall not give the security the judge may appoint another person to act.

17. In case any executor or administrator shall not give such security within a reasonable time, the judge may, on the application of any person interested, order such executor or administrator having been first duly cited, to give such security within a period in the order to be named; and if such executor or administrator without sufficient cause shall neglect so to do, the judge may appoint some other person interested in the estate, to act as administrator for the sale of the real estate and appropriation of the proceeds, upon his giving the security required.

Undevised real estate, if any, to be sold first for payment of debts, legacies, &c.

18. When any part of the real estate of the testator has been undevised, and the personal estate shall be insufficient for the payment of debts, legacies and expenses, the undevised real estate shall be first sold, unless it shall appear from the will that a different arrangement of his assets for the payment of his debts or legacies was intended, in which case they shall be applied for that purpose in conformity with the provisions of the will.

Judge empowered to issue compulsory process, and to punish for contempt.

19. The judges of probate shall have power to issue such process as may be necessary for the discharge of the trust reposed in them, and also to issue subpoenas to compel the attendance of witnesses and the production of papers material to any inquiry pending before them. The party refusing or neglecting to obey such process may be punished as in a court of law for a contempt, and all such process shall be executed by the officer to whom it is directed.

Letters ad colligendum, how granted.

20. No letters *ad colligendum* shall be granted by the judge without due security being first taken.

When judge interested to a certain amount case to be transferred to the next county.

21. When the judge of probate shall be interested in the estate of the deceased as heir, legatee, debtor or creditor, to the extent of two hundred pounds and upwards, or as executor or administrator, or when a person so interested, after proceedings have been had before the court of probate, shall be appointed judge thereof, the case shall be transferred to the probate court of the next adjoining county, and shall there be disposed of and settled; and so soon as such estate shall be settled, the judge shall transmit to the court of probate where the deceased last dwelt, a certified copy under his hand and the seal of his court, of his proceedings therein, and such proceedings shall be entered and

recorded in the books of registry of the court to which they are so transmitted. CHAP. 130.

22. No judge or registrar shall be directly or indirectly employed, or professionally concerned, as counsel, attorney, solicitor, proctor, or advocate, for any party in any matter pending or to be brought before the court of which he is judge or registrar. Judge nor registrar to be of counsel with any party.

23. The registrar shall have the care and custody of all papers and books to the probate office belonging, and in case of the death, sickness, or necessary absence of the registrar, the judge may appoint and swear into office some fit person to officiate in his stead until the standing registrar shall be able to attend his duty, or until a new one be duly appointed. Registrar to have the charge of books, &c.; temporary registrar, how appointed.

24. The registrar shall keep a book for the registration of wills, a book for the registration of decrees and orders of sale of real estate, a book of acts or a book containing a short abstract of the proceedings of the court, properly indexed. Different books to be kept by registrar.

25. Every oath administered to an executor or administrator on entering into office shall be subscribed in writing. Oaths to be subscribed in writing.

26. In the book for the registration of wills, all original wills are to be registered, and all interlineations, alterations, or apparent erasures not noticed in the attestation, are to be noted at the foot of the record, so as to be as nearly as possible an exact and literal transcript of the original. Wills, how registered.

27. No judge of probate shall permit an original will to be in any case taken out of the province, or to be removed from the office but for the purpose of being produced in the supreme court, and then only on security being taken for its safe custody and return. Wills, when and how taken from office.

28. All decrees are to be regularly filed and registered. Decrees to be filed and registered.

29. All letters of guardianship and letters *ad colligendum* are to be registered. Letters of guardianship to be registered.

30. All applications for the probate of wills or letters of administration may be made either verbally or in writing; all other official acts and orders shall be in writing. Applications for probate on letters of administration how made; acts and orders to be in writing.

31. Where such application is verbal, it shall be made to the registrar of the court of probate at his office, who shall thereupon enter such application in the act book, and shall, upon such entry being signed by the party making such application, submit the same to the judge for his *fiat* thereon. Verbal applications, how made.

32. Whenever application shall be made to a judge of probate for filing and recording a copy of a will proved without the province, the testator having real or personal property within his jurisdiction, he shall order the registrar to give public notice in the royal gazette newspaper at Applications for filing and recording wills proved out of the province, how made: proceedings thereon.

**CHAP. 130.** Halifax of the application and of the time and place when the application will be heard.

Rights of parties without the province to be reserved in applications for administration, &c.

33. In all cases of application for letters of administration or probate when the party or any one of several parties entitled to administration or probate is without the province, the judge shall reserve the right of such absent person, but shall proceed notwithstanding.

Compulsory process, how directed.

34. All compulsory process shall be directed to the sheriff or his deputy, or to the coroner.

Proceedings where executor, &c., required to render an account; citation, how served, their form, &c.

35. Upon being required by the judge of probate to render an account, the executor or administrator may apply to the judge for a citation requiring the creditors and next of kin of the deceased, and the legatees, if any, to appear before him on a day therein to be specified, and to attend the settlement of such account; such citation shall be served personally on all those to whom it shall be directed living in the county of the judge, at least fifteen days before the return thereof, and upon those living out of the county, or whose residence may be unknown, either personally fifteen days previously, or by publishing the same in the royal gazette at least four weeks before the return thereof. The citation to be in the form in the schedule.

Citations on final settlement, to whom directed.

36. It shall not be necessary to serve any citation preparatory to the final settlement of an estate upon any creditor whose debt shall have been paid, nor upon any legatee or next of kin, unless the judge of probate shall order such service and shall in such order name the parties to be so cited.

Who may serve citation; service how verified; expense, how borne.

37. Any literate person may serve such citation, and an affidavit in writing of the service having been regularly made, by the person serving the same, taken before the judge or registrar or any justice of the peace, and filed in the registrar's office, and specifying the time and place of service, shall be sufficient; the expense of which service shall be borne by the party at whose instance the same was granted, or paid out of the estate, as the judge may direct.

All persons interested may contest the final settlement.

38. Any person interested in the estate of the deceased may attend the settlement of such account and contest the same, and may obtain from the judge process to compel the attendance of witnesses.

Executors, &c., to produce vouchers; may be examined upon oath; sums under forty shillings how vouched.

39. On making his account, every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges and expenses; and such executor or administrator may be examined upon oath by a master under an order of the court or by the judge of probate, touching any property or effects of the deceased which have come to his hands or knowledge, and the disposition thereof, and such executor or administrator may be allowed any item of expenditure not exceeding forty shillings, for which no voucher is produced, if such expenditure be supported by his own oath positively to the fact

of payment, specifying when and to whom the same was paid, and such oath being uncontradicted. CHAP. 130.

40. It shall not be necessary in any case for a party to employ a proctor or advocate in the court of probate, but every party may prepare and file his own papers, and advocate his own cause therein. Parties may file papers and advocate their own causes.

41. The testimony adduced before any judge of probate in relation to the proof of any will, or in any controversy before him, shall be reduced to writing and filed. Testimony to prove a will or touching a controversy to be in writing and filed.

42. When any will shall be offered for probate, and the witnesses live out of the province, or more than thirty miles distant, or by reason of age or sickness are unable to appear and give evidence in court, the deposition of such witnesses in writing, taken before any person duly authorized by the judge of probate, shall have the same force and effect as if such witnesses were present and testified in open court. Wills, how proved when witness distant, absent or sick.

43. Any hearing may be adjourned from time to time as shall be necessary, and the judge may appoint one or more auditors to examine the accounts before him and to make report thereon under oath, subject to his confirmation, and may make a reasonable allowance to such auditors, to be paid out of the estate. Hearings may be adjourned; auditors appointed.

44. The final settlement of the account and the allowance thereof by the judge, or upon appeal, shall be conclusive evidence against all creditors, legatees, next of kin of the deceased, and all persons in any way interested in the estate upon whom the citation shall have been served, either personally, or by publication as herein directed, of the following facts: Final settlement and allowance of account, of what facts it shall be conclusive evidence.

First.—That the charges made in such account for monies paid to creditors, to legatees, to the next of kin, and for necessary expenses, are correct.

Second.—That such executor or administrator has been charged all the interest for monies received by him and embraced in his account, for which he was legally accountable.

Third.—That the monies stated in such account as collected, were all that were collectable on the debts stated in such accounts at the time of the settlement thereof.

45. The judge shall tax and award such costs as are allowed by law, to be paid by the party against whom the decision may be made in any matter contested before the court, and if against the executor or administrator, to be paid out of his own estate or out of the estate of the deceased, as may be just and proper, which taxation and order shall have the like effect as a judgment in a court of record, and execution may be issued by the judge in the form in the schedule. Any such taxation or order may be reviewed by the supreme court, or by any judge at chambers, upon notice given to the party in whose favor the Costs, how allowed, taxed and recovered; review of taxation provided.

**CHAP. 130.** taxation and order may be made, without any appeal being entered and perfected, and such order made therein as to such court or judge shall seem just and proper.

Value of estates as to fees, how estimated in the first instance.

46. The value of an estate in reference to the fees payable thereon shall be ascertained in the first instance by the oath of the administrator or executor to his belief of the value thereof, to be regulated however eventually, by the actual amount.

Appeals to supreme court provided; time and manner of appeal; bond when to be filed.

47. Any person may appeal from any order, sentence, decree, or denial of the judge of probate, to the supreme court at its next sitting in the same county, or directly to the supreme court in Halifax, whenever the supreme court shall meet in Halifax, previously to the sitting in the county from whence such appeal is made, which courts shall have power to confirm, alter or reverse the same, and the appellant shall, within thirty days from the making of such order, sentence, decree or denial, enter his appeal, and file in the registry of the court of probate a statement of the grounds on which the appeal is sought; and also, within ten days thereafter, shall file a bond to the judge, with two sureties to be approved by him, in the penal sum of sixty pounds, conditioned for the payment of such costs as may be awarded against him upon such appeal, and such appeal, when so perfected, shall be a stay of proceedings.

Cause may be remitted.

48. In case it shall appear that the ends of justice will be promoted thereby, the appeal court may remit the cause to the probate court for a further investigation of facts, or more perfect consideration, with such instructions and upon such terms as may be deemed advisable.

Hearing of appeal.

49. When an appeal shall have been duly perfected, the appellant may cause the same to be heard before any two judges of the supreme court, at chambers, upon a *rule nisi* there to be obtained. If their decision shall confirm the decision appealed from, the same shall be final. If the judgment appealed from be reversed or altered, then, upon the motion of any party who may be dissatisfied, such cause may be entered and argued before the judges in term, as heretofore.

If judgment confirmed.

If reversed.

Entering the appeal.

50. In case the appellant, after fourteen days' notice to be given him by the respondent requiring him to enter the appeal for argument at chambers, shall neglect so to do, then the respondent shall be entitled to enter the same, and shall also be entitled to a *rule nisi*, to confirm the decision of the judge of probate.

Judge to transmit appeal, copies of papers, &c. to the court of appeal.

51. Upon the appeal being perfected, and the fees for making the copies hereafter mentioned being paid, the judge of probate shall immediately transmit to the court in which the appeal is to be heard and determined, a copy of the appeal, and of all such papers, documents and testimony, as shall be ordered by the court, or any judge thereof at chambers, on the subject of the appeal, with a statement of



the decision made by him, certified under his hand or that of the registrar. CHAP. 130.

52. If upon the appeal having been perfected, and the fees allowed in the previous section tendered, the judge of probate shall neglect to transmit the appeal and papers connected therewith to the court wherein the appeal is to be heard and determined, on due proof thereof the court may proceed to enforce the return by attachment as for a contempt. Court of appeal may enforce return on neglect of judge.

53. The supreme court, or any judge at chambers, upon special cause shewn at any time within six months after the time limited for entering and perfecting an appeal, may allow an appeal upon such terms as may seem just, in which case the same proceedings shall be had as if the appeal had been originally entered in the court of probate. On special cause shown appeals may be allowed within six months after the ordinary time has elapsed.

54. The court in which the appeal is heard may direct the costs thereof to be paid personally by the parties against whom such costs shall be awarded, or out of the estate which may be the subject of appeal. The payment of the costs may be enforced against the appellant by execution or suit on the bond, and against other parties by execution; but no such suit on the bond shall be commenced without the order of the court of appeal or a judge thereof. Costs may be allowed by the court of appeal, and execution may issue; bonds how and when to be prosecuted.

55. The court of appeal when any matter of fact shall arise, may, if they think fit, order a feigned issue to be made up, and prescribe the manner of making the same, and direct the county in which the same shall be tried; and shall have power to grant new trials thereof, and to order by whom, and in what manner the costs attending the determination of the issue shall be paid: the final determination of such issue shall be conclusive as to the facts therein controverted. Feigned issues may be ordered.

56. Any executor knowing of his being named as such, and neglecting without sufficient reason to cause the will to be proved and recorded in the probate court of the proper county, or to present such will and declare his refusal of the executorship, shall forfeit after the lapse of the first month, five pounds for every month he shall neglect his duty therein; which may be recovered to his own use by any person having an interest in the estate of the deceased, in an action of debt. Forfeiture for executor's neglect to prove a will.

57. Upon the refusal of the executor to accept the trust, the judge of probate shall commit administration of the estate with the will annexed to those who would have been entitled to the administration thereof if the deceased had died intestate. Administration with the will annexed may be granted where executor refuses to act.

58. The supreme court or court of probate may, if they shall think fit, upon summary application and upon due proof that the executor is wasting the estate, order the executor to give security for the performance of his duty: An executor may be ordered to give bonds upon a complaint of waste.

## CHAP. 130.

and, if he shall not obey such order, shall cancel his authority; and the court of probate shall thereupon appoint another executor who shall have full authority to proceed with the settlement of the estate.

Administration, to whom granted, and in what order.

59. Administration of an intestate estate shall be granted to some one or more of the persons hereinafter mentioned, and they shall respectively be entitled thereto in the following order:

First.—The widow or next of kin, or both, as the judge of probate shall think fit; and if they do not voluntarily, either take or renounce administration, they shall, if resident within the county, be cited by the judge for that purpose.

Secondly.—If the persons so entitled shall fail without sufficient cause, to take out administration, within thirty days after the decease of the intestate, the judge of probate shall commit it to one or more of the principal creditors, if competent and willing to undertake the trust, or to any other person on the application of one or more of the creditors duly proved to be such, as he shall think fit.

Thirdly.—If the deceased were a married woman, administration of her estate shall be granted to her husband, if willing to undertake the same, unless she shall by force of a marriage settlement, or other lawful power, have made some testamentary disposition of her separate estate, or some other disposition which shall render it necessary or proper to appoint some other person to administer her estate.

Judge may associate another in administration with the next of kin.

60. In case such of the next of kin as shall be considered by the judge best qualified to administer in any estate shall desire it, the judge may associate with him in the administration, such person as he may think fit and proper for that purpose.

An administrator of a person dying out of the province applying for administration within it, to be preferred.

61. When administration of the estate of any person dying out of the province shall have been granted in the place where the deceased was last domiciled out of the province, and the person to whom the same was granted shall apply to have administration of such part of the estate as may be within the province, he shall be preferably entitled thereto, and the administration to him granted by the judge of probate shall supersede any other administration thereof.

A previous executor, &c., may be cited by his successor to account, &c.

62. When the authority of an executor or administrator shall cease he may be cited to account before a judge of probate, at the instance of the person succeeding to the administration of the estate.

Administrator to give bonds.

63. Every administrator shall, before entering on the execution of his trust, give bond with two sureties to be approved of by the judge, in such sum as he shall order, and in the form in the annexed schedule.

Administrator may be required to enter into new bond.

64. The judge of probate, may, if he shall think fit, on summary application and due proof that any bondsman on any administration bond has died, or become insolvent,

order the administrator to enter into a new bond with two sureties, to be approved by the judge, in such sum as he shall order; and if the administrator shall not obey such order, may cancel his authority, and thereupon proceed to appoint a new administrator in the same manner as if such administrator were deceased.

65. The bond to be taken on such new administration, shall be as near as may be in the form of the administration bond, making the necessary alterations.

Bond to be in form now used.

66. The executor or administrator to whom letters testamentary, or letters of administration shall have been granted, shall within three months thereafter, unless the court on petition allow further time therefor, exhibit and file, in the registrar's office upon oath, a full and true inventory of the real and personal estate of the deceased, which shall have come to his possession or knowledge.

Inventory to be filed within three months.

67. If any real or personal estate of the deceased shall come to the possession or knowledge of the executor or administrator after he shall have filed such inventory, he shall within a reasonable time thereafter, file in the registrar's office a further inventory of the same upon oath.

Further inventories may be filed.

68. Any executor or administrator neglecting to file such inventory after having been duly cited to file the same, shall forfeit five pounds for each month's neglect, to be recovered by any person having an interest in the estate of the deceased, in an action of debt.

Fine for neglecting to file inventory, how and by whom recoverable.

69. In making such inventory, the following articles shall be omitted, and shall not be considered as assets, nor be administered as such, notwithstanding the estate of the deceased should be insolvent, viz:

Articles to be omitted from inventory.

First.—All the paraphernalia and articles of apparel or ornament of the widow, according to the degree and estate of her husband, and also the apparel of the minor children.

Secondly.—The wearing apparel of the deceased not exceeding ten pounds in value, which shall be distributed at the discretion of the executor or administrator, among the family of the deceased.

Thirdly.—Such provisions and other articles as shall be necessary for the reasonable sustenance of the widow, if any, and also of the family of the deceased, for ninety days after his death.

70. The judge on granting letters of administration, or letters testamentary, and as often afterwards as may become necessary or advisable, shall, by a warrant of appraisement, appoint two or more disinterested persons to estimate and appraise all the real and personal estate of the testator or intestate; and such appraisers shall be entitled to receive a reasonable compensation for their services for the time they may be actually employed, not exceeding ten shillings for each person per day.

Warrants of appraisement, when and how issued; appraisers' fees.

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When property in different places, there may be two or more inventories; warrant to be filed with the inventory.

Appraiser's oath, before whom to be sworn; certificate to be on the warrant.

Executors, &c., to advertise in the royal gazette; accounts to be attested according to form; cases of informal attestation provided against.

Executor, &c., a creditor to file account one month before distribution.

Naming a debt or executor shall not extinguish a debt.

Executor, &c., after eighteen months to pay all debts and make distribution.

71. When appraisers are so appointed, the inventory shall be made by the executor or administrator with the aid of such appraisers; and when property shall be in different and distinct places, two or more inventories may be made; and every such warrant of appraisement shall be returned and filed in the registry of probate with the inventory.

72. Before proceeding to make the appraisement, the appraisers shall be sworn by the judge or registrar, or a justice of the peace, truly and impartially to appraise the property which may be exhibited to them according to the best of their knowledge and ability; the taking of the oath shall be certified on the warrant of appraisement by the person administering the same.

73. Every executor or administrator, previous to the payment of debts or distribution of the estate of the deceased, shall, by advertisement in the royal gazette newspaper, in all cases where the estate shall be under two hundred pounds for one month, and in other cases for six months, call on all persons who have any demands upon the estate of the deceased, to exhibit such demands within one year from the date of the advertisement,—all which demands when exhibited shall be attested to by the party, or in his absence from the province by his agent, before the judge or registrar or a justice of the peace, and the affidavit shall be in the form in the annexed schedule, but no account shall be rejected by a judge in his final decree for any mere informality in the same, or the attestation thereof, unless he shall be satisfied that the party claiming to be a creditor shall have had notice of such informality.

74. When the executor or administrator shall be a creditor of the estate, he shall file in the office of the registrar at least one month before the distribution of the estate, a true and correct account of all dealings between the deceased and himself, verified by affidavit in the form in the annexed schedule.

75. The naming of any person executor in a will shall not operate as a discharge of any claim which the testator had against him, but such claim shall be included as part of the estate of the deceased in the inventory, and such executor shall be liable for the same as for so much money assets of the estate in his hands at the time when such debt or demand shall be due, and shall apply and distribute the same as part of the personal estate of the testator.

76. Every executor or administrator, at the expiration of eighteen months from the date of the letters testamentary or letters of administration, advertisement having been made as hereinbefore prescribed, shall pay all such legal and just claims as shall then be exhibited, so far as the estate of the deceased in his hands will enable him; and shall make such distribution of the surplus as directed by the will of the deceased or by this chapter.

77. The judge of probate on the application, after eighteen months from the date of the letters of administration or probate, of any party interested as a creditor, legatee, or next of kin, or as surety on the administration bond, may cite the executor or administrator to render an account, and to proceed to have the same settled according to law; and on the settlement of any administrator's or executor's account, the judge of probate may proceed to adjust the claims of creditors, subject to appeal, as in other cases. The costs of the proceedings on citation to render an account shall not be allowed against the executor or administrator, unless the party at whose instance such proceedings shall have been had, shall first have given ten days notice to such executor or administrator, requiring him to render such account.

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Executor or administrator may be cited to account.

78. After eighteen months from the date of letters of administration, any executor or administrator may cite a co-administrator, or co-executor to account before the judge; and thereupon the judge may compel the party cited to proceed to the settlement of his account, as between him and the party at whose instance he was cited, or may order all the administrators or executors to proceed to the settlement of their accounts as prescribed in the thirty-fifth section.

Executor or administrator may cite his co-executor or co-administrator to account.

79. In the settlement of the accounts of executors or administrators, or in any matter pertaining thereto, the court of probate shall have the same power which was enjoyed by the court of chancery.

In settlement of accounts, court of probate to have same power as chancery.

80. The judge of probate may order the surplus assets remaining after the settlement of an executor's or administrator's account to be distributed among the parties entitled thereto.

Distribution of surplus assets.

81. The judge of probate, may, on summary application, if he shall think it for the interest of the estate so to do, order any money in the hands of the executor or administrator to be paid into any chartered bank in this province to the credit of the estate; and when money shall be so paid, the bank shall not permit the same to be withdrawn without the order of the court of probate.

Judge may order money to be paid by executor or administrator into a bank.

82. If the deceased at the time of his death, were liable to perform any contract for the sale and conveyance of any real or personal estate, the judge shall have power to declare the administrator trustee thereof, so far as may be necessary for performing such contract; and thereupon such administrator shall have power to execute the necessary conveyances for the performance thereof, and shall hold the purchase money, subject to the same rules of descent and distribution, as if the conveyance had been made and the consideration received in the life time of the deceased.

Administrator may be required to convey lands when intestate has contracted for the sale.

83. Any executor or administrator may make oath before the judge of probate who has granted administration of the

Estates, when and how declared insol-

**CHAP. 130.** estate, that he believes the same to be insolvent, and the judge may, if he shall think fit, by an order for that purpose, declare the estate insolvent, and the executor may plead such order in bar of any legal proceedings instituted against such executor or administrator for any cause of action accruing in right of the deceased, and judgment shall thereupon be given in favor of such executor or administrator. On the petition of any creditor or person interested in the insolvent estate, the judge of probate may proceed to adjust the claims of all parties interested therein, and to settle the estate; and where the judge shall decide against any creditor in respect of any controverted claims, the creditor may appeal to the supreme court in like manner as by this chapter is provided in respect to appeals from other decisions of the judge of probate.

vent; order of insolvency may be pleaded; power of judge to adjust claims on petition; appeals in such cases.

Order of distribution; preferential claims, &c.

84. In the settlement and distribution of the insolvent estate of any deceased person, the whole of the real and personal estate remaining after payment of the funeral charges, the necessary medical and other attendance on him during his last illness, and the expenses attendant on the settlement of the estate, shall be distributed among those creditors who shall have rendered their accounts duly attested, within the period before prescribed in the following manner:

First.—Domestic and farm servants and rent, to be paid in full when not more than a year's wages or rent is due, the excess to be on the same footing as other claims.

Secondly.—All other creditors to be paid in proportion to the amount of their respective debts.

Mortgages and judgments and other claims when not affected by the last section.

85. Nothing in the preceding section contained shall affect debts due on mortgages of real or personal estate, or on judgments registered in the lifetime of the deceased person, so far as the value of the property so mortgaged or lands bound by such judgment shall extend and no more, leaving the mortgagee or judgment creditor at liberty to claim as any other creditor for any balance that may remain due to him after the value of such property or lands shall have been realized; or as affecting the widow's dower in real estate, or to prevent any creditor who may not have exhibited his attested account as before prescribed, from recovering his demands against the estate of any deceased person to such amount as may remain in the hands of the executor or administrator for distribution after the settlement of the estate; nor to affect mortgages duly executed and recorded, and judgments docketed and duly recorded before the nineteenth day of March, one thousand eight hundred and forty-two.

When sale of divisible estate cannot be made without prejudice, judge may order the whole

86. In cases where the estate of a testator or intestate is divisible amongst the next of kin, being collateral heirs, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole

estate, the judge of probate may order the whole, or, after the division of the residue, the whole of a particular portion, to the eldest of the heirs that may be in this province, and on his refusal, to the other heirs so being in the province, successively, in the order of their ages, such heir paying to the other heirs their shares of the value of such estate, or giving satisfactory security for the payment thereof, with six per cent. interest thereon.

87. Such order shall be made, and guardians appointed, and other proceedings had, as prescribed by the sixth section. The relative ages of the heirs shall be ascertained by the affidavit of the applicant as to the facts, according to his belief.

88. If any trustee or executor, empowered by any last will and testament to sell and convey lands of the testator, shall have heretofore made and entered into any contract for sale thereof, but shall have died before the full payment of the purchase money, and without having executed a conveyance, and there be no executor or administrator of such testator, the administrator *de bonis non* of the testator, may, upon receipt and payment of the purchase money, execute a conveyance of such lands to the purchaser or any other person entitled thereto.

89. If such trustee or executor shall have brought an action on such contract or agreement against the purchaser, and obtained a judgment therein, the administrator *de bonis non* of the testator, may take proceedings to recover the amount due on such judgment under the 132nd section of chapter 134, part first; and shall, for that purpose, be held to represent the said trustee or executor.

90. Where the executor or administrator shall have obtained a license for the sale of the real estate of the deceased, he shall give public notice of the time and place thereof by advertising the same in the royal gazette at Halifax, and by posting up notices thereof in the township or settlement wherein the lands lie, for thirty days previous thereto, and shall proceed to sell the same by public auction at the time and place named in the advertisement.

91. Where the executor at the time appointed for the sale shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn it for any time not exceeding thirty days, and shall give notice of such adjourned sale by posting up notices thereof.

92. The affidavit of the executor or administrator, made before a judge or registrar of probate, and filed in the registry within one year after the sale, shall be admitted as evidence of the time, place and manner of the advertisement and notices.

93. All deeds of conveyance, mortgages or leases, made pursuant to the license, shall have the same effect as if made by the deceased.

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to one heir, on his giving security, &c.

Order, how made, &c.

Ages of heirs, how ascertained.

Administrator de bonis non, may execute a conveyance agreed upon by deceased executors, &c.

Administrator de bonis non, may recover judgment obtained by deceased executor, &c.

Notice of sale of real estate by license, how given.

Executor may adjourn sale if advisable; notice of adjournment to be given.

Affidavit of executor, &c., evidence of sale.

Deeds, &c., to be as effectual as if made by deceased.

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Desperate  
debts.

94. An executor or administrator, at any time after the lapse of twelve months from the issuing of probate or letters of administration, may file an affidavit in the registry of the court, with a schedule of desperate debts attached, containing the particulars of dates, names, and amounts, setting forth therein that such debts are, as he believes, desperate, and that he has been unable to collect the same; and thereupon the judge of probate may make an order for the equitable division of the same among the creditors, next of kin, or other parties entitled, or may appoint auditors for that purpose, whose judgment shall be subject to confirmation by the court; and on the division which may be ordered by the court, the parties to whom the debts are allotted shall have all the rights and remedies for the recovery in their own names of the debts assigned, which such executors or administrators possessed.

Conveyance un-  
der chapter.

95. Every conveyance made under the provisions of this chapter, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had.

Commissions to  
executors, &c.,  
how adjusted.

96. In the settlement of any estate, the executors or administrators may be allowed over and above all such actual and necessary expenses as may appear just and reasonable, a commission not exceeding five per cent. on the amount received by them; and the court further may apportion such commission among the executors or administrators of any estate as may appear just and proper, according to the labor bestowed, or responsibility incurred by them respectively.

A specific lega-  
cy as compensa-  
tion to an exe-  
cutor, unless re-  
nounced, shall  
be in lieu of  
commission.

97. When any provision shall be made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services in lieu of any commission or his share thereof, unless such executor by declaration under his hand filed in the court of probate, shall renounce all claim to such specific legacy.

Surrogate, ap-  
pointment,  
powers of, &c.

98. A judge of probate shall have power to appoint a surrogate during any temporary absence, subject to the approval of the governor in council; and such surrogate, during such absence, shall possess all the powers and discharge the duties of the judge of probate.

Judge may au-  
thorize persons  
to administer  
oath in certain  
cases.

99. Where any oath prescribed by this chapter is required to be taken before a judge or registrar, and the party to make such oath lives out of the province, or more than thirty miles distant, or by reason of age or sickness is unable to appear before such judge or registrar, the oath of such party taken in writing before any person duly authorized by such judge, shall have the same effect as if taken before the judge or registrar.

Forms to be ob-  
served.

100. The forms in the annexed schedule shall be observed as near as may be in the court of probate.



## SCHEDULE.

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*Form of affidavit to be annexed to any account or claim rendered by a creditor to an executor or administrator.*

A. B. of ———, maketh oath and saith, that the foregoing paper writing doth contain a true and correct account of his demand against the estate of ———, deceased, and that all the credits to which the deceased was honestly and justly entitled, so far as deponent believes, have been given on said account; and that the balance of ——— is justly and truly owing to deponent.

Sworn before me at ———, this ——— day of ———.

*Citation.*

Nova Scotia,

To A. B. of ———, in the county of ———,

Greeting:

Whereas, A. B., executor [*or administrator, or other person interested as the case may be,*] hath prayed that you may appear and [*here state in short forms the object,*] you are therefore required to appear before me at a court of probate, to be held at ———, within and for the said county, on the ——— day of ——— next, to [*here state in short forms the object.*]

Given under my hand and seal of the said court, this ——— day of ———, 18—.

C. D., judge of probate.

E. F., registrar of probate.

*Attachment.*

Probate court.

County of ———, ss.

To the sheriff of ———.

Greeting:

You are hereby required to attach by his body, if found within your bailiwick, and him safely keep, so that you may have his body before me at my office in ———, on the ——— day of ——— next coming, to answer concerning a contempt lately by him committed in neglecting to appear before me pursuant to a subpoena issued in that behalf, [*or in case it may be for refusing to testify after appearing, for refusing to testify before me*] in a certain matter lately pending before me as a judge of probate for said county, and have then there this writ.

Given under my hand this ——— day of ———, 18—.

C. D., judge of probate.

E. F., registrar.

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*Execution.*

Probate court.

County of ———, ss.

To the sheriff of the said county of ———.

Greeting:

You are hereby required [*or in case it be an alias execution as before,*] to levy of the goods and chattels of ———, within your bailiwick, the sum of ———, for costs awarded in favor of ———, in a certain proceeding lately had before me as judge of probate in and for the said county, and have that money before me at my office in ———, within thirty days from the date hereof, to be rendered to the said ———, and for want of such goods and chattels whereon to levy you will take the body of the said ———, and him safely keep until the said sum and your costs of levying this execution be paid, and make return hereof within thirty days from the date hereof.

Given under my hand this ——— day of ———, 18—.

C. D., judge of probate.

E. F., registrar.

*Warrant of appraisement.*

Nova Scotia, county of ———, ss.

To A. B., &amp;c.

Greeting:

You are hereby appointed and empowered, to take an inventory of all the real estate, goods, chattels and credits, of which ——— late of ———, in the county aforesaid died seised or possessed within the province, and according to your best skill and judgment truly to appraise the same, which, when completed, you are to deliver to the executor or administrator of the said deceased, to be returned together with this warrant, in three months from the date hereof.

Given under my hand this ——— day of ———, 18—.

S. S.

C. D., judge of probate.

The above named appraisers personally appeared before me and made oath that they would faithfully and impartially perform the services to which they are appointed by the above warrant.

*Bond on appeal.*

(The bond to be taken for ——— pounds, payable to the judge of probate in the same manner as administration bonds, and conditioned as follows:)

Whereas the above bounden ——— hath appealed from the decision of the judge of probate, made in a certain matter now pending before the said judge. Now the condition of this obligation is such that if the said ——— shall

well and truly pay such costs arising from such appeal, and CHAP. 139.  
to such person as the court of appeal may order and direct,  
then this obligation to be void, otherwise to remain in full  
force.

Signed, sealed and delivered }  
in the presence of ———. }

*Administration bond.*

Know all men by these presents, that we, A. B., C. D.,  
and E. F., all of ———, in the county of ———, are held  
and firmly bound unto ———, judge of probate for the  
county of ———, in the sum of ———, to be paid to him  
or his successors in office, for which payment we bind our-  
selves, our and every of our heirs, executors and adminis-  
trators, jointly and severally by these presents, sealed with  
our seals, dated this ——— day of ———, 18—.

The condition of this obligation is such, that if the above  
bounden A. B., administrator of the goods and effects of  
———, deceased, do make a true inventory of the goods  
and effects of the deceased which have or shall come to the  
possession or knowledge of the said A. B., and the same do  
exhibit into the registry of the court of probate for the  
county of ———, on or before the ——— day of ——— next  
ensuing; and the same goods and effects, and all other the  
goods and effects of the deceased, at the time of his death  
or which at any time after shall come to the possession or  
knowledge of the said A. B., do administer according to  
law, and further do make a true account of his adminis-  
tration, on or before the ——— day of ———, in the year of  
our Lord one thousand eight hundred and ———; and all  
the residue of the said goods and effects which shall be  
found remaining upon the said administrator's account, the  
same being first examined and allowed by the judge of the  
said court, shall deliver and pay unto such persons respec-  
tively as the judge by his decree shall appoint; and if the  
said A. B., administrator, shall perform all orders and decrees  
made by the court, touching the goods and effects of the  
deceased; and if it shall hereafter appear that any last will  
was made by the deceased, and the same be proved and  
allowed by the court, then if the above bounden A. B.,  
being thereunto required, do deliver the said letters of  
administration to the said judge, or his successor in office,  
then this obligation to be void.

Signed, sealed, and delivered }  
in the presence of ———. }

*Bond on sale of real estate.*

Know all men by these presents that we [as in adminis-  
tration bond.]

Whereas, license has been granted by the above named

**CHAP. 131.** judge of probate to the above bounden executor of the last will and testament [*or administrator of all and singular the goods, chattels, credits and estate, as the case may be,*] of \_\_\_\_\_, deceased, to sell [*or lease or mortgage, as the case may be,*] the real estate of the said deceased for payment of his debts and legacies. Now the condition of this obligation is such, that if the said A. B., executor [*or administrator*] as aforesaid, shall faithfully apply all monies arising from the sale [*lease or mortgage*] of any of the real estate of the said deceased, or otherwise from the rents and profits thereof, in payment of the debts or legacies of the deceased, agreeably to law, and shall truly account for the same in his administration account, before the court of probate for the county of \_\_\_\_\_ or other court of competent authority in that behalf; and shall pay any surplus monies which may be found remaining in his hands upon such accounting unto such person as the court of probate for the said county of \_\_\_\_\_ or other court of competent authority in that behalf shall by decree appoint, then this obligation to be void.

Signed, sealed, and delivered }  
in the presence of \_\_\_\_\_ }

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## CHAPTER 131.

### OF THE JURISDICTION OF JUSTICES OF THE PEACE IN CIVIL CASES.

Jurisdiction of a single justice, £3; of two justices, £10.

1. In actions for debt, where the whole dealing or cause of action does not exceed three pounds, one justice, and where the whole dealing or cause of action exceeds three pounds and does not exceed ten pounds, two justices of the county wherein the defendant resides or wherein the debt was contracted, shall have jurisdiction; and they shall have power to sue executors or administrators.

Suit, how conducted.

2. The suit may be conducted and the amount collected upon the same rules in a summary form, and subject to a like defence as if the suit were brought in the supreme court.

Jury in cases over £5; account or note to be filed.

3. When the whole cause of action exceeds five pounds and does not exceed ten pounds, either party may obtain a jury by applying to the justices therefor at least two days before the return day of the process. No justice shall issue any writ of summons or *capias* unless the party applying therefor shall file a statement in writing containing the particulars of his cause of action, or the promissory note or other instrument on which he is suing, a copy of which

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note, or other instrument shall be furnished to the defendant by the justice, if required. Where final judgment shall have passed thereon, the statement, note, or other instrument shall be retained by the justice, and in cases of appeal shall be transmitted with the other papers in the cause.

4. A statement in writing of the particulars of the plaintiff's claim, shewing both debts and credits, shall be annexed to the original summons, and a copy thereof to be prepared by the justice issuing the writ shall be annexed to the copy of such summons, and served therewith; and in case of the defendant not appearing, the plaintiff shall be entitled to a judgment on default for the amount of his particulars.

5. All writs shall be directed to, and be served and executed by, a constable of the county wherein the writ is made returnable.

6. A copy of the summons or *capias* shall be delivered to the defendant at least five days before the return day thereof, and the constable serving the same shall, if required, explain such writ to the defendant.

7. The constable shall make return of such writ, with his doings thereon, on or before the return day, and if required by the justice, shall make an affidavit of the manner in which he has served the same.

8. When the defendant does not personally appear, the justice shall not proceed in the cause unless the constable shall make an affidavit "that he has delivered a copy of such writ with a statement in writing of the plaintiff's particulars annexed, to the defendant," and if by the defendant at the time of service required so to do, "that he explained the contents thereof to the defendant."

9. No person shall be arrested for a debt under twenty shillings nor for any debt less than five pounds, unless the affidavit contain an allegation that the plaintiff verily believes that unless such writ be granted the debt will be lost.

10. No female or minor shall be arrested on a writ of *capias* issued by a justice.

11. Any person arrested on any such writ shall be admitted to bail by the officer in the same manner as in other cases of arrest.

12. All causes shall be tried between the hours of ten o'clock in the forenoon and six o'clock in the afternoon of the day on which process is made returnable.

13. When, from the number of causes to be tried, a cause cannot be heard and determined within the time specified in the preceding section, or when sufficient cause on affidavit is shewn, the justice may continue the cause till some further time, not exceeding eight days, of which continuance he shall notify the parties, plaintiff and defendant.

14. Where a jury has been demanded, the justice shall issue a *venire*, directed to a constable not being of kin

Particulars to be annexed to summons.

Judgment for default of appearance.

Writs to be directed to and served by constables.

A copy of summons to be delivered to defendant five days before the return.

Return of writ, how made by constable.

Affidavit of service required where defendant does not appear.

No arrest by *capias* for a debt under twenty shillings, nor for a debt less than £5 unless under a special affidavit.

Females or minors not to be arrested on *capias*.

Persons arrested to be admitted to bail.

Causes to be tried between 10 a. m. and 6 p. m.

Causes may be continued by justices if necessary.

Jury how summoned.

**CHAP. 131.** to either party, or interested in the suit, commanding him to summon a jury of three persons qualified to act as petit jurors from the township or place wherein the action is to be tried, to appear at the time and place therein to be specified.

Fine for juror not attending.

15. Any juror so summoned, who shall neglect to appear and shall not show to the justices some sufficient excuse therefor, shall forfeit five shillings, to be levied by warrant of distress upon his goods; such warrant to be issued by the justices, upon the oath of the officer that he had summoned the juror at least twenty-four hours before the time appointed for his appearance.

Jurors, how sworn; proceedings until verdict.

16. The jury shall be sworn by one of the justices in open court, "well and truly to try the cause according to the evidence;" and the evidence of the witnesses produced shall be made and delivered in the hearing and presence of the justices and jury so impanelled; and having heard the directions of the justices, the jury shall, if they require it, retire to some convenient room, under the charge of some constable, or in case no constable shall be in attendance, such other person as shall by such justices be appointed for that purpose, who shall be sworn "to keep such jury together without meat or drink, and not to suffer any one to speak to them, nor to speak to them himself, without leave of the justices;" and when agreed, the jury shall return their verdict, whereupon judgment shall be given accordingly.

Challenges may be made; jury how filled up.

17. Either party may challenge for cause any of the jurors, and if the challenge be allowed, or any of the jurors do not appear, the justices shall direct the constables forthwith to summon any person duly qualified and not liable to be challenged, to fill up the jury.

Proof to be on oath where action not confessed.

18. In all cases under this chapter where the plaintiff's demand or cause of action is not confessed by the defendant in person, or in writing under his hand, the same shall be established, whether the defendant appear or not, on the oath of one witness.

Plaintiff's proof confined to his statement filed.

19. The plaintiff shall not be permitted to give evidence of any thing not contained in the statement filed by him previous to the issue of the writ.

Defendant to file or serve set-off two days before return of writ.

20. A defendant who intends to rely upon a set off shall file the same with the justice, or serve it on the opposite party, at least two days before the return day of the summons; and he shall be precluded from giving in evidence by way of set-off anything not contained in the statement. The justice, if required, shall furnish the plaintiff with a copy thereof.

If defendant prove a set off under £10 and less, or equal to a above plaintiff's demand as pro-

21. Whenever the defendant shall establish a set-off equal to or exceeding the demand proved by the plaintiff, or any other sufficient defence thereto, the defendant shall have judgment; if the set-off be less than the plaintiff's demand,

the plaintiff shall have judgment for the residue only with costs; and if the set-off exceeds the plaintiff's demand as proved, and the whole amount of such set-off do not exceed ten pounds, the defendant shall in that case have judgment for such excess. CHAP. 131.

ved, there shall be judgment accordingly.

22. When it shall appear that the defendant had tendered the amount due before suit brought, such defendant may before the trial pay the same into the hands of the justice, and shall thereupon be entitled to his costs, which shall be deducted by the justice out of the money so paid into his hands. If defendant tender the amount due before suit, and pay in the same, he shall have judgment with costs.

23. The party succeeding shall in all cases be entitled to his costs. The successful party to have costs.

24. Where judgment has been awarded, the justice or justices before whom the suit was tried, and in case of the death, resignation, or removal of such justice or justices, any other justice, and when such cause has been tried before two justices, in case of the death, resignation or removal, of one of them, the remaining justice shall issue execution against the goods and chattels, and for want thereof against the body of such person, for the sum awarded with costs. Execution, how issued where the justice who tried the cause is dead, absent, or has resigned; where one of the justices dead, &c.

25. All executions shall be made returnable in thirty days. Return of executions.

26. No execution shall issue after the lapse of one year from the time of giving judgment, unless it shall be made to appear by affidavit that a balance is still due thereon, and that due diligence has been used to levy the same, in which case further executions may issue for the balance at any time within four years after the rendering of the judgment. Execution not to issue after one year from judgment, except in certain special cases.

27. The constable to whom the execution shall be delivered shall proceed forthwith to levy for the sum due, and shall take sufficient goods of the party against whom the execution is issued to satisfy the same, and shall cause an advertisement describing the goods taken, and specifying the time and place of the sale, to be posted up in two or more public places in the township or place wherein such sale is to be held, at least five days before the time appointed for such sale. Duty of constable in levying execution on personal property.

28. At the time and place so appointed, if the amount remain unpaid, the officer acting therein shall sell the goods at auction to the highest bidder, and shall forthwith return the execution with his doings thereon, to the justice who issued the same, and pay the debt and costs levied thereon to the plaintiff or his agent duly authorized, after deducting the fees of levy and sale, returning the surplus, if any, to the person against whom the execution issued or his agent duly authorized, or in his absence to the justice for the use of such party; and if the goods shall remain unsold for want of buyers the constable may adjourn the sale for any period not less than twenty-four hours nor more than six days, and may in such case proceed to advertise anew, and Sale, how conducted; return of execution; money to whom payable; sales may be adjourned for want of buyers; goods unsold to be returned.

**CHAP. 131.** sell the same after the return day of the execution: immediately after such sale he shall make return and payment as above specified; and whatever goods remain unsold after satisfying the execution and expenses, shall be restored.

Constables not to purchase.

29. No constable shall, directly or indirectly, purchase any goods at any sale made by him under this chapter, and every such purchase shall be absolutely void.

Constable for want of goods to commit the party, unless otherwise directed.

30. For want of goods whereon to levy, the constable, unless otherwise directed, shall commit the person against whom the same is directed to jail.

Appeal, and manner of proceeding thereon.

31. In case of an appeal the appellant, or in his absence his agent, before the appeal shall be allowed, shall make an affidavit in writing that he is dissatisfied with the judgment and feels aggrieved thereby, and that such appeal is not prosecuted solely for the purpose of delay, and shall file the same with the justice; and the party so appealing, or in his absence his agent, shall, within two days thereafter, enter into a bond with two sureties in a penalty double the amount of the judgment, with a condition that the appellant shall enter and prosecute his appeal and perform the judgment of the court, or shall, before the first day of the term of such court, pay the amount of the judgment together with all costs thereon subsequently accruing; and such justice, or if the action be before two justices then the first one applied to therein, if thereto required, shall prepare the affidavit and appeal bond; which appeal, if applied for at any time within ten days after judgment in such cause, such justice or justices shall be bound to grant, returnable to the next term of the supreme court in the county in which the trial was had; and execution if not issued when the appeal is applied for, and the appellant or his agent shall make or be ready to make the affidavit, shall be stayed; but in such case, if the defendant have given bail, his bail shall continue liable, notwithstanding his personal appearance, until they shall render him, or he shall give an appeal bond within the ten days herein prescribed.

Justice to return all papers in the cause to the prothonotary, unless by consent of parties in writing.

32. In case of appeal the justice, unless he shall receive a notice in writing signed by both parties or their agents to the contrary, shall return to the prothonotary of the supreme court before the opening of the court on the first day of the next term in the county, all papers in the cause, with a transcript of the judgment, and the affidavit and bond whereon the appeal was allowed.

Fine for constable neglecting to return writ of summons.

33. Any constable neglecting to serve or make return of a writ of summons or capias, besides being liable to an action on the case for any damage that may have been sustained, shall forfeit twenty shillings.

Fine and proceedings where constable neglects to return a writ of execution.

34. Any constable neglecting to return an execution for the space of ten days after the return day thereof, unless with the consent of the party in whose favor it was issued, or to pay over within five days the monies received thereon,



or to pay the surplus, if any, on demand, shall forfeit twenty CHAP. 131. shillings, and may also be sued in an action for money had and received; and the justices shall have jurisdiction though the sum claimed exceed ten pounds.

35. The forms shall be as in the schedule.

SCHEDULE OF FORMS.

*Summons.*

County of \_\_\_\_\_ ss.

To any of the constables of the said county:

You are hereby required to summon A. B. of \_\_\_\_\_ to appear before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon, to answer to C. D. in the sum of \_\_\_\_\_, and to make return thereof on or before the said day.

Witness \_\_\_\_\_ hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

*Capias.*

County of \_\_\_\_\_ ss.

To any of the constables of said county:

You are hereby required to take A. B. of \_\_\_\_\_, and him safely keep, so that you may have him before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon, to answer to C. D. in the sum of \_\_\_\_\_, whereof fail not, and to have there then this writ, with your doings thereon.

Witness \_\_\_\_\_ hand and seal at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 13—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

NOTE.—On the back of the capias, and copy thereof, to be endorsed the sum sworn to in words at length, as follows:

By oath for the sum of \_\_\_\_\_

E. F., J. P.

*Execution.*

County of \_\_\_\_\_ ss.

To any of the constables of the said county:

Whereas judgment hath been awarded against C. D. of \_\_\_\_\_ at the suit of A. B. for the sum of \_\_\_\_\_ and \_\_\_\_\_ more for costs. These are therefore to command you to levy from off the goods and chattels of the said C. D., such sums making together \_\_\_\_\_ by sale of such goods and chattels, after duly advertising the same, and for want thereof you are hereby required to take the body of the said C. D. and him commit to her majesty's jail, [or where there is a

CHAP. 131. *lock-up house or other place of confinement in any county nearer the residence of the party to be arrested, insert the name of it in place of the jail.*] in ———, the keeper whereof is required to take the said C. D. into his custody, and him safely keep until he pay the sum above mentioned, with your fees and jailer's fee, or that he be discharged by the said A. B. or otherwise by due course of law. Whereof fail not, and make due return of this writ with your doings thereon to ——— within ——— days. Witness ——— hand and seal the ——— day of ———, 18—.

E. F., J. P. (seal.)  
G. H., J. P. (seal.)

*Subpœna.*

County of ———, ss.

To J. K., L. M., N. O. and P. Q.

[according to the number.]

You and every of you are required to appear at ———, on the ——— day of ——— at the hour of ——— o'clock, in the ——— noon, to give evidence on the part of the [*plaintiff or defendant, as the case may be*] in a suit now depending between A. B. plaintiff, and C. D. defendant, and then and there to be tried, which you are not to omit under penalty of the law, in such cases made and provided. Dated the ——— day of ———, 18—.

E. F., J. P. (seal.)

*Subpœna ticket for each witness.*

Between { A. B., plaintiff,  
          and  
          C. D., defendant.

J. K. is required to give evidence in this suit, on the part of the [*plaintiff or defendant as the case may be*] at ———, on the ——— day of ———, at ——— o'clock, in the ——— noon. Dated the ——— day of ———, 18—.

E. F., J. P.

*Venire.*

County of ——— ss.

To any of the constables of the said county :

You are hereby required to summon three persons duly qualified to sit as jurors, who are not of kin to either of the parties, to come and be present at ———, on the ——— day of ———, at ——— o'clock, in the ——— noon, to make a jury between ———, plaintiff, and ———, defendant. Dated the ——— day of ———, 18—.

E. F. J. P. (seal.)

NOTE.—All writs of summons, *capias*, *subpœna*, and *venire* require but one seal, and the same, as well as all executions in cases before two justices, are to be prepared by the jus-

to be endorsed by the justice first applied to, who is to prepare the affidavit also. In all suits triable before two justices, the summons and *capias* must be signed by two justices, and the execution in such case to have two seals, and to be signed by the two justices that issued the mesne process and tried the cause. Writs of subpoena and venire and the subpoena ticket are to be signed by one justice only; all affidavits are to be taken before and all oaths under this chapter to be administered by one justice only; and in all suits before two justices all acts required to be done by one justice only, are to be had and done by and before the justice first applied to, who is to be the keeper of all papers in the cause, and to make return of the proceedings therein in cases of appeal. CHAP. 131.

*Affidavit to obtain a capias.*

A. B. of ———, in the county of ———, maketh oath and saith, that C. D. is justly indebted to the deponent in the sum of ——— after giving full credit, to the best of deponent's knowledge or belief, for all payments or offsets, and that the cause of action does not exceed ten pounds.

A. B.

Sworn at ———, the ——— }  
 day of ———, before me. }  
 E. F., J. P.

NOTE.—The sum sworn to must in all cases be twenty shillings at least, and if under five pounds then after the words "ten pounds" above add, "and that there is danger of losing the debt unless a *capias* is allowed the deponent."

RETURNS TO THE FOLLOWING WRITS.

*To a summons.*

The within process was duly served on the said C. D. on the ——— day of ——— by me.

O. P., constable.

If required, the following affidavit to be made by the officer serving the process:

O. P., of ——— in the county of ———, maketh oath and saith, that he did on the ——— day of ——— personally serve the defendant in the annexed process named, with a true copy thereof, and at the same time acquainted ——— with the contents thereof.

O. P.

Sworn before me at ———, }  
 the — day of ———, 18—. }  
 E. F., J. P.

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*To a capias.*

The within named defendant was arrested and served with a copy of the within process on the — day of —, and was admitted to bail by me.

O. P., constable.

*To a venire.*

I have summoned the within jurors as jurors for the trial of the within cause, namely: G. H., J. K., L. M. and N. O.

O. P., constable.

*To an execution.*

I have levied the debt and costs as within directed.

O. P., constable.

For want of goods and chattels whereon to levy, I have taken the body of the within named C. D. and committed him to jail as within directed.

O. P., constable.

I have levied the sum of —, part of the debt and costs within mentioned, the remainder not satisfied.

O. P., constable.

I could not find any goods and chattels, or the body of the said C. D.

O. P., constable.

OATHS TO BE TAKEN BY WITNESSES, JURORS AND CONSTABLES, ON TRIALS.

*Witnesses.*

The evidence you shall give to the court [*or to the court and jury*] sworn touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you God.

*Jurors.*

You shall well and truly try this cause between A. B., plaintiff, and C. D., defendant, and a true verdict give according to the evidence. So help you God.

*Constable or other person appointed to attend jury.*

You shall keep every one of the jury sworn, and now about to make up their verdict, in some convenient place without either meat or drink; you shall not suffer any person to speak to them, nor shall you speak to them yourself, except it be to ask if they are agreed on their verdict, without the leave of the court. So help you God.

*Bail bond on capias.*

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Know all men by these presents that we [names, place of residence, and profession or calling of the defendant and his bail,] are held and firmly bound unto [name of the plaintiff in the suit, adding his place of residence and profession or calling] in the sum of [twice the amount sworn to and endorsed on the capias] to be paid to the said [name of the plaintiff,] his certain attorney, executors, administrators or assigns, for which payment, we bind ourselves, and every of us by himself, our and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

The condition of the foregoing obligation is such, that if the above bounden [the defendant] shall appear before [name the justice or justices issuing the capias] on the — day of —, [insert the day appointed for the trial] to answer to the suit of the above named [name the plaintiff] in the sum of [here insert the sum sworn to,] then the above obligation to be void.

Signed, sealed and delivered, }	(seal.)
in the presence of —. }	(seal.)
	(seal.)

*Affidavit to be made by the party appealing.*

In the court before [name the justice or justices before whom the trial was had,] justices of the peace.

Between { A. B., plaintiff,  
and  
C. D., defendant.

A. B., [the party making the appeal] of —, in the county of —, the above named [plaintiff or defendant, as the case may be, or if the party for whom the appeal is made be absent, say "agent for the above named plaintiff" or defendant, as the case may be,] maketh oath and saith that he is really dissatisfied with, and feels aggrieved by, the judgment given in this cause, and that he does not appeal therefrom solely for the purpose of delay, but that justice may be done therein.

Sworn at —, the }	To be signed by the party
— day of —, }	appealing, or, in his ab-
18—.	sence, the agent.
Before me, —, J. P.	

*Bond to be given on appeal being made.*

Know all men by these presents, that we, A. B., C. D., and E. F., [names of the appellant if he be present, or, if absent, of the agent, and the sureties, with their places of residence] are held and firmly bound to G. H. [the party against whom the appeal is allowed] in the sum of [double the

CHAP. 132. *amount of the judgment, debt and costs,*] to be paid to the said G. H., his certain attorney, executors, administrators or assigns, for which payment we bind ourselves, and every of us by himself, our and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

Whereas a certain cause between the above bounden A. B. (*if the party appellant be the principal in the bond, or if he be absent then say between—name the appellant*) and the above named G. H. in which the said [*name the appellant*] was *plaintiff or defendant, as the case may be*] tried before [*name the justice or justices before whom the trial was made*] justice of the peace for the county of — on the — day of —, and judgment was given in favor of the said G. H. for the sum of —, debt and costs, and an appeal therein hath been demanded on behalf of the said [*name the party appealing*]. Now the condition of the above obligation is such that if the said [*name the appellant*] at the next sitting or term of the supreme court for the county of [*name the county in which the cause was tried*] shall duly enter and prosecute his said appeal, and shall proceed therein to final judgment, and shall abide by and fulfil the judgment of the said court to be given in such appeal, or shall previous to the first day of the sitting of such court pay the full amount of judgment in such cause, together with all costs subsequently accruing thereon, then the above obligation to be void.

Signed, sealed and delivered, in the presence of

A. B. (seal.)  
C. D. (seal.)  
E. F. (seal.)

## CHAPTER 132.

### OF BARRISTERS AND ATTORNIES.

Attornies and barristers to be admitted.

Month's notice to be posted of intention to apply for admission.

Term of service of clerkship preparatory to admission as an attorney.

1. No person shall practise as an attorney or barrister unless he shall have been duly admitted.

2. Every person intending to apply for admission as a barrister or attorney shall cause notice thereof to be posted up in the prothonotary's office at Halifax at least one month before the commencement of the term, and his admission shall be moved for in open court within the first four days thereof.

3. No person shall be admitted an attorney unless he shall have actually served under articles of clerkship, whether such articles shall be the original articles for the whole

term, or any transference thereof, or new articles for the residue of such term, for a period of five years, or if a regular graduate of any college in her majesty's dominions for the period of four years, with some practising barrister, or shall have kept terms for a portion of the time prescribed at one of the inns of court in Great Britain or Ireland, reckoning four terms for one year. CHAP. 132.

4. The term of service shall commence from the time of filing a duplicate of the articles of clerkship in the prothonotary's office in Halifax. Time from which service shall be reckoned.

5. Any student of the age of twenty-one years who shall file satisfactory certificates of his having complied with the requisites of the third section of this chapter, and of his good moral character from the barrister with whom he last served, and shall also undergo a satisfactory examination as to his qualification before a judge and two barristers to be named by the court, shall be entitled to be admitted an attorney on taking the following oath: Qualifications requisite for admission.

"I, A. B., do swear that I will truly and honestly demean myself in the practice of an attorney, solicitor, or proctor, in all and every of the courts of this province in which I shall be employed as such, according to the best of my knowledge and ability." Attorney's oath.

6. A barrister of any court in Great Britain or Ireland shall be entitled to be admitted to practise as a barrister and attorney on filing a satisfactory certificate of his being a barrister at the time of application and of his good moral character. Barristers of Great Britain or Ireland entitled to admission on filing proper certificates.

7. A barrister or attorney of any court in her majesty's colonies, and an attorney of any court in Great Britain or Ireland, on filing a satisfactory certificate of his being a barrister or attorney at the time of application and of his good moral character, and also of his having served as an articulated clerk for a term equal to that hereinbefore prescribed for articulated clerks in this province, and who shall undergo a satisfactory examination as hereinbefore provided for, shall be entitled to be admitted an attorney on taking the foregoing oath. Colonial barristers and attorneys, and attorneys of Great Britain and Ireland entitled to admission on filing proper certificate.

8. An attorney of the supreme court of one year's standing shall be entitled to be admitted a barrister, if no sufficient objection be made; but any student having regularly graduated shall be entitled to be admitted as a barrister immediately on being admitted an attorney. Barristers, when admitted.

9. No Attorney shall permit any person not an attorney, other than his articulated clerk actually serving in his office, to sue out any writ of process, or to prosecute or defend any action in his name. Attorney not to allow any other person than his articulated clerk or another attorney to sue or defend causes in his name.

10. Barristers of the supreme court shall be counsel, advocates, proctors and solicitors of the court of chancery, court of vice admiralty, court of error, court of marriage and divorce, and all courts within this province, and as such Barristers, their privileges and precedence; power of courts to control all practitioners.

**CHAP. 133.** shall be entitled to prosecute and defend all causes therein, and shall have such seniority and pre-audience therein as they are entitled to in the supreme court; but nothing herein contained shall interfere with or affect the wholesome control which the queen's courts are authorized to exert over the several practitioners therein, or to prevent such courts from suspending, silencing, dismissing or striking off the roll any barrister, advocate, attorney, solicitor or proctor for mal-practice or misconduct.

Practising barristers only to take clerks.

11. No barrister not actually practising his profession, except only the prothonotary at Halifax, being a barrister, shall take or retain any clerk.

No barrister to have more than two articleed clerks at once.

12. No barrister shall have at any one time more than two articleed clerks.

Persons who have voted at elections, or paid rates, entitled to the privileges of barristers, proctors and advocates.

13. Any of her majesty's subjects who shall have voted at any election, or paid poor and county rates, may plead and reason in any of her majesty's courts of judicature within this province, enjoying all rights and privileges therein in as full and ample a manner as these are now enjoyed by barristers, proctors and advocates.

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## TITLE XXXV.

### CHAPTER 133.

#### OF MUNICIPALITIES.

Desire to be incorporated, how testified, &c.

1. Any county may have the benefit of municipal government, and the desire of a county to be incorporated hereunder shall be ascertained and testified in manner following:

If one hundred persons, certified by two justices of the peace to be freeholders, shall present a requisition to the sheriff to that effect, he shall name a day and place for holding simultaneously a meeting in each electoral district in the county, and shall appoint a presiding officer and clerk of each district; of which meeting notice ten days previously shall be given in three of the most public places of each district, by printed handbills with a copy of the petition affixed, setting forth the object.

Meeting, votes.

The sheriff and presiding officers shall, at the time and place appointed in each electoral district, convene the meeting and receive the votes for or against the county incorporation, to be given by the persons present qualified to vote for members of assembly, resident within the dis-



trict, which voters and their votes, the clerk shall take down CHAP. 133.  
in writing.

The meetings shall be held from nine o'clock in the morn- Meetings, when  
ing till three o'clock in the afternoon, when the meetings opened.  
shall be closed, and the presiding officer shall seal up the  
list of voters, and their votes, and return the same to the  
sheriff.

The return shall be publicly opened and counted by the Return.  
sheriff in the presence of the clerk of the peace, on a day  
and at a place to be previously appointed, and a majority of  
the whole votes shall decide the question.

The sheriff shall return the result to the governor in Return, how  
council; if in favor of incorporation, the governor by pro- acted upon.  
clamation shall declare the county to be incorporated under  
this chapter, unless just ground to impugn the legality and  
fairness of the proceedings shall be shewn to the satisfac-  
tion of the governor in council, in which case the procla-  
mation may be withheld until examination into the legality  
of proceedings can be had, and the governor in council shall  
ultimately decide accordingly as the regularity and fairness  
of the proceedings or the reverse shall be established.

The sheriff shall receive forty shillings, the presiding Fees.  
officers ten shillings each, and the clerks five shillings each,  
in full for their services, to be paid by the county or dis-  
trict.

The proceedings may be renewed at any period not less Proceedings,  
than twelve months from any rejection of incorporation. when renewed.

2. The inhabitants of every county incorporated under County incor-  
this chapter shall be a body corporate, under the name of porated, &c.  
the municipality of \_\_\_\_\_, and shall have perpetual  
succession and a common seal, with power to break, renew,  
or alter such seal at pleasure, and shall be capable of suing  
and being sued, of pleading and being impleaded in all  
courts and places whatsoever, of purchasing, acquiring, and  
holding lands and tenements, and other real and personal  
property within such municipality, for the use of the  
inhabitants thereof in their corporate capacity, and of mak-  
ing and entering into such contracts as may be necessary  
for the exercise of their corporate functions; and the  
powers of the corporation shall be exercised by and through  
and in the name of the municipal council of such county.

3. The council shall consist of a warden and council- Council, what  
lors; the warden to serve for one year, and the councillors to consist of.  
after the first election for two years, and until their succes-  
sors shall be sworn into office.

4. The first election of councillors shall be held on the Time of elec-  
third Tuesday of November, and shall be conducted by the tions.  
sheriff and persons named by him; all succeeding general  
elections shall be held on the third Tuesday of November  
in each year, and shall be conducted by presiding officers  
named by the councils.

**CHAP. 133.**

Districts, &c.,  
number of coun-  
cillors return-  
ed.

The elections shall take place in and for each of the electoral districts laid off for the election of members to serve in general assembly, and each district shall return two councillors, except when otherwise provided in the schedule A. hereto annexed, and the election shall take place in and for the several districts comprised in that schedule as therein directed, in the same manner as if the said schedule were incorporated in this chapter.

What districts  
to be considered  
as separate  
counties.

For the purposes of this chapter the districts of Saint Mary's in the county of Guysborough, and Barrington in the county of Shelburne, the township of Clare in the county of Digby, and the township of Argyle in the county of Yarmouth, shall be treated as separate counties and incorporated accordingly. And the court houses at Barrington, Sherbrooke, Tusket, and Clare, shall be used as county court houses in those districts respectively for the purposes of this chapter.

Notices of elec-  
tions: presiding  
officers.

5. It shall be the duty of the sheriff in the case of the first election, and of the presiding officers in future elections, to give at least ten days public notice, in writing, of the times and places of holding the election, and post the same in three of the most public places in each district; and the sheriff and persons appointed by him shall preside at such first election, and persons appointed by the council shall preside at future elections.

Notices, how  
supplied.

It shall be the duty of the municipality clerk to supply the presiding officers with the notices after the first election.

Division of  
councillors.

6. Soon after the first election the councillors shall be divided by the council into two sections, to be distinguished by lot number one and two, the numbers of which beginning with section number one shall go out of office in each alternate year. In forming these sections the councillors for districts returning two or more shall be apportioned between the sections.

Time of election  
of councillors  
composing each  
section.

7. On the third Tuesday in November, in the year next following that in which the first election shall be had, and on the same day in each succeeding year, an election shall be held of the councillors in one section, beginning with number one, and proceeding in all future annual elections in regular alternation; the members returned at each election shall be entered on the list of the section previously occupied by the members then vacating office; councillors going out of office may be re-elected.

Election, how  
conducted.

8. Every election shall commence at nine o'clock in the morning. No candidate shall be proposed after twelve o'clock; at any time after that hour the poll may be closed by proclamation if no vote be polled within the hour, and the poll shall not be continued later than five o'clock in the afternoon. At the close of the poll the presiding officer shall proceed, publicly, to declare the number of votes given

for each candidate, and shall proclaim the person having the majority of votes to be duly elected, and summon his attendance on the second Tuesday of December following, at the county court house. CHAP. 133.

If there shall be an equal number of votes the presiding officer shall give a casting vote, and so determine the election. Casting vote.

The presiding officer and his clerk shall then and there publicly subscribe the poll list and seal up the same, and the presiding officer, within two days after the close of the election, under the penalty of twenty shillings for each day's delay thereafter, shall make return in writing of the councillors elected, together with the poll list, the seals having been unbroken, at the first election to the sheriff, and at subsequent elections to the municipality clerk; and such poll list, after having been published as hereafter provided, shall be open to the inspection of every member of the incorporation. Poll list to be signed and sealed; returns.

9. The proclamation and summons of the presiding officer shall be notice to every councillor elect, present in person or by an authorised agent or clerk; councillors elect, not so present, shall be, immediately after the election, notified and summoned by the presiding officer. Notice to councillors.

10. Before the presiding officer shall allow any votes to be polled, he, and the clerk he may employ, shall take the oath in the schedule annexed before a justice of the peace or two electors, and they shall certify such oath in the poll book for the election. Presiding officers and clerk to be sworn.

11. No person shall vote except in the district in which he resides. Must vote in his own district.

12. Municipal electors shall have the same qualification, and be liable to the same objections, questions, and oaths, as electors for members of assembly shall at the time by law be required to have, and be subject to; and the objections shall be taken and questions and oaths put and administered as the law regulating elections of members of assembly shall require. Elector, qualification for.

13. No person shall be qualified to be elected or serve as councillor who shall not at the time of the election be possessed of the same qualifications as is required in the case of members of the house of assembly. Councillor, qualification for.

14. None of the following persons shall be elected a councillor, or be appointed to office by any council; nor shall any person continue to act as councillor or hold any office under a municipal council after becoming one of the persons disqualified as follows: Persons disqualified.

I. Persons in holy orders, or ministers, or teachers of any religious sect or denomination; but this restriction shall not extend to school commissioners.

II. The sheriff.

III. Any person having a contract, or share or interest in a contract with the municipality.

**CHAP. 133.** IV. Any person receiving a pecuniary allowance from the municipality for his services in any office other than warden or councillor.

**Persons exempted.** 15. The following persons shall be exempt from being elected councillor or serving in any municipal office unless with their own consent.

I. Justices of superior courts and of probate.

II. Members of the executive or legislative councils, members of the legislative assembly, schoolmasters actually engaged in teaching, any miller who shall be the only one employed in a mill; persons more than sixty years of age.

III. Persons who have served as councillors or in any municipality office, or paid the penalty for refusing, shall be exempt during the four years next after such service or refusal.

**Warden, qualification of.** 16. At each annual election, including the first, the electors may vote for a warden from among the body of inhabitants resident within the municipality, and qualified as is required for a councillor. And the sheriff, at the first elections, and at subsequent elections the presiding officers, shall return under seal, the votes given for warden in each district, when they make return of the councillors elected.

**Return of votes for warden.** 17. On the first meeting of the council following each annual election, the council shall ascertain the votes given for warden in all the districts, and any one person having a majority of the whole number of votes given for warden shall be warden for that year, and he shall take the oath of office; and also if he shall not be a councillor already sworn in, the oath of qualification, and shall have all the authority of a councillor while warden, and be liable to a like fine for non-acceptance of office, or not qualifying.

**How elected.** 18. In case no person shall have a majority of the whole votes given for warden, or being so elected shall not qualify and serve, the council shall choose by a majority of votes from among themselves or from among the inhabitants, at their discretion, a warden duly qualified.

**In case no majority, a warden not qualified.** 19. The warden shall hold office for one year, and thereafter until his successor be appointed, but he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation, or otherwise, the council shall, at its first meeting thereafter, proceed to elect a warden for the remainder of the term; during the temporary absence of the warden, his place may be filled by a chairman for the time being, with all the authority of the warden chosen by the members present.

**Duration of office.**  
**When vacancy occurs.** 20. The presiding officer, at an election of councillors, during the time of such election, shall be a conservator of the peace, and shall be invested with the same powers for the preservation of the peace, the apprehension, committal, holding to bail for trial, or trying or convicting offenders,

**Presiding officer at elections, power of.**

as are vested in justices of the peace in this province; and, CHAP. 133.  
 for the purpose of preserving peace and good order, all justices of the peace residing in the district shall attend at the election, upon being notified in writing by the presiding officer; and such officer may command the assistance of all justices, constables, and other persons present at the election, and may swear in as many special constables as he thinks fit; he may commit any person for a breach of the peace, or for molesting or threatening any elector, at or coming to, or returning from, the election, or for any violation of good order, to the custody of any constable or person present, on view, for such time as he deems expedient; or may, by writing under his hand, commit the offender to the common jail of the county, for any period not exceeding ten days; and any justice of the peace or other person present at the election, who shall neglect to aid or assist the presiding officer during such election, when requested by him, shall be deemed guilty of a misdemeanor, and be punished accordingly.

21. No person who may be elected a councillor shall act in that capacity until he shall have taken and subscribed, before a justice of the peace for the county, or the sheriff, in the case of the first election, and in case of subsequent elections, before the warden or municipality clerk, the oath of allegiance to her majesty, and also the oath of office and qualification; such oath shall be taken and subscribed by each councillor, duly qualified, at the first meeting of the council after his election, or otherwise within ten days after notice of his election; and, in default thereof, such person shall be deemed to have refused to accept the office of councillor, and shall be liable to pay the municipality clerk such fine, not exceeding ten pounds nor less than five pounds, as the bye-laws of the council shall prescribe; provided that no person elected a councillor shall be subject to a penalty for not taking the required oaths if he be not qualified, which fact he shall be required to verify on his own oath, before a justice of the peace, on first election, and before the warden or municipality clerk, on subsequent elections.

Councillors  
must take oath  
of allegiance.

Exemption  
from penalty.

22. In case of the death or resignation of any councillor, or his permanent absence from the municipality, or absence for more than six months, or incapacity after election, or refusal to accept office, or neglect to be sworn, the warden of the county shall issue a warrant, under his hand and seal, to the presiding officer, requiring him to call a public meeting in the district to elect some other person to fill the vacancy, and such election shall be conducted in the manner prescribed in this chapter for holding elections; but no warrant shall issue for an election to supply a vacancy within three months of the annual election.

Election of  
councillor in  
case of vacancy.

23. On the second Tuesday of December, after the first election, the sheriff and the councillors elect shall meet at

Organization of  
council.

**CHAP. 133.** the county court house, and the sheriff having produced the returns of the presiding officers, and the seals being then and there broken, and the returns examined, and the councillors elect having been sworn into office, the council shall be organised and proceed to business.

Time of meeting after first year.

24. On the second Tuesday of December, after the annual elections in all subsequent years, the municipal council and the councillors elect shall meet at the county court house, and the municipality clerk having produced the returns of the presiding officers, and the seals being then and there broken and the returns examined, the councillors elect shall be sworn into office.

Quorum.

25. A majority of the council shall be a quorum for the transaction of business; a smaller number may adjourn from time to time, and absent members may be compelled to attend under such penalties as may be provided by by-law of the council. All questions arising in the council shall be decided by a majority of votes; and the warden or temporary chairman shall have a right to vote.

Members may be compelled to attend.

Questions, how decided.

Number of meetings in each year.

26. There shall be two established meetings of the council in each year; the first herein designated the annual meeting, shall be held at the county court house on the second Tuesday of December; the second herein designated the half yearly meeting, shall be held at such place as the council may appoint, on the last Tuesday of April.

Extra meetings, notice of.

27. Besides these regular meetings, the council may meet as often as expedient for the despatch of business, at such time and place as they may appoint; public notice shall be given of the time and place of each meeting of the council, and all meetings shall be open and public; the council shall have power to adjourn and to appoint committees to act during the session and recess; if any council fails to meet at any time appointed by law, they shall not thereby be deemed to be dissolved, but may hold future meetings as if there had been no failure.

Clerk and treasurer, appointment of.

28. Each council shall appoint a clerk and a treasurer, who shall respectively perform the duties now exercised by the clerk of the peace and county treasurer, as far as the same come within the scope of the corporation and of this chapter, and the council shall prescribe the duties of such officers, and the security to be given for the faithful performance thereof.

Duty of clerk.

29. The general duty of the clerk shall be to record in a book all the proceedings of the corporation, make regular entries of all resolutions and decisions, and if required by any member present, to enter the votes as given, and to preserve and file all accounts, and to keep the books, records, and accounts of the corporation; which shall be open, without fee or reward, to the inspection of all persons at all reasonable times and hours.

Duty of treasurer.

30. The treasurer shall be appointed annually. It shall

be the duty of the treasurer to receive and safely keep all monies belonging to the municipality, or which he shall be appointed to receive, and keep and pay out the same to such persons and in such manner as he shall be directed to do by any lawful order of the municipal corporation, or by any law of the province, and strictly to conform to and obey any such law or any bye-law lawfully made by any such municipal corporation, and faithfully to perform all such duties as may be assigned to him by any such law or bye-law; and every treasurer shall annually give such security for the faithful performance of the duties of his office, and more especially for the due accounting for, and paying over, all monies which shall come into his hands by virtue of his office, as the municipal corporation by which he was appointed shall direct. CHAP. 133.

31. The council shall make such bye-laws or resolutions as to the duration of the office of the clerk, as to them shall see fit. Council to make bye-laws &c., as to duration of clerk's office.

32. The council shall make such bye-laws or resolutions as to the number of offices to be held by one person, as to the holding of offices by partners of municipality officers, and as to officers having an interest in any work undertaken for the municipality, as to them shall seem fit. Same as to number of officers, &c.

33. A warden or councillor may resign his office at any time by a declaration to that effect under his hand, and on payment of a fine of ten pounds. Resignation, and fine.

The warden or councillor elected to fill an occasional vacancy, shall hold office for the residue of the term of the person whom he succeeds, but no longer; but he shall be capable of re-election if qualified. Duration office of warden, &c., elected to fill vacancy.

34. The council shall have power to make, and from time to time alter, such rules and regulations as may be requisite for the conduct and good order of their proceedings, and such bye-laws touching any matters within its authority as it may judge proper. Formation of bye-laws.

35. The council, at its first meeting in each year, or as soon after as practicable, shall appoint two persons to be county auditors. No person shall be appointed auditor who is a member of the municipality council or one of the officers, or who was a councillor or officer at any time within a year previously, or who shall, directly or indirectly, by himself or partner, have any share or interest in any contract with the municipality council, or any employment under them. No municipality auditor shall act as such unless he shall have the qualification required for a councillor, and shall have previously made and subscribed the oath of office and qualification. Auditors, appointment of, qualification, &c.

36. It shall be the duty of the municipality auditors to examine and audit the accounts of the treasurer, and all other accounts of the council or corporation, or in which the municipality is concerned; and it shall be the duty of Auditors, duty

CHAP. 133. the council to refer to them all such accounts, and their duty faithfully to report thereon without needless delay.

Authority of auditors.

37. The municipality auditors shall have authority to call for all books and vouchers they may deem necessary for elucidating any account laid before them. No account shall be allowed or passed by the council until the same is audited and reported upon by the municipality auditors; and all audited accounts shall be open at all reasonable times to the inspection of any elector of the municipality.

Salaries of warden and councillors.

38. The warden and councillors shall be paid, that is to say: the warden by a salary to be established by the council, and the councillors according to their actual attendance, at such rate as the council by bye-law shall determine, not to exceed five shillings per day, and travel at the rate of three pence going and returning per mile.

Attendance.

39. The clerk shall keep an exact account of the attendance of councillors at every meeting.

Fines for non-attendance.

40. The warden and councillors shall respectively be liable to such fines for non-attendance or other neglects, as the council by bye-law may appoint, of which the clerk shall keep a correct account; nor shall any of them be authorised to receive any payment for salary or fees until such fines as may stand against them be deducted.

Vote for the poor, overseers, &c.

41. On the first meeting of the council, after each annual election, or as soon after as may be convenient, the council shall vote for each poor district the sum it shall judge necessary for the support of the poor in that district, and the purposes enumerated in the eighty-ninth chapter, and shall appoint overseers of the poor for the existing poor districts, until such existing poor districts shall be altered by the council, which districts it has power from time to time to alter, if it shall see fit to do so.

Council to exercise the functions of the grand jury, sessions, and as given by chapters 89 and 90.

42. The overseers of the poor shall account to the council instead of the sessions; and the council shall exercise the functions given by such eighty-ninth chapter to the grand jury, town meetings and general and special sessions, and to the sessions by the ninetieth chapter, and shall hear and determine appeals, and in all particulars shall carry out the objects of those chapters as nearly in conformity with the mode thereby directed as shall be consistent with this chapter and the incorporation thereunder.

Committees, formation of.

43. In the exercise of the functions, and the carrying out of the objects stated in the preceding section, and also in any other matters exclusively relating to townships or special districts, and which have heretofore been managed by township or district officers, and under township and district authority, the municipality may appoint, for carrying into effect and managing the same, committees of their own body, comprising councillors returned from such townships or districts, which committees may meet from time to time, and shall specially attend to and regulate the affairs



of those townships or districts under the supervision, direction and control of the council, and subject to its orders and revision, and liable to be superseded at its pleasure. CHAP. 133.

44. The municipalities may vote, assess, collect, receive, appropriate, and pay, whatever monies are required for purposes named in the forty-sixth chapter, and shall have all the powers and authority which, when this chapter shall go into operation, may be possessed by the grand jury and sessions under that chapter, and shall carry out the objects of that chapter as nearly in conformity with the mode it directs as shall be consistent with this chapter and the incorporation thereunder. Power of municipalities.

45. The municipalities, for raising the monies required under such eighty-ninth and forty-sixth chapters, and which may be required for any other township, district, or county purposes, shall at the annual meeting in December, appoint a suitable number of assessors and collectors, and prescribe their duties and allot their limits within which to act. Casual vacancies shall be filled by the council, if such vacancies occur within a month before either regular meeting of the council, otherwise by the councillors for the electoral district or districts within which the assessors or collectors were limited to act. Appointment of assessors.  
Casual vacancies, how filled.

46. The treasurer, overseers of the poor, assessors, collectors, and other officers whose term of office is not by this chapter, or shall not be by bye-law of the corporation, otherwise determined, shall hold office from the time of their appointment, or from the time by the council fixed for its commencement, until the first annual meeting in December next, after or until their successors be appointed. Duration of office of treasurer, assessors, &c.

47. The municipal financial year shall end on the thirtieth day of November, and all accounts of the several officers, and of the municipality, shall be audited, examined, determined upon, and passed, as far as possible, at the first annual meeting in December. Financial year when ended.

48. At the half yearly meeting in April, the road monies granted by the legislature shall be apportioned to the extent and upon the principles which the legislature may from time to time direct and approve; commissioners for its expenditure shall be appointed, and any other appointments and business attended to. Road monies, distribution of.  
Appointment of commissioners.

49. At the same meeting the council shall transmit to the financial secretary a full and exact list of the appropriation of the road monies granted by the legislature, with the commissioners names. Appropriation list to be sent to financial secretary.

50. The commissioners shall lay out the money and make account of the expenditure, as the law now does, or hereafter may require; but their accounts instead of being attested before a justice of the peace, shall be audited and sworn to before a councillor resident in the district where the work may be performed, or if none shall be resident Commissioners, duties of.

**CHAP. 133.** therein, a councillor resident in an adjacent district; and such councillor shall certify the account as approved under his hand. The commissioners shall draw for the money, and their accounts be audited and paid at the financial secretary and receiver general's office, as is now done.

Account of commissioners.

51. The commissioners shall immediately return a duplicate of their account to the municipality clerk, and the council shall, at the annual meeting in December, examine these accounts, and return a full abstract to the financial secretary.

Account, further examination of.

52. If any occasion shall induce the council to judge a further examination of any account to be necessary, they shall refer the same to the municipality auditors, to whom the commissioners shall make explanations; and the auditors shall report thereon to the council before the half yearly meeting in April.

School commissioners, appointment of.

53. The council shall appoint a board or boards of school commissioners in place of the boards which may be acting at the time this chapter shall go into operation; the members severally to hold office during the pleasure of the council. The board of school commissioners shall appoint their own clerk, and in addition to the returns required by law, shall make a full account of their appropriations, expenditures, and proceedings, to the municipality clerk, at such times as the council may order. The municipality clerk shall immediately place the returns in the hands of the auditors, who shall examine and report thereon to the council at its next general meeting, and the council shall examine and adjudicate on the same.

Municipality property, court house, &c.

54. The municipalities shall have authority for the purchase, acquirement, and management of all such real and personal property within the municipality as may be required for purposes of the corporation, and the sale and disposal of the same, when no longer required; and for the superintendance and management of all the property of the municipality, and for the erection, preservation and repair of the municipality court house, jail, lock-up house, town hall, and all other buildings required by or being upon any land belonging to the municipality as a corporation; and shall have and possess all powers given to the sessions by the forty-seventh chapter; and the protection, care and management of municipality property, and the title, powers, and authority of the grand jury, sessions, and trustees, under the ninety-seventh chapter.

Pound keepers, fence viewers, &c., appointment of, duties, fees, penalties, &c.

55. The municipal councils shall appoint a sufficient number of pound keepers, fence viewers, overseers of the highways, road surveyors, and of such and so many officers as may be necessary for carrying into effect any of the provisions of this chapter, or of any other act of the legislature, concerning any of the subjects placed under the jurisdiction of the councils, or of any bye-law of the muni-

city; and in like manner to displace any of them and appoint others in their room, and to add to or diminish the number of them as often as the corporation shall see fit, and to regulate their powers and limits wherein they shall be exercised; and shall regulate and prescribe the duties of all officers acting under the authority of the corporation, and the penalties of their making default in the performance of such duties, and shall settle the remuneration of all such officers, in all cases where the same is not settled by act of the legislature, and the providing for the payment of the remuneration which, by the act of the legislature, or by the bye-laws of the municipality, may be provided for such officers; and shall regulate the bonds, recognizances, or other securities to be given by such officers for the faithful discharge of their duties; the penalties for refusing to serve in any office, and for the infringement of any bye-law of the municipality.

56. The municipal corporation shall have the appointment of health officers, health wardens, and health inspectors, and a board of health, with the authority and powers given to justices in general or special sessions by the fifty-fourth and fifty-sixth chapters.

Board of health, appointment of.

57. The municipal corporation shall also make regulations for the protection against rabid animals, and the destruction of noxious animals, and for exercising the authority and powers given to justices in general and special sessions by the fifty-fifth and ninety-third chapters; also for the preservation of useful birds and animals, and the regulation and protection of the river fisheries, and for exercising the powers and authority of general and special sessions under the ninety-second and ninety-fifth chapters.

Rabid animals.

Preservation of game and fisheries.

58. Also for preventing damage by setting fire to woods, felled trees, underbrush, and on bog and marsh lands; also for removing obstructions from rivers, and for regulating the bringing down of logs, timber, and lumber on rivers, and for exercising the powers of the grand jury and sessions under the one hundred and third chapter.

Setting fire to woods, removing obstructions from rivers, &c.

59. The council shall make orders for the prevention and suppression of fires, regulating stoves, stove pipes, flues, furnaces, ovens, and the safe keeping of ashes, and shall appoint firewards, firemen, fire constables, and engine men, and shall exercise the authority and powers of the general and special sessions under the ninety-ninth chapter, and shall make orders for the prevention of the unnecessary and wanton discharge of fire arms and fire works.

Fires, regulations concerning firemen, &c. appointment of.

60. Also, the municipal council shall have the power given to general or special sessions under, and shall make orders for carrying into effect, the one hundred and fifth, the one hundred and sixth, the one hundred and seventh, the one hundred and eighth, the one hundred and ninth, and the one hundred and tenth chapters; and so much of the one

Trespass by cattle, regulations concerning.

**CHAP. 133.** hundred and forty-seventh chapter as relates to preventing trespasses by horses and oxen and other animals going at large.

Acts of clerk of the licenses, how performed.

61. The acts required in the one hundred and fifth chapter to be performed by the clerk of the licenses, and by justices of the peace, shall be done by the clerk of the corporation, and two councillors, unless otherwise ordered by any bye-law or order of the council.

Acts of town clerk, how performed.

62. The acts required in the one hundred and sixth chapter to be performed by the town clerk shall be done by any officer or person authorised by the council, and a municipality councillor shall exercise concurrent authority with a justice of the peace under that chapter.

Chapters 147, 158 and 160, not affected.

63. This chapter shall not interfere with nor affect the jurisdiction created under the one hundred and fifty-seventh, one hundred and fifty-eighth, and one hundred and sixtieth chapters.

Warden to have same power as justices of the peace.

64. The warden, while in office, shall ex-officio be a justice of the peace in and for the county, and shall have within the municipality all the powers and jurisdiction, as well civil as criminal, which belong to that office, and as well the warden as in his absence any councillor shall have power to administer oaths and affirmations concerning accounts, and other matters which shall be submitted to the corporation, or shall concern the same.

Grand jury and sessions not required to meet.

65. The grand jury and sessions, or the justices in session, either general or special, shall not be required to meet for any purposes for which, by law, they are now required to meet in any municipality; but nothing in this chapter shall be construed to take from justices of the peace their power as conservators of the peace, or to impair or abridge the criminal jurisdiction they possess by common or statute law, or their authority over offences partaking of a criminal nature given by any law of this province, nor the power to administer oaths, nor any power belonging to the office of justice of the peace, which is not taken away by this chapter, either expressly or by necessary implication.

Power of justices of the peace not affected.

66. The powers and authority of the council shall also extend to the following objects:

Power and authority of council.

Roads.

I. The laying out of new roads, and the making, maintaining, or improving of any new or existing road or street, or for stopping up, altering, or diverting the same, not being a great road, subject however to the provisions of the law, and the restrictions and protection to private rights contained in the sixty-second chapter, and subject to the rights of the crown and the province in public property.

Road money.

II. The appropriating and apportioning road money granted by the legislature, to be laid out in the municipality by the municipal authority, and appointing commissioners for its expenditure, and the accounting therefor to the government.

III. The directing and enforcing the performance of statute or highway labor, and the expenditure of the commutation money for highway labor and all the powers of the sessions and of the justices of the peace under the sixty-third chapter, and the returns therein directed shall be made to the council or their clerk, or as the council may order.

CHAP. 133.  
Statute labor.

IV. The division of the municipality into road districts, and the appointment of a superintendant of roads in each with such powers as regards the roads and bridges, and the expenditure of provincial and municipality money, and statute labor therein, as the council shall see fit to confer; and the erection, preservation, and repair of any new or existing bridges, and the regulating the driving and riding over bridges; the protection of timber, stone, sand, or gravel, or any appropriation for roads or other public property, and the sale of such timber and other articles.

Road districts,  
bridges, &c.

V. The support of the poor by municipality, township, or district organization, and the erection and maintenance of municipality, township, or district poor houses.

Poor.

VI. The making orders for carrying into effect the law, as it may from time to time exist, concerning the manufacture, importation, and sale of intoxicating liquor, and the providing payment for expenses that may be incurred in relation to that object.

Intoxicating li-  
quors.

VII. The regulating ferries, public wharves and landings, and the establishment and regulations of markets and fairs.

Ferries,  
wharves, &c.

VIII. The providing means for defraying such expenses connected with the administration of justice as require to be defrayed out of the municipality funds; the providing for the establishment and support of schools and hospitals; and the erection of school houses and hospitals, the raising, assessing, levying, and appropriating all monies that may be requisite for carrying into effect the objects for which the council is empowered to act or to make bye-laws; such monies to be raised by rates to be assessed on real and personal property, or its owners or occupiers.

Assessment.

IX. The collection and accounting for, of all tolls, rates, and assessments of the municipality revenues; but no monies shall be voted, nor any salaries determined upon, except at one of the two regular meetings, or an adjournment thereof, unless the public service may require a deviation from this rule; in such cases, as also in cases of adjourned meetings, every member of the council shall have notice of the meeting and its objects.

Collector of as-  
sessments.  
Proviso.

X. The making of all contracts relative to matters under their control, which contracts, after having been duly considered by the council, shall be signed by the warden, and countersigned by the county clerk.

Contracts.

XI. The determining what officers it may be expedient to pay, fixing the amount of the salaries, fees, and remuneration, where not fixed by this chapter, and the time and mode of paying them.

Salaries of offi-  
cers.

## CHAP. 133.

Returns of assessors; expenses of elections.  
Presiding officers at elections.

XII. The returns of assessors and collectors, with a view to the general business of the municipality; the expense of municipal elections, and the mode of remuneration.

XIII. The appointing of presiding officers for conducting municipal elections, the times, places, and mode of election, and the times, form, and manner of the presiding officers' returns, as far as may not be specially directed by this chapter.

Contested elections.

XIV. The making of rules and regulations for the trying contested elections of members of their own body, and the trying of such contested elections.

Prevention of vice.

XV. The enforcing of the due observance of the Lord's day; the prevention of vice, drunkenness, profane swearing, obscene language, and any other species of immorality or indecency in the public streets and roads, and for preserving peace and good order in such streets and roads, and in public places or taverns; for preventing the excessive beating, or cruel and inhuman treatment of animals; for preventing the sale of any intoxicating liquors to indians, children, apprentices, or servants; for restraining and punishing all vagabonds, drunkards, and beggars, and all persons found drunk or disorderly in any street, road, or public highway in the county.

Other matter under control of council.

XVI. The providing for any other purpose, matter or thing specially subjected to the control of the council by law; but no bye-law shall impose any punishment or imprisonment, or any penalty exceeding five pounds.

Coroners, appointment of.

67. The council, as often as requisite, shall appoint coroners, and determine their limits within which to act.

Snow plough.

68. It shall be discretionary with the municipality council to procure a snow plough, or other machine or contrivance sufficient to keep the roads open and beaten after the fall of snow, to the width of at least eight feet, and place the same under the charge of the commissioners of highways in such district, who shall cause the same to be worked and used by such number of the inhabitants of their district as they shall judge sufficient for its use, and in rotation; and the cost of the snow plough shall be defrayed out of the county funds by a rate imposed equally on the whole district.

All powers vested in grand jury, sessions, &c., to be transferred to municipality council.

69. All powers and authorities now vested by law in the grand jury and sessions, in special sessions, or in justices of the peace, to make bye-laws, impose rates or assessments, appoint township or county officers, or make regulations for any county purpose whatever, after the incorporation of any municipality shall be transferred to, vested in, and be exercised by, the municipality council only; but no bye-laws or regulations made by the justices in session, shall be considered repealed until the municipality council shall expressly declare such repeal by a bye-law; and the county and town officers shall continue to exercise their functions

Proviso.

until the first meeting of the incorporated council under this chapter, and they shall be liable to account to the council. CHAP. 133.

70. All debts, liabilities, and obligations of every kind which may be due, or owing, or to which any municipality may be liable at the time of its incorporation, shall be assumed, paid, and performed by the municipality council, and be recoverable from the same by action, or otherwise, on the same terms and conditions as the same should have been paid and performed if the county had not been incorporated; and all property of a public nature, and debts of every kind, belonging or owing to any municipality, shall, at the same time, become vested in and due and payable to the municipality council; but no municipality council shall issue, or authorize the issuing, of any bill or note, or in any way act, or authorize any persons to act, as bankers. Debts to be assumed.

71. In assessing any rate or tax, the municipality council shall be governed in all things by the laws now or hereafter to be enacted for the levying and collecting of poor and county rates, except as herein provided; and the same shall be apportioned and assessed equally on all property liable by law to poor and county rates; but no rate or assessment whatever shall be made or levied on any lands, tenements, or other property, real or personal, of her majesty, her heirs or successors, or in possession of the board of ordnance. Proviso.

72. All allowances or per centage granted by law to any collector or county treasurer, and all salaries, wages and allowances of any kind enjoyed by any county, town, or parish officer, shall continue to be paid, after the incorporation of any county, until otherwise ordered by the municipality council. Assessment of poor and county rates.

73. An authentic copy of each bye-law passed by the municipality council, shall forthwith, after being passed, be transmitted by the warden or chairman for the time being to the provincial secretary, who shall note on such bye-law the date of its receipt, and lay the same before the governor, by whom the same shall be laid before the legislature within ten days after the opening of its next session. Any bye-law repugnant to the law of the land, or the provisions of this chapter, shall be wholly void and of no effect whatever. Allowances to collector, &c.

74. At least ten days before the meeting of the provincial legislature, the wardens shall transmit an abstract of the receipts and expenditures of the municipality, and the returns from the several judicial district courts during the preceding year, to the governor, who shall lay the same before both branches of the legislature. Bye-laws must be laid before the legislature

75. Nothing in this chapter shall extend to any toll bridge, or road belonging to any company or individuals, nor to any work under the control of the imperial or provincial governments, or of the military authorities. Expenditure to be laid before the legislature.

Not to extend to toll bridges, &c.

## CHAP. 133.

Penalties, how recovered.

Informer not a competent witness, when.

Members of council competent witnesses.

Expenditure of road monies to be accounted for.

Sheriff's, &c., fees on first election.

Assessments, how recovered.

Rates for public purposes.

Inconsistent or repugnant laws only affected.

76. All fines and penalties imposed by any bye-laws of the municipality councils, and for the recovery of which no other provision is made, may be recovered with costs, by suit and execution, as in the case of debts, in the name of the corporation, before any justice of the peace for the county, and, after the appointment of judicial district courts, before such courts. All fines and penalties, when recovered, shall be paid and applied as the bye-law shall direct. No informer or other person, who is to receive for his own benefit any part of a fine or penalty, shall be a competent witness for the prosecution, unless he first relinquishes, in writing, all claim to his proportion of the fine or penalty; in such case the whole penalty shall be applied as the bye-law shall direct for that portion which was to go to the informer or prosecutor. No inhabitant of the municipality, or member or officer of the council, shall be an incompetent witness in any prosecution for the recovery of a fine or penalty, or in any suit for money payable to the clerk or treasurer, or due to the council, or in any suit wherein the council is a party, or has an interest in the result, by reason of such person being an inhabitant of the municipality, or a member of the council, or an officer or a person in its employ; provided that such person shall have no other interest in the prosecution or suit which would render him an incompetent witness.

77. The municipality council shall strictly account to the governor for the expenditure of all provincial monies granted for roads or other municipality uses, and under all needful vouchers. These expenditures shall be examined and audited by the financial secretary, and the accounts laid before the legislature within ten days after the opening of each session.

78. In the case of the first election, the sheriff shall receive from the municipality funds the sum of forty shillings, in full for his services, and each presiding officer shall receive ten shillings, and each poll clerk five shillings, in full for their respective services.

79. All rates and tolls imposed by the council shall be assessed and recovered in manner prescribed by the bye-laws, and by such assessors and collectors as may be appointed for that purpose by the council at one of the two meetings hereby appointed: provided such bye-law is not repugnant to the law of this province or to this chapter.

80. All rates for public purposes, not within the scope and authority of this chapter, which the inhabitants of any county are now liable, or may hereafter be liable, to pay by a law of the province, shall continue to be assessed upon and paid by the inhabitants of any incorporated county, until otherwise directed by act of the legislature.

81. Nothing in this chapter contained shall be construed to repeal or affect the provisions of any law or enactment



now in force, except so far only as such law or enactment shall be inconsistent with, or repugnant to, the provisions of this chapter, or the attainment of the objects and purposes thereof.

82. Every returning officer, or person holding any election under this chapter, shall have power to administer all oaths and affirmations required to be administered or taken at any such election.

Returning officer may administer oaths.

83. Every officer who shall be elected or appointed under this chapter, shall, before entering on the duties of his office, take and subscribe the general oath of office contained in the schedule, unless officers for whom the schedule contains a special oath of office.

Every officer to be sworn.

84. Every person elected or appointed under this chapter to any office which requires a qualification of property in the incumbent, shall, before he shall enter upon the duties of his office, take and subscribe the general oath of qualification contained in the schedule of oaths, and shall annex thereto and file with the clerk a schedule of his qualification.

Oath of qualification, by whom taken.

85. No person shall be qualified to vote or to be elected or appointed to any office under this chapter, who shall not, at the time of his voting, election, or appointment, be a natural born or naturalized subject of her majesty, her heirs, or successors, and of the full age of twenty-one years.

No person qualified to vote, &c., unless a subject of her majesty.

86. When no provision shall be made in this chapter for the administering of any oaths or affirmations required to be administered or taken, the same may be administered by the warden, or, in his absence by the clerk, or by any councillor or any justice of the peace of the county; and when an oath or affirmation is directed to be administered by, or taken before, any officer or person, the authority to administer is included.

Oaths, by whom to be administered.

87. Every qualified person duly elected or appointed to any office in, by, or under the municipality, in cases not herein expressly provided for, who shall refuse such office, or neglect to take the several oaths or affirmations required by this chapter in respect thereof, within ten days after his election and appointment, having had notice of such election or appointment; and every person who shall enter on the duties of any office under this chapter, without having taken the oath required in respect of such office; and every person duly authorized to administer such oaths or affirmations, who shall refuse to administer the same when such administration is reasonably demanded of him, shall thereupon, respectively, forfeit such sum, not more than twenty pounds, nor less than two pounds, as may be prescribed by the bye-laws of the municipal corporation, to be paid to the clerk of such corporation for the use thereof; provided that such forfeiture shall not be incurred by any person not legally qualified, or who shall be legally exempt, and who shall verify that fact on his oath.

Penalty for refusing to take office.

Proviso.

## CHAP. 133.

Affirmation.

88. Every person authorized by law to make affirmation instead of taking an oath, may make affirmation in every case where an oath is required by this chapter; and any person who shall wilfully swear or affirm falsely in any matter where an oath or affirmation is required by this chapter, shall be deemed guilty of wilful and corrupt perjury, and be punished accordingly.

## Corporations of cities not affected.

89. Nothing in this chapter contained shall abridge, limit, or defeat any rights, powers, privileges, or jurisdiction of the corporation of the city of Halifax, or the corporation of any other town which may be incorporated during any further sitting of the legislature.

## Actions against council, how brought.

90. Every action brought by or against any municipality council shall be brought by or against the same by its corporate name; and in all such actions, service of process on the warden or clerk for the time being, shall be good and valid service of such process. In case of judgment being given against the corporation, the same shall be paid by order of the council, without unnecessary delay, if there shall be funds available for the purpose, otherwise the amount shall be included in the next assessment, and shall be paid out of the first monies which shall be subject to the appropriation of the council; if the amount shall not be paid within six months after judgment recovered, and demand made, the supreme court, or a judge thereof in vacation, shall have the power to amerce the county, which, by the fourth and fifty-third sections of the forty-sixth chapter are given to the sessions and the supreme court, and may, if need be, appoint assessors and collectors.

## Judgments, interest on.

91. Judgments against a municipal corporation shall bear interest at six per centum per annum.

## Coroners to be sworn.

92. Coroners appointed under this chapter shall be sworn into office before the warden, or, in his absence, two councillors; and the forty-first chapter, except the first section, shall be in force as to such coroners. Nothing in this chapter contained shall affect coroners now appointed.

## Present coroners not affected.

## Jurisdiction of sessions and grand jury taken away.

93. The jurisdiction of the general and special sessions of the peace and of the grand jury, in all matters over which, by this chapter, jurisdiction is given to the municipal council, is taken away in counties in which this chapter shall go into operation.

## Powers of grand juries, &amp;c. given to municipal councils.

94. The powers and authorities which in chapters twenty-two, forty-six, forty-seven, forty-eight, fifty-four, fifty-five, fifty-six, sixty-one, sixty-two, sixty-three, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, eighty-nine, ninety, ninety-two, ninety-three, ninety-five, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred and two, one hundred and three, one hundred and four, one hundred and five, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and forty-seven, one hundred

and fifty-six, are given to grand juries, justices in session, CHAP. 133.  
 general or special, or to justices of the peace, and to the  
 officers and persons named in those by them, and to officers  
 and persons named in those chapters, for carrying out any  
 of the provisions of those chapters, are given to municipal  
 councils, and to the officers and persons to be appointed by  
 them under the respective bye-laws of such councils.

95. The warden, councillors, and officers acting under  
 them, shall be entitled to the protection afforded to justices  
 of the peace and constables, under the one hundred and  
 fiftieth and one hundred and fifty-first chapters. Protection of  
wardens, &c.

#### JUDICIAL DISTRICT COURTS.

96. The municipal corporation for each municipality  
 shall, at its first meeting, or soon thereafter, divide the muni-  
 cipality into convenient judicial districts, which shall, if prac-  
 ticable, be so formed as not to divide any electoral district  
 or any existing township, and shall appoint three judicial  
 district commissioners for each of such judicial districts.  
 The commissioners shall be qualified as is required for  
 councillors, and before entering upon the duties of their  
 office shall take and subscribe the oaths of allegiance, of  
 office, and of qualification. Judicial dis-  
tricts, forma-  
tion of  
  
Commissioners.

97. The judicial district commissioners shall retain office  
 for three years and no longer. At the end of that period  
 the municipality corporation shall appoint a new board, but  
 may re-elect two of the out-going officers. The corporation  
 shall also supply occasional vacancies, arising from death,  
 resignation, or otherwise. Office of com-  
missioners, du-  
ration of.

98. No commissioner shall at any time be chosen from  
 among the councillors. No councillor  
to be a commis-  
sioner.

99. The commissioners shall have authority within their  
 respective districts only. Their writs may extend over the  
 whole municipality, but shall be returnable only within the  
 district, and shall be directed and served as writs from  
 justices are now served. Authority of  
commissioners.  
Jurisdiction.

100. They shall have and exercise within their district  
 the same jurisdiction over actions of contract, and for petty  
 trespasses and assaults under the 147th chapter, and for  
 penalties for violation of the laws relating to the impor-  
 tation, manufacture, or sale of intoxicating liquors, and  
 other penalties, and the same functions for the purposes of  
 trial which justices of the peace may possess at the time the  
 commissioners are appointed. No action shall be sustained  
 unless at the time the writ issued either the plaintiff or  
 defendant shall actually reside, or the cause of action shall  
 have arisen within the judicial district. One party must  
reside in dis-  
trict.

101. The commissioners shall meet at some convenient  
 place to be named by the council, on the first Tuesday of  
 every month, and may continue in session for two days,  
 and no longer; causes not disposed of shall stand over;  
 two commissioners shall form a quorum. Meeting of com-  
missioners, quo-  
rum, &c.

## CHAP. 133.

Power to administer oaths.

Appeal.

Clerk of district, appointment of.

Witnesses.

Power of justices to cease, when.

Fees.

Commissioners salary.

No commissioner, &amp;c. to be employed as attorney.

Bye-laws.

102. The commissioners shall have the same power, to swear witnesses, and to try by jury, and the same authority as a court, that justices now have; and appeal shall lie from their judgment, and in the same mode as it now lies from the judgment of justices.

103. The municipal corporation shall appoint a clerk for each judicial district, who shall take the oath of office before entering on his duties, and by whom, and not by the commissioners, the writs of mesne process and execution shall be issued; but the commissioners as well as the clerk may issue subpoenas for attendance of witnesses, which shall extend over the province.

104. Witnesses in cases before the court of judicial commissioners shall be entitled to the same fees for attendance, and subject to the same obligations to attend and give evidence, and liable to the same penalties for prevarication and for perjury, as in causes at present within the jurisdiction of justices of the peace.

105. After the court of judicial commissioners shall come into operation, the power of justices of the peace, to the extent of the jurisdiction of the judicial commissioners, shall cease.

106. The same fees which in chapter one hundred and fifty-four, under the head "magistrates' courts," are distinguished as justices' fees, constables' fees, witnesses' fees, and jurors' fees, or under any other acts in force relating to such fees, shall be paid upon suits before commissioners; but the fees distinguished as justices' fees shall be received by the commissioners' clerk and paid to the county treasurer.

107. The commissioners shall be paid according to the actual attendance in court, such amount, and the clerk by such allowance, as the municipal corporation shall appoint; and the remuneration of the commissioners and clerk shall not in any thing be made to have relation to or be dependent upon the number of writs issued or judgments obtained, or the amount of fees collected; and neither the commissioners nor the clerk shall, on any pretence, derive any emolument from their office beyond such allowance. No commissioner or clerk shall be directly or indirectly employed, or professionally concerned as counsel, attorney, solicitor, proctor, or advocate, for any party in any matter pending or to be brought before the court of which he is commissioner or clerk.

108. Municipal corporations shall make bye-laws for enforcing a correct and regular account of the writs issued, trials had, judgments entered, and costs incurred, in such judicial district courts, and of the fees paid to the county treasurer; and shall annually, on or about the thirty-first day of December, make a return thereof to the governor, to be submitted to the legislature.

109. The powers and authority which, in chapters one hundred and thirty-one, one hundred and forty-seven, and one hundred and fifty-four, are given to justices of the peace, are transferred and given to the judicial district commissioners within their respective districts; and they and the officers executing their process, shall be entitled to the same protection, under the one hundred and fifty and one hundred and fifty-first chapters, as justice of the peace and constables in the like cases are now entitled to.

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Powers, protection, &c., of justices of the peace transferred to commissioners.

110. The municipal councils may, if they see fit, alter the limits and increase or diminish the number of electoral districts in their respective municipalities, and the number of councillors to be elected by each district; and in laying off such districts regard shall be had to the population so as to equalise the number of councillors in that respect as far as possible.

Council may alter the limits and numbers of districts, and the number of councillors, &c.

111. The councillors of any district, or the councillors of any number of districts, in matters relating exclusively to such district or districts, may meet together with the warden, and they shall have full authority to manage all such matters, independent of the control of the council.

Meeting of councillors.

112. The warden or temporary chairman shall have a right to vote on all questions before the council.

Warden right to vote.

113. The provisions of chapter sixty-four "Of commissioners of streets," shall extend to all municipalities; and all the powers by such chapter vested in the sessions and grand jury, are hereby vested in the council of the municipality, and the power and authorities of the commissioners are hereby vested in the commissioners to be appointed by such council.

Provisions, &c., of chap. 64, extended to municipalities.

114. All the provisions of chapter thirty-three, "Of the census and statistical information," shall extend to the municipalities; and all the powers, authority and duties, given and imposed upon the sessions and clerk of the peace, shall be exercised and performed by the municipality council and the municipality clerk, and the officers and persons appointed by them to carry out the provisions of that chapter. The municipality councils shall appoint committees of their own body to revise the jury lists in accordance with the acts relating thereto, and shall fulfil all the duties imposed by those acts on the committees of the sessions.

Provisions, &c., of chap. 33, extended to municipalities.

Jury list, revision of.

115. Notwithstanding the ninth clause of chapter ninety-seven, "Of trustees of public property," all property of every description belonging to the municipality, or any district or districts, shall be under the management and control of the municipal council, or of the warden and the councillor or councillors of such district or districts.

Public property to be under management of the council.

116. Whenever it shall become necessary to purchase land or buildings, or to erect buildings for the use of municipalities, or of townships or districts, the assessment for the amount required therefor may, if it be thought advi-

Purchase of land, &c.

**CHAP. 133.** sable, be made payable by yearly instalments, to be collected and levied on such municipalities, townships, or districts, liable therefor; but such payment shall not be made to extend over a longer period than five years.

**Elections.** 117. The election for warden and councillors may be by ballot or otherwise, as shall be determined by the council.

**Commissioners of sewers.** 118. Municipality councils shall appoint commissioners of sewers in their respective districts or counties, who shall have power and authority to carry out the provisions of chapter seventy-three, "of commissioners of sewers, and the regulation of dyked and marsh lands," and shall also appoint inspectors of provisions, lumber, fuel, and other merchandize, under the eighty-fifth chapter, except the inspectors of pickled fish.

**Inspectors of lumber, &c.**

**Commons.** 119. The municipality councils shall have the same power and authority respecting commons as is now vested in the sessions, under the seventy-fourth chapter, "of commons."

**Municipality clerk, power, duties of, &c.** 120. All power and authority now vested in, and all duties now imposed on clerks of the peace and town clerks, shall be vested in, and be performed by, the municipality clerks.

**Judicial district commissioners, powers of, &c.**

121. All the powers and authorities vested in justices of the peace by the ninety-first chapter, "of the maintenance of bastard children;" also by the one hundred and twenty-fifth chapter, "of masters, apprentices and servants;" also, by the one hundred and fifty-seventh chapter, "of offences against religion;" also, by the one hundred and fifty-eighth chapter, "of offences against public morals," shall be exercised by the judicial district commissioners of the municipality.

**Continuation of causes.**

122. The judicial district commissioners may, on good grounds shewn by affidavit, continue a cause to the next monthly meeting.

**Seamen, power as regards them.**

123. The warden, and any one of the councillors, shall have power, on the sworn complaint of the master, to arrest any seaman, of a British, provincial, or foreign vessel, who, having signed regular articles, and not being duly discharged therefrom, shall wilfully absent himself from his vessel; and after hearing both parties, if he find the complaint well founded and just, to compel the seaman to return to duty if requisite; also to send him to jail until the vessel is ready for sea, and give the aid of constables in carrying him on board his vessel.

**Votes of money.**

124. No vote shall pass the municipality council other than the annual vote for the maintenance of the poor, or for ordinary annual county or district purposes, to a greater amount than fifty pounds, unless the same shall have been sanctioned by the majority of qualified electors present at a public meeting, which shall have been called for the purpose, and presided over by the warden and one of the coun-

cillors; of the time and place of which meeting ten days' notice shall have been given. CHAP. 133.

125. When any county or district shall hereafter be incorporated, the municipal council shall, without delay, proceed to lay the county or district off in so many and such municipal townships as shall be most convenient, and which shall not disturb the limits of existing townships, electoral districts, or poor districts, unless there be an unavoidable necessity to do so for the convenient division and arrangement of the whole county or district.

Counties to be laid off in municipal townships; not to disturb existing districts, &c.

126. Such division shall be made between the first annual meeting of the county council on the second Tuesday of December, and the fifteenth day of March next after, and publication shall be forthwith made in each township of the boundaries of all the proposed municipal townships, with a notice that the county council at its next half-yearly meeting in April will hear objections.

Division, when to be made.

127. The county council shall, at the next half-yearly meeting in April, consider all objections made by petition or in person to the proposed township divisions, and at their discretion establish, alter, modify, or re-arrange the same, and having finally decided on the number and limits of the several municipal townships, shall make immediate publication thereof in each township.

Number and limits, how decided.

128. Immediately thereupon the inhabitants of each of such municipal townships shall be a body corporate, have perpetual succession and a common seal, with power to break, renew, and alter the same, and shall be capable of suing and being sued, of purchasing, acquiring, and holding real and personal estate within the township, for the use of the inhabitants thereof in their corporate capacity, and of making and entering into such contracts as may be necessary for the exercise of their corporate functions; and their powers shall be exercised by, through, and in the name of the municipality of such township.

The inhabitants of municipal townships to be bodies corporate, &c.

129. The municipal council of each township shall consist of five councillors, one of whom shall be presiding officer, under the name of town reeve, and the councillors and reeve shall hold office for two years, and until the election of their successors.

Municipal council.

130. The first elections of such township councillors shall, after due notice to the respective townships for not less than ten days given by the county council, be held on the third Tuesday in November following, and at such place, and before such presiding officers as shall be appointed by the county council.

First election of councillors, when held.

131. Succeeding biennial elections shall be held on the third Tuesday of November in each alternate year, at such place and before such presiding officers, and after such notice as the township council shall by any bye-law appoint.

Succeeding elections, when held.

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Elections, how held.

132. Every election shall commence and be continued, closed and notified, as directed in the case of county councillors, by sections eight and nine; the township councillors elect being summoned to meet on the fourth Tuesday of November next after, at such place in the township as the officer presiding may appoint, until the place of meeting shall be determined by the township council; at which time and place the presiding officer and councillors elect shall meet, and the councillors being sworn into office, the township council shall be organized and proceed to business.

Town reeve, how elected.

133. At the first meeting the township councillors shall elect from among themselves a town reeve in each municipal township, and every town reeve shall *ex officio* be a county councillor.

Meetings, how summoned.

134. There shall annually be held a meeting of the township council on the fourth Tuesday of November, to be called the annual meeting; and such other meetings, either periodical or occasional, as the council shall appoint. The township council may severally adjourn their meetings from time to time, and the town reeve, or in case of his death or absence, any two of the town council, may at any time summon a special meeting; the places and times of meeting may be appointed by the township council by by-law, resolution, or adjournment, and the twenty-seventh section shall, as far as applicable, extend to township councils and their meetings.

President of meetings.

135. The town reeve shall preside at all meetings, or in his absence some member of the council to be selected for the purpose by the members present, who shall for the time have the same authority as the town reeve.

Requirements for voting.

136. No person shall be entitled to vote at the election of township councillors unless he shall reside in the municipal township, and shall have so resided for the time required for residence in the case of voting for members of assembly.

Townships, by whom divided.

137. The township council, if they deem it desirable, may divide their township into five electoral wards, and appoint polling places therein, and presiding officers to receive the votes in each polling place; each ward to return one town councillor, who shall be resident within the township.

Overseers of poor, by whom chosen.

138. The township council, at the first meeting, and at each annual meeting afterwards, or at such other time as they may appoint, shall vote for each poor district in the township the sum they shall judge necessary for the support of the poor in that district, and for the purposes enumerated in the eighty-ninth chapter; and shall appoint overseers of the poor for the existing poor districts within the township until such existing poor districts shall be altered by the town council, which districts they have power from time to time to alter, if they shall see fit to do so. When



a poor district lies in more than one municipal township, the councils of the several municipal townships interested may respectively appoint overseers to meet the circumstances within each municipal township; and the several townships interested may make agreements with each other according to the emergency of the case, and if unable to agree, the county council shall have power to make such order as may be agreeable to justice.

139. In the case of the first election, each presiding officer shall receive in full for his services ten shillings; and each poll clerk employed, five shillings.

Payment of officers.

140. Each township municipality shall appoint a clerk and a treasurer, and shall prescribe their duties and the security to be given by each for fidelity in office; and the clerk shall perform within the municipal township all the duties by law required of town clerks.

Clerks and treasurers, rules concerning.

141. The following sections, as far as the same are, or may be applicable, and with such changes of terms as may be necessary to make them applicable to townships and township municipalities, shall apply to township municipalities created under this chapter, that is to say: sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-nine, thirty, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-nine, forty, forty-two, forty-four, forty-five, forty-six, forty-seven, fifty-four, fifty-five, sixty, sixty-four, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-five, seventy-six, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, ninety, ninety-one, ninety-five; also so much of sections sixty-nine, seventy-three and ninety-four, as apply to townships or township business or officers; and also the following division or sub-sections of the sixty-sixth section, viz., I., II., III., except as relates to provincial road money, and the IX. to the XVI., both inclusive, as far as applicable; and also the schedule of oaths. The township council may, by resolution or bye-law, make regulations on the subject matters of the thirty-first and thirty-second sections; also, may determine what, if any, remuneration, shall be paid to the town reeve and town councillors for their attendance and services.

Portions of the act for municipal government of counties applied to township municipalities.

142. When in the above portions of this chapter the words county, or council, or municipality, or councillor, or warden, or municipality clerk, or elector, or synonymous words occur, they shall respectively be construed to mean township or town council, or township municipality, or township councillor, or town reeve, or town clerk, as the case may be, unless otherwise expressed, or the sense forbid the change.

Words applicable to the county shall be construed as applicable to the township.

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Sections inconsistent with this chapter shall cease, and the following shall come into operation.

143. When municipal townships shall come into operation, the powers granted under the forty-third section, and other sections inconsistent with the sections from one hundred and twenty-five to one hundred and forty-two, inclusive, shall cease.

CLAUSES FOR ADAPTING THE COUNTY MUNICIPALITY TO TOWNSHIP INCORPORATIONS.

144. After township incorporations shall be adopted, and the municipal townships laid out and notified in any incorporated county or district, the sections next following shall come into operation therein, that is to say :

Election of county councillors shall not take place. Municipal council, how elected.

145. Thereafter in those counties or districts, no election of county councillors shall take place.

146. In such incorporated counties or districts, the town reeves of the several municipal townships shall constitute the municipal council; they shall continue in office two years, and until their successors are appointed, commencing their duties on the second Tuesday of December after the first and every subsequent general or bi-annual election of town councillors, at which time the county councillors shall go out of office.

Election of wardens.

147. On the second Tuesday of December after the first, and after each subsequent general or bi-annual election, the county council, and the recently elected town reeves, shall assemble at the county or district court house. The town reeves shall respectively exhibit and lodge with the county clerk a certificate of their election as township reeves, signed by the town clerk of the respective township municipalities, and they shall forthwith take the oath of office as county councillors, and then enter upon the duties of their office, and shall immediately proceed to elect by majority of votes from among themselves, a warden, who shall take the oath of office, and shall then enter upon the duties of his office, and who shall be subject to the twenty-first section; and in case the person so elected shall not qualify and serve in the said office, the county council shall choose, by a majority of votes from among themselves, a warden duly qualified, until one shall be found willing to serve.

Authority, &c., of wardens.

148. The warden shall have all the authority of county councillor; he shall hold office for two years, and thereafter till his successor be appointed and has qualified, and he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation, or otherwise, the council shall, at its first meeting thereafter, elect a warden for the remainder of the time; during the temporary absence of the warden, his place may be filled by a chairman for the time being, with all the authority of the warden, to be chosen by the members present.

Elections, &c., when held; power of coun-

149. It is declared that the first municipal election in any county or district hereafter to be incorporated, is to

take place on the third Tuesday of November next after its incorporation; and the first meeting of the county councilors then elected is to be held on the second Tuesday of December then next after. Until such first meeting of the county council, the existing authorities and modes of administering the affairs of the county, and of the townships and districts therein, are to continue in force. On the organization of the county council at that meeting, and from thence until its next succeeding annual meeting, the county council is to administer the affairs of the county, and of the townships and districts therein, under and in conformity with the provisions of this chapter.

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cills; relative  
duties of coun-  
ty and town-  
ship councils.

150. On the third Tuesday of November next after the said first meeting of the county council, the first election of township councillors is to take place, instead of the election of county councillors; and on the fourth Tuesday of November next thereafter, the first meetings of the township councils are to be held, and on the second Tuesday of December then next following, being the second annual meeting of the county council, the newly constituted county council is to be organized, and thenceforth the administration of the county and the township affairs is to be separated, and all the powers and jurisdiction over township affairs, which are given to the county council, and which are given to the township councils, shall thereafter no longer be exercised by the county council, but shall exclusively be vested in and be exercised by the township municipalities; and all other the powers and jurisdiction given to the county municipalities, and not herein given to the township municipalities, shall continue to be exclusively vested in and exercised by the county municipalities; provided that assessors, collectors, overseers, and other ministerial officers, having duties commenced, and not completed, on the occasion of any of the said changes of authority and jurisdiction, shall continue to have legal authority for the completion of such duties, unless the council coming into authority shall otherwise order; and they shall make return, and account to such council according to its direction, and otherwise obey its authority.

#### SCHEDULE OF OATHS.

*Oath of office, to be taken by all persons appointed to any office or duty under this chapter for which no oath of office is specially provided.*

I, A. B., do solemnly swear [or affirm where the party is entitled to affirm,] that I will truly, faithfully, and impartially, to the best of my knowledge and ability, execute the office of [inserting the name of the office, as presiding officer, or clerk at the elections, or warden, councillor,

CHAP. 133. *county clerk, &c., &c. as the case may be,*] to which I have been elected [*or appointed*] in this municipality, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality, or malversation, or other undue execution of the said office. So help me God.

*Oath of office for the auditors.*

I, A. B., do solemnly swear [*or affirm when the party is entitled to affirm,*] that I will faithfully, and impartially to the best of my knowledge and ability, execute the office of auditor, to which I have been appointed in this municipality, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office; and that I have not, during the time preceding my appointment to the said office of auditor, and that I have not since had, and that I have not now, directly or indirectly, any share or interest whatever in any contract or employment, with, by, or on behalf of the municipal corporation of ———. So help me God.

*Oath of qualification.*

I, A. B., do swear [*or affirm*] that I am a natural born [*or naturalised*] subject of her majesty, and, that I am by law qualified to be elected to the office of ———, in the municipality of ——— according to the true intent of chapter one hundred and thirty-three, and that a correct account, to the best of my knowledge and belief, of the property in respect whereof I claim to be so qualified, is contained in the schedule hereunto annexed. So help me God.

SCHEDULE A.

*County of King's.*

Each electoral district shall return two councillors, except the Aylesford district, which shall return four councillors.

*County of Queen's*

Three councillors to be returned for electoral district number one.

*County of Yarmouth.*

In the district of Yarmouth three councillors shall be returned for electoral district No. 2, and one councillor for electoral district No. 4.

## TITLE XXXVI.

## OF COURTS AND PROCEEDINGS THEREIN.

## CHAPTER 134.

## OF PLEADINGS AND PRACTICE IN THE SUPREME COURT.

## Part the First.

## WRITS OF MESNE PROCESS.

1. All personal actions shall be commenced by writ of summons or replevin, and in case of absconding debtors, attachment or summons, in the forms set forth respectively in appendix A. numbers 1, 2, 3, and 4; and where the amount claimed is under twenty pounds, the writ shall be marked on the back thereof, summary cause; and every writ shall be subscribed with the name of the plaintiff issuing the same, and with his place of abode, or with the name of the attorney issuing the same.

Writs of mesne process.

Commencement of actions.

Forms.

2. It shall not be necessary to mention any form of action in the writ or other proceedings.

Form of action, mention of, unnecessary.

3. The teste of all writs, whether of mesne process or otherwise, shall be abolished, and every writ shall be dated by the prothonotary the day it is issued.

Teste abolished; writs, when dated.

4. The writ shall contain the declaration according to the practice now adopted in summary causes, and to the forms in appendix B, except in very special cases, where the declaration may be annexed or served separately; but no charge shall be allowed therefor, unless, on taxation, the judge shall deem such course to have been proper under the circumstances.

Writ to contain declaration.

5. If a plaintiff, in any action commenced by summons, in which the defendant is now liable to arrest, whether upon the order of a judge or commissioner, or without such order, shall, at or after the commencement of such action, by affidavit of himself, or some other person, shew, to the satisfaction of a judge or commissioner, that such plaintiff has a cause of action against the defendant or defendants, to the amount of five pounds or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the defendant, or any one or more of the defendants, is or are about to quit the province, unless he or they be forthwith arrested, such judge or commissioner may, by a special order, direct that such defendant or defendants, so about to quit the province, shall be held to bail for the amount of the debt or damage sworn to, or, in the case of unliquidated damages, for such sum as the judge or com-

Affidavit to hold to bail.

**CHAP. 134.** missioner shall think fit; and thereupon the plaintiff within the time expressed in such order, but not afterwards, may sue out one or more writ or writs of *capias* into one or more different counties, as may be required, against any such defendant, so directed to be held to bail, which writ shall be in the form in appendix A, number 5. Where a defendant is ordered to be held to bail under this section, after he has appeared to the action, the form of the bail bond in the appendix number twenty-two, shall be modified accordingly.

*Capias.*

*Form.*

*Bail bond.*

*Bail, how taken.*

*Deposit.*

*Wrong name, initials, or want of christian name in affidavit.*

*Where defendant under arrest, and plaintiff does not proceed.*

*Writs, when returnable*

6. The sheriff shall, within one month after the date of such *capias*, but not afterwards, proceed to arrest such defendant thereupon, and he shall remain in custody until he shall have given a bail bond to the sheriff, or shall have made deposit of the sum endorsed on such writ of *capias*, together with ten pounds for costs; and the sheriff shall make return of his writ immediately upon the execution thereof, or at the expiration of the month if not executed.

7. Where the defendant shall be described in the process or affidavit to hold to bail by initials, or by a wrong name, or without a christian name, the defendant shall not be discharged out of custody, or the bail bond delivered up to be cancelled, if it shall appear by the affidavit that due diligence has been used to obtain a knowledge of the proper name.

8. Where a defendant is committed to jail on mesne process, and the plaintiff does not proceed to trial in the term next after his committal, or in the sittings thereafter, the defendant shall be discharged on entering a common appearance on the last day of such term, or the sittings thereafter, provided he was ready for trial at such term or sittings, and had pleaded issuably to the declaration, if served upon him, and given notice of his readiness for trial, and provided the cause had been called for trial, and also provided the court shall not, on sufficient cause shewn on affidavit, be of opinion that the defendant ought not to be discharged.

9. There shall be no special return days for writs of summons, writs of replevin and writs of attachment and summons, against absent or absconding debtors, or their agents or trustees; but such writs shall be returnable within ten days after the service thereof, if the defendant shall reside in the county in which the action is brought; within twenty days after service if he shall reside in any other county, except in the island of Cape Breton; and within thirty days if he shall reside in the island of Cape Breton; and the action is brought in any county not in the island; or if he shall reside out of the island and the action is brought in any county within the island; and judgment may be entered against the defendant if he shall not appear and plead within four days after the expiration of

such periods of ten, twenty, or thirty days, as the case may be. CHAP. 134.

10. The writs shall summon the defendant to appear "within ten, twenty, or thirty days (as the case may be) after the service of this writ." Form of, how altered.

11. Writs shall be directed thus: To the sheriff of —, or to any other of our sheriffs; and may be executed by any sheriff within his bailiwick, and concurrent writs may be issued. Writs, how directed and executed.

12. The sheriff shall in his return on every writ of mesne process state the very day on which it was served, and shall not be allowed any fees on process served by him where the return is not so made. Endorsement on return.

13. No person upon the Lord's day shall serve or execute any civil writ or process, but the service thereof shall be void, and the party serving the same shall be liable to the party aggrieved, as if he had executed the same, without any writ or process. Lord's day, no service on.

14. The service of the writ wherever practicable shall be personal, but the plaintiff shall be at liberty to apply, from time to time, if necessary, on affidavit to the court or a judge, who may, if satisfied that the writ has come to the knowledge of the defendant, or that he wilfully evades service, order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the court or a judge may seem fit. Service of writ.

15. Writs against a corporation may be served on the principal officer, or on the clerk or secretary. Ditto on corporations.

16. The plaintiff shall annex, or endorse on his writ and copy thereof, the particulars of his claim, in the form, or to the effect contained in appendix A, number 6, in all cases where the claim is for a debt, or liquidated demand in money, with or without interest arising upon a contract express or implied. Particulars.

17. If such particulars are not given, the plaintiff shall not be entitled to final judgment on non-appearance of defendant. Effect of non-delivery of.

18. The plaintiff's particulars shall give credits, if there be any. To give credits.

19. Notice of trial may be endorsed on writs of summons. Notice of trial.

20. A set-off by defendant shall be pleaded, and he shall annex to, or indorse on his plea, and copy thereof, full particulars of each set-off, giving credits, if there be any, and in default, his plea may be treated as a nullity; such particulars shall be assimilated in form to those in appendix A, number 6. Set off; plea of; particulars of.

21. Neither plaintiff nor defendant shall be at liberty to adopt his adversary's particulars, without at the same time admitting the adverse side of the account or claim as presumptive proof thereof. Particulars of demand or set off adopted by either party.

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Summons for particulars.

22. A summons for particulars and order thereon may be obtained from a judge or the prothonotary, by either party, without the production of any affidavit, but a summons and order for further or better particulars, or for amending particulars, shall be granted only by a judge, and upon affidavit.

Time to plead after delivery of particulars.

23. A defendant shall be allowed the same time for pleading, after the delivery of particulars under a judge's or prothonotary's order, which he had at the return of the summons; nevertheless, judgment shall not be signed until the day after the delivery of particulars, unless otherwise ordered by a judge, and the judge may order further time.

## APPEARANCE AND JUDGMENT FOR NON-APPEARANCE.

Judgment by default.

24. In case of non-appearance, where particulars are annexed or endorsed, the plaintiff may, after the time for appearance has elapsed, sign final judgment, which may be entered in the form given in appendix A, number 7, and on which no proceeding in error shall lie, for any sum not exceeding the sum mentioned in the particulars, with interest, at the rate specified, if any, to the date of judgment and taxed costs; but the plaintiff shall not, in such case, be entitled to recover any sum beyond the sum so mentioned, with interest and costs.

Appearance.

25. A party may appear at any time before judgment by default, and if he appear after the time specified in the writ of summons, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position, as to pleadings and other proceedings in the action, as if he had appeared in time; provided always, that a defendant appearing after the time appointed by the writ, shall not be entitled to any further time for pleading or any other proceedings, than if he had appeared within such appointed time.

After time for pleading elapsed and before judgment.

Parties admitted to defend after final judgment.

26. It shall be lawful for the court or a judge, either before or at any time within one year after final judgment, to let in the defendant to defend upon an application supported by satisfactory affidavits, accounting for the non-appearance, and disclosing a defence upon the merits.

Judgment by default where particulars not given.

27. In case of non-appearance, where the particulars are not given, judgment by default may be signed at the expiration of the time for appearance, but no costs shall be allowed in respect of assessment of damages unless it appear that the plaintiff could not conveniently furnish the particulars at the time of the issue of the writ.

Assessment of damages where default marked.

28. In actions for the recovery of debts, where a judgment for default has been marked, the court or a judge, may assess the damages on competent evidence in writing, or *viva voce*; and the attendance of witnesses and production of documents before the court or a judge may be enforced by subpoena, in the same manner as upon the trial of a cause



before a jury. Upon such assessment, signed by the judge or prothonotary, being filed, the costs in the action may be taxed, and final judgment entered thereon. CHAP. 134.

29. Either party, upon due application to the court, or a judge, may have the assessment made by a jury, or, at any assessment to be made before the court, if the court should think fit, by a special jury; and at any assessment before a judge, he may order such assessment to be made by a jury. Jury may be demanded or ordered.

30. The defendant shall appear and plead within four days after the time specified in the writ for his appearance. Appearance and plea, time for.

31. Every writ by which an action is commenced, except in ejectment, shall be endorsed with the notice in the form in appendix A, number 8. Notice to appear and plead endorsed on writ.

32. Every appearance by the defendant, in person, shall contain an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if the address be not given, the plaintiff may proceed by sticking up the proceedings in the prothonotary's office, without further service, until the true address be given. Appearance by defendant in person.  
Service of pleadings on defendant appearing in person.

33. In any action brought against two or more defendants, where the writ of summons is endorsed in the special form hereinbefore provided, if one or more of the defendants shall only appear, and another or others of them shall not appear, it shall be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and to issue execution thereupon, in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared, and such defendant or defendants shall be entitled to their costs; or the plaintiff may, before issuing such execution, proceed against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared, shall operate and take effect, whether the plaintiff succeeds against the other defendant or defendants or not. When one of several defendants only appears.

34. It shall not be necessary to file warrants of attorney to prosecute or defend. Warrants to prosecute or defend unnecessary.

35. Common bail is abolished, and the appearance shall be in the form in appendix A, number 9. Common bail abolished.

#### JOINDER OF PARTIES.

36. The joinder of too many plaintiffs shall not be fatal to any action, but the plaintiff or plaintiffs entitled may recover. Joinder of too many plaintiffs.

37. The defendant, in any action in which there is more than one plaintiff, on pleading a set off may obtain the benefit of a set off against a plaintiff improperly joined. Set off against plaintiff improperly joined.

**CHAP. 134.** fit of the set off on proving, either that all the parties named as plaintiffs are indebted to him, notwithstanding that one or more of such plaintiffs was or were improperly joined, or on proving that the plaintiff or plaintiffs, or any or either of them who establish their right to maintain the action, was or were indebted to him.

**Non-joinder of plaintiff.** 38. The non-joinder of a person as plaintiff in an action on contract, shall be a variance to be amended at, or at any time before the trial by the court or a judge, if it shall appear that such non-joinder was not for the purpose of obtaining an undue advantage, and that injustice would not be done by amending, and that the omitted party consent to be joined as a co-plaintiff; provided, however, that no such amendment shall be made if the defendant shall, at or before the time of pleading, have given notice to the plaintiff that he objects to such non-joinder.

**How amended.** 39. In case such notice be given, or any plea of non-joinder be pleaded, the plaintiff shall be at liberty to amend the writ and other proceedings, by adding the name of the person alleged to have been improperly omitted as plaintiff, on payment of costs, and with liberty for the defendant to plead anew.

**Too many defendants.** 40. Where too many defendants are joined in an action on contract, the plaintiff shall be at liberty to recover against such defendant or defendants as appear to be liable, and the other defendants shall be acquitted with like provisions respecting set off, and evidence as in the case of too many plaintiffs, and the defendants so acquitted shall be entitled to their costs.

**Plea in abatement of non-joinder.** 41. Upon a plea in abatement of non-joinder of a contractor as defendant, the plaintiff may amend his writ, serve the amended writ on the added defendant, and proceed against both, and the date of such amendment shall, as between such added defendant and the plaintiff, be considered the commencement of the suit.

**Costs.** 42. In such case, if upon the trial of the cause, it shall appear that the added defendant was jointly liable with the original defendant, the original defendant shall be entitled to the costs of the plea in abatement and amendment; but if at the trial it shall appear that the plaintiff cannot maintain his action against the original and added defendants, but can maintain his action against the original defendant alone, the added defendant shall be acquitted with costs, and the plaintiff shall be entitled to recover against the original defendant with costs, including those of the plea in abatement, and such costs as the plaintiff may have to pay the added defendant.

**In actions by husband and wife, claims of husband alone may be joined.** 43. In any action brought by a man and his wife, for an injury to the wife, in respect of which she is a necessary plaintiff, there may be joined claims by the husband alone, but in the case of the death of either plaintiff, the suit so

far only as relates to the causes of action, if any, which do not survive, shall abate. CHAP. 134.

44. The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued in manner and under the restrictions hereinafter mentioned. Death of parties.

45. If there be two or more plaintiffs or defendants and one or more of them should die, if the cause of such action shall survive to such surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. Of one of several parties.

46. In case of the death of a sole plaintiff, or sole surviving plaintiff, the legal representative of such plaintiff may at any time within two years after such death, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the cause of action of deceased plaintiff; and such judgment shall follow upon the verdict in favor of, or against the person making the suggestion, as if such person were originally the plaintiff. Of sole plaintiff.

47. In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings if the cause has not arrived at issue, or in the issue, if it has so arrived of the death, and that a person named therein is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of such writ and suggestion, and with a notice signed by the plaintiff, or his attorney, requiring such executor or administrator to appear and plead within twelve, eighteen, or twenty-five days, as the case may be, after service of the notice; and that in default of his so doing, the plaintiff may sign judgment against him as such executor or administrator, and the same proceedings may be had in case of non-appearance and plea, after such notice as upon a writ against such executor or administrator, in respect of the cause for which the action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together, and the new defendant shall plead thereto at the same time, and in case the plaintiff shall have served his declaration, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion, and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate and ren-

**CHAP. 134.** dered necessary by his character of executor or administrator, unless, by leave of the court or a judge, he should be permitted to plead fresh matter, in answer to the declaration, and in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declarations, and pleadings upon the suggestion shall be tried together, and in case the plaintiff shall recover, he shall be entitled to the like judgment, in respect of the debt or sum sought to be recovered, and in respect of the costs, prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator.

The death of either party between verdict and judgment.

48. The death of either party, between the verdict and the judgment, shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict.

Of plaintiff after interlocutory and before final judgment.

49. If the plaintiff in any action happen to die after an interlocutory judgment, and before a final judgment obtained therein, the action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die, after such interlocutory judgment, and before final judgment obtained therein, the action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant, and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators may have a writ of revivor against the defendant, if living, after such interlocutory judgment, or if he be dead, then against his executors or administrators, to shew cause why damages in such action should not be assessed and recovered by him, or them; and if such defendant, his executors, or administrators shall appear at the return of such writ, and not show or allege any matter sufficient to arrest final judgment, or shall make default—damages shall be thereupon assessed as hereinbefore provided; and upon the return of the writ or delivery of the order, with the amount endorsed thereon, judgment final shall be given for the plaintiff, his executors, or administrators, prosecuting such writ of revivor against such defendant, his executors, or administrators respectively.

Marriage of a woman, plaintiff or defendant.

50. The marriage of a woman, plaintiff or defendant, shall not cause the action to abate, but the action may notwithstanding, be proceeded with to judgment, and such judgment may be executed against the wife alone, or by suggestion or writ of revivor, pursuant to this act, judgment may be obtained against the husband and wife, and execution issue thereon, and in case of a judgment for the wife,

execution may be issued thereupon by the authority of the husband, without any writ of revivor or suggestion, and if in any such action, the wife shall sue or defend by attorney, appointed by her when sole, such attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the court. CHAP. 134.

QUESTIONS RAISED BY CONSENT WITHOUT PLEADING.

51. The parties, after writ issued, may, by leave of the court or a judge, state any question for trial, which they may think fit, without any pleadings, and with or without an agreement; that according as it may be determined an agreed sum of money, or a sum to be ascertained by the jury, shall be paid, and as to payment of costs. Damages and Costs.

52. Upon such finding, judgment may be entered, and the proceedings recorded. Judgment.

53. Questions of law, after writ issued, may be stated for the opinion of the court, without pleading, and with similar agreements as to money and costs to be recovered, and with or without an agreement to bring errors, which may be brought when agreed. Questions of law after writ.

PLEADING.

54. Every declaration, whether in the body of the writ or annexed, and subsequent pleadings which shall clearly and distinctly state all such matters of fact as are necessary to sustain the action, defence, or reply, as the case may be, shall be sufficient, and it shall not be necessary that such matters should be stated in any technical or formal language or manner, or that any technical or formal statements should be used. Declaration. sufficiency of.

55. All statements which need not be proved, such as the statement of time, quantity, quality and value, where these are immaterial, that of losing, and finding, and' bailment in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the queen; the statement of promises which need not be proved, as promises in indebitatus counts and mutual promises to perform agreements and the like statements, shall be omitted; and when any clearly unnecessary statement is made, or any statement is made with unnecessary prolixity, as for instance, where evidence of the fact is pleaded instead of or as well as the matter of fact itself, or otherwise, it may be struck out or amended by the court or a judge with or without costs. Immaterial statements in, to be omitted.

56. In summary causes where the plaintiff claims less than twenty pounds, the defendant shall not be required to file or serve a written plea but he shall serve a written notice of appearance, [in which he shall state briefly the No plea in summary causes.

**CHAP. 134.** grounds of his defence, and, if he means to rely upon a sett off, he shall serve the plaintiff or his attorney with the particulars thereof.]

Change of venue.

57. No venue shall be changed without a special order of the court or a judge, unless by the consent of the parties.

No venue in body of writ.

58. The name of the county in the writ shall in all cases be taken to be the venue intended by the plaintiff, and no venue shall be stated in the body of the writ or declaration, or in any subsequent pleading; provided that in cases where local description is now required, such local description shall be given.

Demurrer to pleadings.

59. Either party may object by demurrer to the pleadings of the adverse party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply as the case may be; and where issue is joined on demurrer, the court shall proceed and give judgement according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in, or lack of form.

Defects in form, omissions, &c.

60. Except in the cases hereinafter particularly mentioned, no pleading shall be deemed insufficient for any defect now objectionable on special demurrer only.

Duplicity, argumentativeness, uncertainty.

61. Duplicity, argumentativeness, and uncertainty, shall be no longer grounds of objection to a pleading, unless the effect of such duplicity, argumentativeness, or uncertainty shall be to embarrass the opposite party; but if any pleading by reason of duplicity, argumentativeness, or uncertainty, shall be so framed as to embarrass or mislead the opposite party, it shall be competent to the latter to apply to a judge to have such pleading amended, which application shall be by summons, wherein the party shall state the particular ground of objection, and require that the pleading be amended.

Amendment, demurrer in default of.

62. Upon the hearing of such summons, if the judge shall be of opinion that the objection is well founded, and that the pleading is, in the matter objected to, so pleaded as to embarrass or mislead the opposite party, he may order the party pleading to amend in such manner as he may direct upon payment of costs; and in the event of such amendment not being made within a limited time, the party complaining shall be at liberty to demur, but if the judge shall not be of such opinion, he shall dismiss the summons with costs, and the party complaining shall have no further right of objection as to the point mentioned in the summons, or as to any other point of duplicity, argumentativeness, or uncertainty.

Powers conferred by two last secs. may be exercised by court

63. The powers conferred upon a judge under the two last sections, may be exercised by the court.

64. A demurrer on any such ground shall state that it is pleaded by leave, and shall repeat the objection taken in the summons and that only. CHAP. 134.  
Demurrer filed  
by leave.

65. Upon the argument of such demurrer the court shall give judgement according to the validity or invalidity of the specified objection and the substance of the pleading. Judgment on  
Demurrer.

66. The form of a demurrer shall be as follows: Form of.

The plaintiff [*or defendant*] by —— his attorney, [*or in person*] says that the declaration [*or plea, &c.*] is bad in substance, for the following reasons, viz.:

67. The form of a joinder in demurrer, in all other cases shall be as follows: Form of joinder.

The plaintiff [*or defendant*] says that the declaration [*or plea, &c.*] is good in substance.

68. In every demurrer some matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the court or a judge, and leave may be given to sign judgment as for want of a plea; but the party demurring, may, at the time of the argument, insist upon any further matters of law, which have been added to the demurrer by a judge's order. Matters of law  
to be stated.

69. No rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer; and the opposite party shall be bound within ten days after such demand to deliver the same, otherwise judgment. Demand of join-  
der substituted  
for rule.

70. The court or a judge shall, in all cases, have power to set aside frivolous or vexatious pleadings, and pleadings colourably amended, in pretended compliance with a judge's order to amend. Frivolous or  
vexatious  
amended plead-  
ings.

71. All statutory enactments allowing parties to plead the general issue or other general plea, and to give special matter in evidence, under such plea, are repealed. General issue  
by statute  
abolished.

72. The forms contained in schedule B, shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity. Forms.

73. In all actions upon bills of exchange and promissory notes, pleas that the defendant "never was indebted," or "did not promise as alleged," shall be inadmissible. In such actions therefore, a plea in denial must traverse some matter of fact: for example, the drawing, or making, or endorsing, or accepting, or presenting, or notice of dishonor of the bill or note. Pleas—  
In actions upon  
bills of ex-  
change.

74. In every species of actions on contracts, all matters in confession, and avoidance, including not only those by way of discharge but those which show the transaction to be either void or voidable in point of law on the ground of fraud or otherwise, shall be specially pleaded: for exam- On contracts.

**CHAP. 134.** ple, infancy, coverture, release, payment, performance, illegality of consideration, either by statute or by common law, drawing, endorsing, accepting, &c., bill or note by way of accommodation, set off, mutual credit, unseaworthiness, misrepresentations, concealment, deviation, and various other defences, must be pleaded.

**On policies of assurance, &c.** 75. In actions on policies of assurance, the interest of the assured may be averred thus:—"That A. B. C. and D. [or some or one of them] were or was interested," &c. And it may be also averred, "that the insurance was made for the use and benefit and on the account of the person or persons so interested."

**On specialities.** 76. In actions on specialities and covenants, the defendant's plea that the alleged deed is not his deed shall operate as a denial of the execution of the deed in point of fact only; and all other defences shall be specially pleaded, including matters which make the deed absolutely void as well as those which make it voidable.

**"Nil debet."** 77. The plea of "*nil debet*" shall not be allowed in any action.

**Matters in confession.** 78. All matters in confession and avoidance shall be pleaded specially as above directed in actions on simple contracts.

**Payment.** 79. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt unless the same shall be pleaded in bar.

**Actions for wrongs.** 80. In actions for wrongs independent of contract a plea that the defendant *did not do* which is complained of by the plaintiff, shall operate as a denial only of the breach of duty, or wrongful act, alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defence than such denial shall be admissible under that plea. All other pleas in denial shall take issue on some particular matter of fact alleged in the writ or declaration; and all matters in confession or avoidance shall be pleaded specially as in actions on contracts.

**For trespass.** 81. In actions for trespass to land, a plea that the defendant did not commit the trespass complained of shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession or right of possession of that place, which, if intended to be denied, must be traversed specially.

**For taking goods, &c.** 82. In actions for taking, damaging, or converting the plaintiff's goods, a plea denying the defendant's having committed the wrong alleged by taking, damaging, or converting the goods mentioned, shall not operate as a denial of the plaintiff's property therein, which, if intended to be denied, must be traversed specially.

**No further pleadings.** 83. There shall be no further pleadings after the plea of the defendant, except a demurrer thereto, or a replication to a plea of set off, or plea of matter occurring subsequently



to the commencement of the action, unless by the special leave of the court, or a judge, or an application to allow such further pleading, which shall only be allowed in case the real question or questions, whether of fact or law between the parties, cannot conveniently be raised and put in issue by the amendment of the previous pleadings; and where there is no replication the plaintiff shall be taken to have joined issue on the defendant's pleas.

84. Express colour, profert, oyer, and special traverses, are abolished.

Express color, profert, oyer, &c., abolished.

85. Each party shall be entitled to demand of the other a copy or inspection, or both copy and inspection, in whole or in part, of any deed, agreement, bill, or other written document, mentioned or referred to in his pleading, or in any paper therein referred to, or whereof inspection could be obtained by a bill of discovery; and in the event of such copy not being delivered, or such inspection not being granted, shall be entitled to apply to the court or a judge for an order for such copy or inspection, or both, as the court or a judge may think fit.

Inspection of papers and copies may be demanded.

86. Such demand, summons, or order, shall be no stay of proceedings, unless specially ordered; and the court or a judge may impose such conditions for enforcing obedience thereto as may be deemed right.

Such demand to be no stay of proceedings.

87. A party pleading in answer to any pleading in which such document is mentioned or referred to, shall be at liberty to set out the whole, or such part, or the substance thereof, as may be material; and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

Documents set out in pleadings.

88. A plaintiff or defendant may aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify the condition or conditions precedent the performance of which he intends to contest.

Averment of performance and denial.

89. The general issue is abolished, and every pleading shall specify, particularly and concisely, the facts intended to be denied.

General issue abolished.

90. The rule to plead, and the demand of plea shall be abolished, and the notice to plead, which may be endorsed on the writ, or declaration, or delivered separately, shall be alone retained.

Rule to plead and demand of plea abolished.

91. With any amended declaration, plea, or subsequent pleading, delivered in any cause in term or vacation, a notice to the following effect may be endorsed: "Ten days are given to the plaintiff or defendant to plead *reply*, &c. in the cause"; and thereupon, if the party thus notified shall neglect to file his plea, replication, rejoinder, or other pleadings, as the case may be, within ten days from the time of service of such notice, and to deliver a copy of the same to the opposite attorney, the party giving such notice shall, after the

Notice to plead, &c.

**CHAP. 134.** expiration of that time be at liberty, being plaintiff in the cause, to mark a default as for want of plea; or, being defendant, to sign judgment of *non pros*: provided, however, that the court or a judge may, upon application, grant further time to plead; and may also, upon proper cause alleged and verified, order such default or *non pros* to be set aside, upon such terms as shall be thought reasonable and just: and provided also, that the court or any judge thereof may, in such cases as require it, give a rule or order to plead, reply, &c., within any shorter period than ten days.

Several counts for same cause of action.

92. Two or more counts may be added for the same cause of action, and several pleas, replications, and subsequent pleadings may be pleaded, but no costs shall be allowed for any count or other pleading which may appear to the judge unnecessary. The costs of all issues shall be borne by the party against whom they are found, and the jury shall be required to find the truth on each issue.

Costs.

New defence arising after last pleading.

93. No entry of continuances, by way of imparlance, *curia advisari vult*, *vice comes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings; but in all cases in which a plea *puis darrein continuance* is now by law pleadable, the same defence may be pleaded with an allegation that the matter arose after the last pleading, or the issuing of the jury process, as the case may be.

Entry of continuances, &c., abolished.

How pleadable.

94. Any defence arising after the commencement of any action, shall be pleaded according to the fact, without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action.

Ejectment and trespass *quare clausum fregit*, description.

95. In ejectment and in trespass *quare clausum fregit*, the property shall be described by metes and bounds, or other certain designation.

Trespass, defendants may demand particulars.

96. In any action for trespass to a person or property, the defendant shall be entitled to particulars, identifying the cause of action for which the plaintiff is proceeding, and the plaintiff to particulars of any justification pleaded by the defendant, and the judge may order plans of the place in question to be exchanged between the parties.

New assignment.

97. No new assignment shall be pleaded unless by leave of the court or a judge.

Plea.

98. No plea which has already been pleaded to the declaration, shall be pleaded to a new assignment, except a plea in denial, unless by leave of the court or a judge, and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

Libel and slander.

99. In actions of libel and slander, the plaintiff may aver that the words or matter complained of, were used in a defamatory sense, specifying such defamatory sense, without any prefatory averments to shew how such words or

matter were used in that sense, and such averments shall be put in issue by the denial of the alleged slander or libel; and where the words or matter set forth, with or without the alleged meaning, shew a cause of action, the declaration shall be sufficient. CHAP. 134.  
Averments,

100. In actions of slander, the precise words need not be proved as stated, provided the defamatory matter itself shall be substantially proved, nor shall it be necessary to aver, or prove special damage, where it shall appear that the words were defamatory, and were spoken falsely and maliciously. Slander.  
Proof.

101. In all personal actions, except actions for malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant, the defendant may pay into court a sum of money, by way of compensation or amends, without any rule or judge's order for that purpose, except in the case of one or more of several defendants, when such leave must be obtained, and may be granted, on such terms as the court or a judge may think fit. Compensation  
or amends in  
personal ac-  
tions.

102. When money is paid into court, such payment shall be pleaded in all cases, and in any stage of the cause, as near as may be in the following form: Payment of mo-  
ney into court  
to be pleaded.

The defendant, by ———, his attorney, [*or in person,*] [*if pleaded to part, say as to £——. parcel of the money claimed,*] brings into court the sum of £——, and says that the said sum is enough to satisfy the claim of the plaintiff, in respect of the matter herein pleaded to.

103. When money is paid into court, the same shall be paid to the proper officer, who shall give a receipt for the amount in the margin of the plea, and the same shall be paid out to the plaintiff or his attorney on demand. How paid in  
and received  
out.

104. The plaintiff after delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court, in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit; and in case of non-payment thereof, within twenty-four hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to his judgment and costs. Replication to  
such plea.

105. No rule or order for further time to plead shall be granted, unless the grounds of such application be disclosed by affidavit, and it shall then rest with the court or a judge, in their discretion, to grant such rule under the special circumstances of each particular case. Time to plead.

106. It shall be imperative on the party, plaintiff or defendant, to deliver to the opposite party, or his attorney, Filing plead-  
ings.

**CHAP. 134.** as well as to file all pleadings within the time limited therefor.

All pleadings to be signed; counsel's signature unnecessary.

107. It shall not be necessary to have a counsel's signature to any pleading, but all pleadings shall be signed with the name of the party or his attorney.

Plea, not to be waived without leave.

108. The defendant shall not be at liberty to waive his plea without leave of the court or a judge.

Set off, mutual debts.

109. Wherever there are mutual debts in the same right, one debt may be set off against the other, although such debts may be deemed in law to be of a different nature.

Pleas in bar, &c., formal parts abolished.

110. In a plea or subsequent pleading, intended to be pleaded in bar to the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect, or any prayer of judgment, nor shall it be necessary, in any replication or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts, shall be taken, unless otherwise expressed, as pleaded respectively in bar or in maintenance of the whole action; provided that nothing herein contained shall extend to cases where an estoppel is pleaded.

Formal defence unnecessary.

111. No formal defence shall be required in a plea, and it shall commence as follows: The defendant by ———, his attorney, [*or in person,*] says that ———.

Second and other pleas to be pleaded without leave.

112. It shall not be necessary to state in a second or other plea, or avowry, or cognizance, that is pleaded by leave of the court, or according to the form of the statute, or to that effect, nor shall such leave be required.

One plea or replication to several counts or pleas allowable.

113. Where there are two or more counts substantially for the same cause of action, or two or more pleas raising substantially the same defence to the same cause of action, the defendant or plaintiff may, on suggesting the fact in his plea or replication, plead a single plea or replication to such counts or pleas, and when the opposite party insists that the cause of action or defence is not the same, he may apply to the court or a judge, who may set aside the plea or replication on such terms, or make such other order as shall appear to be right or just.

Bankrupts or insolvents, actions against.

114. In all actions by and against the assignees of a bankrupt or insolvent, or executors, or administrators, or persons authorised by act of parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not in any case be considered as in issue, unless specially denied.

Discontinu-  
ance.

115. The plaintiff may discontinue at any time by filing either a discontinuance or a rule therefor, and thereupon the defendant may at once tax his costs of defence and enter judgment therefor.

116. Either party may, by leave of the court or a judge, plead and demur to the same pleading at the same time, and it shall be in the discretion of the court or a judge which issue shall be first disposed of.

CHAP. 134.  
Parties may  
plea and demur  
to same plead-  
ing.

117. Different causes of action, of whatever kind, except local causes arising in different counties, may be joined in the same suit, provided they be by and against the same parties and in the same rights; but the court or a judge shall have power to prevent the trial of different causes of action together, if such trial would, in their judgment, be inexpedient, and in such case may order separate issues to be made up and separate trials to be had.

Different causes  
of action may  
be joined.

118. All notices given in the progress of a cause between the attorneys, shall be received in evidence on an affidavit of the service thereof made by the attorney or his clerks, specifying the time and mode of such service.

Notices recei-  
ved in evidence.

#### VIEW.

119. View by jury is abolished, unless the judge on the trial shall think the same advisable, in which case the whole jury shall, after being sworn, view the premises, and the judge may, in such case, for the purpose of the view, postpone further proceedings in the trial until such view can be had, but such postponement shall not be made for so long a time as to prevent the trial at the same term or sittings.

View.

#### EXECUTION.

120. Writs of execution shall be, as near as may be, in the form heretofore used, and shall be made returnable, either in sixty days, or to a particular return day.

Execution; re-  
turn.

121. It shall be competent for the party suing out the writ, to direct by endorsement in what manner it is to be executed, which direction the officer shall obey, and the party shall in all cases, specify upon the face of the writ, or by endorsement, for what amount it is to be levied.

To be executed  
according to  
direction endor-  
sed.

122. No execution shall issue on a judgment until the bill of costs and record, or in a summary cause the bill of costs only, be filed.

When issuable.

123. When any member of the provincial parliament, being taken under execution, shall be released by reason of his privilege, he may be taken under a new writ after the expiration of such privilege.

Against M. P. P.

124. Current gold and silver coin may be taken in execution, and may be paid to the creditor as money collected.

Coin.

125. Provincial and bank notes, and all bills or evidences of debt issued by any corporation, and circulated as money, may be taken in execution, and paid to the creditor at their par value as money collected, if he will accept them, otherwise they shall be sold as other chattels.

Bank notes and  
securities.

126. The necessary wearing apparel and bedding of the

Property ex-  
empted.

CHAP. 134. debtor and his family, and the tools or instruments of his trade or calling, and his last cow, shall be exempted from execution.

To bind goods after delivery to sheriff.

127. No writ of execution shall bind the goods of the defendant but from the time the writ shall be delivered to the sheriff to be executed; and the sheriff shall, upon the receipt of the writ endorse thereon the time at which the same was received by him.

Interest on judgments.

128. Judgments hereafter to be taken, shall, in all cases, bear interest, and the same may be levied for under execution.

Discharge from custody.

129. A written order, under the hand of the attorney in the cause by whom any writ of execution shall have been issued, shall justify the sheriff, jailor, or party in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary, to such sheriff, jailor, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Satisfaction pieces.

130. All satisfaction pieces shall be signed by the plaintiff or his personal representatives, or by any attorney specially authorised for that purpose, unless any judge, upon special circumstances set forth in an affidavit, shall dispense with such requisites. The satisfaction piece may be in the form following:

In the supreme court, ——— term, 18—, satisfaction is acknowledged between ——— plaintiff, and ——— defendant, for ——— and ——— costs.

Judgment entered on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

SCIRE FACIAS.

Execution may issue within six years without revival.

131. During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, execution may issue without a revival of the judgment, at any time within six years after the judgment.

Judgment, how revived.

132. In cases where it becomes necessary, by reason either of the lapse of time, or of a change by death, or otherwise, of the party entitled or liable to execution, the party alleging himself entitled to execution, shall be allowed either to sue out a writ in the nature of a *scire facias*, to be called a writ of revivor, according to the form set forth in appendix A, number 10, or to apply to the court or a judge, for leave to enter a suggestion to the effect that it manifestly appears to the court, that he is entitled to execution of the judgment, and to issue execution there-

Writ of revivor.

Suggestion.

upon; such leave to be granted by the court or a judge, CHAP. 134.  
 upon a rule to show cause, or a summons to be served as at present, or in such other manner as may be directed by such court or a judge, which rule or summons may be in the form given in appendix A, number 11; and upon such application, in case it manifestly appears that the party making the same is entitled to execution, the court or a judge shall allow such suggestion to be entered in the form given in appendix A, number 12, and execution to issue, and order whether or not the costs of the application shall be paid by the applicant; and in case it does not manifestly so appear, shall discharge the rule, or dismiss the summons with or without costs, and the party applying shall, in such case, nevertheless, be at liberty to proceed by revivor or action, upon the judgment.

## AMENDMENT.

133. The supreme court and every judge thereof, shall at all times have the power of amending all defects and errors in any proceeding in civil causes, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party or not, and all such amendments may be made with or without costs, as to the court or a judge shall seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be made.

Court or judge may amend defects, &c.

134. The party against whom such amendment shall be made, if dissatisfied therewith, may apply to the court for a new trial on that ground, and the court shall thereupon make such order as to a new trial, and the terms on which such new trial shall be granted, or such other orders as they may deem reasonable.

Party dissatisfied with amendment.

135. In all such cases the judge, instead of causing the writ, pleadings, issue, roll, or document to be amended, may direct the jury to find the facts according to the evidence, and such finding shall be stated on the writ, issue, roll, or document; and if the judge shall deem such defect or error immaterial to the merits of the case, and the misstatements such as could not have prejudiced the opposite party, he shall give judgement according to the justice of the case.

Amendment at trial, power of judge.

## EJECTMENT.

136. Actions of ejectment shall be commenced by writ of summons against all persons in possession of the property claimed, and shall in all cases be conducted as other actions, and damages may be given for the plaintiff on trial, and on judgment by default the plaintiff shall be entitled to costs, and the damages may be assessed, or form the subject of a separate suit, at the plaintiff's option.

Commencement of action; proceedings in as-similated to other actions; judgment by default.

## CHAP. 134.

Description of property and of parties.  
Notice to appear.

137. The writ shall describe the property claimed with reasonable certainty. It shall also state the names of all the persons in whom the title is alleged to be, and there shall be thereon endorsed, a notice, that if the defendant do not appear and defend the property sued for, or such part thereof as he may think fit, within the time specified in such notice, the plaintiff will be at liberty to sign judgment at the expiration of such time, and that the defendant may thereupon be turned out of possession. The writ shall be served in the same manner as other writs, or in such manner as the court or a judge shall order, under any peculiar circumstances; and in case of vacant possession, by posting up a copy thereof, upon the door of the dwelling house, or other conspicuous part of the property.

Service of writ.

Vacant possession.

Forms.

138. The following forms in ejectment shall be used, viz: the writ appendix A, number 13; the notice endorsed on writ appendix A, number 14; judgment for non-appearance appendix A, number 15; judgment for plaintiff after appearance and plea, appendix A, number 16; and where other forms are requisite, they shall be assimilated to the above.

Who may appear.

139. Any person shall be permitted to appear, on filing an affidavit that he is in possession of the land, either by himself or his tenant, or who would now be entitled to appear, but the court or a judge shall have power to strike out or confine defences, set up by persons not so entitled.

Plea, when considered defence to whole.

140. A plea not confining the defence to a part of the premises, shall be considered a defence to the whole.

Defence may be limited to part of property.

141. Any person appearing, shall be at liberty to limit his defence by plea to a part only of the property mentioned in the writ, describing that part with reasonable certainty.

Plea, substance of; forms.

142. The plea shall be confined to a denial in whole or in part of the plaintiff's right to the possession claimed, or to a right of possession in himself with the plaintiff as tenant in common with the plaintiff. The forms shall be those in appendix A, numbers 17 and 18.

Plea; want of certainty in.

143. Want of reasonable certainty in the writ or plea, shall not nullify it, but only be ground for application to the court or a judge, for better particulars to the land claimed or defended, which the court or a judge shall have power to give in all cases.

Mode of proceeding where part of property undefended.

144. In case there be no appearance and plea within the time appointed, or if an appearance be entered but the defence limited to part only, the plaintiff shall be at liberty to sign judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Issue.

145. In case an appearance and plea shall be entered, either for the whole or part of the premises claimed, the case shall be considered at issue, and the parties may proceed thereupon to trial as in other actions, and the ques-

Trial.



tion at the trial shall, except in the cases hereinafter mentioned, be, whether the statement in the writ of the title of the claimant be true or false, in whole or in part, and if true, then which of the claimants, if more than one, is entitled; and also, whether he is entitled to any, and what damages for the wrongful withholding of the said premises.

146. In case of such an action being brought by some or one of the several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession, may plead that he defends as such, and admits the right of the claimant to an individual share of the property, but denies any actual ouster of him from the property; and upon the trial of such an issue, the additional question of, whether an actual ouster has taken place, shall be tried as at present in an action of ejectment.

Action for joint tenants, tenants in common, or coparceners.

147. In case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his costs of suit.

Where plaintiff's title expires before trial.

148. If the defendant appears, and the claimant does not appear at the trial, the claimant shall be non-suited; and if the claimant appears and the defendant does not appear, the claimant shall be entitled to recover as heretofore, without any proof of his title.

Non-appearance of either party at trial.

149. Upon any judgment in ejectment for the recovery of possession and costs, there may be either one writ, or separate writs of execution for the recovery of possession and for costs, at the election of the claimants.

Execution.

150. The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Death of either party.

151. In case the right of a deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict, and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Death of one of several claimants.

152. In case of the death before trial, of one of several claimants whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall

Where right does not survive to other claimants.

**CHAP. 134.** only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant, for such share of the property as he is entitled to, and costs.

After verdict  
and before exe-  
cution.

153. In case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for the recovery of possession of the entirety of the property and costs; but nothing herein contained shall effect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant, under such execution, shall be considered as an entry and possession on behalf of such legal representative, in respect of the share of the property to which he shall be entitled as such representative, and the court may direct possession to be delivered accordingly.

Of sole claim-  
ant, or of one of  
several claim-  
ants before  
trial.

154. In case of the death of a sole claimant, or before trial of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant, may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favor of, or against the person making such suggestion as hereinbefore provided, with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial, and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within twelve days after notice thereof, or such further time as the court or a judge may allow, then such suggestion shall be tried, and if, upon a trial therefor, a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant, such defendant shall be entitled to such judgment as aforesaid for costs.

Of a joint de-  
fendant.

155. In case of the death before or after judgment of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution.

Of a sole defen-  
dant, or all the  
defendants.

156. In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traver-

sable, but only be subject to be set aside if untrue; and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend, within the time to be appointed for that purpose by the order of the court or a judge, to be made upon the application of the claimants; and it shall be lawful for the court or a judge, upon such suggestion being made, and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the court or a judge may think fit, unless the person then in possession, by himself or his tenants, or by the legal representative of the deceased defendant, shall, within such time, appear and defend the action, and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant, as if he had originally appeared and defended the action; and if no appearance be entered, and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.

157. In case of the death of a sole defendant, or of all the defendants in ejectment, after verdict, the claimants shall, nevertheless, be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession, without suggestion or revivor, and to proceed for the recovery of the costs in like manner as upon any other judgment for money against the legal representative of the deceased defendant or defendants.

After verdict.

158. In case of the death, before trial, of one of several defendants in ejectment, who defends, separately, for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant; or the claimants may proceed against the surviving defendants, in respect of the portion of the property for which they defend.

Of one of several defendants before trial, defending for portion of premises.

159. In case of the death, before trial, of one of several defendants in ejectment, who defends separately, in respect of property for which surviving defendants also defend, it shall be lawful for the court or a judge, at any time before the trial, to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made, or leave granted, the claimant suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.

Ditto where surviving defendants make defence.

160. The claimant in ejectment shall be at liberty at any time to discontinue the action, as to one or more of the defendants, by filing a discontinuance or rule therefor, as against such defendant or defendants, and giving notice

Discontinuance as to one or more defendants.

**CHAP. 154.** thereof in writing to the defendant or defendants as against whom the action is discontinued, and thereupon the defendant to whom such notice is given, shall be entitled to tax his costs of defence, and have execution therefor.

By one of several claimants.

161. In case one of several claimants shall be desirous to discontinue, he may apply to the court or a judge to have his name struck out of the proceedings, and an order may be made thereupon, on such terms as to the court or a judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

Defendants may confess as to part of property.

162. A sole defendant, or all the defendants in ejectment, shall be at liberty to confess the action, as to the whole or part of the property, by giving to such claimant a notice headed in the court and cause, and signed by the defendant or defendants; such signatures to be attested by his or their attorney, and thereupon the claimant shall be entitled to, and may forthwith sign judgment and issue execution for the recovery of possession and costs.

Also, one of several defendants who defends separately for a part.

163. In case one of several defendants in ejectment, who defends separately for a portion of the property for which other defendants do not defend, shall be desirous of confessing the claimant's title to such portion, he may give a like notice to the claimant, and thereupon the claimant shall be entitled to, and may forthwith sign judgment and issue execution for, the recovery of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

Also, a defendant who defends separately for a part.

164. In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to, and may sign judgment against such defendant for, the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.

Judgment, effect of.

165. The effect of a judgment in such an action, shall be the same as that of a judgment in the present action of ejectment.

Special verdict.

166. The jury may find a special verdict.

Verdict for claimants: execution.

167. Upon finding for the claimants, judgment may be signed and execution issue, for the recovery of the possession, and for the damages awarded, and for the costs, as at present in the action of ejectment.

In ejectment, security for costs in second action.

168. If any person shall bring an action of ejectment, after a prior action of ejectment for the same premises has been, or shall have been, unsuccessfully brought by such person, or by any person through or under whom he claims, against the same defendant, or against any person through or under whom he defends, the court or a judge may, if they or he think fit, on the application of the defendant, at

any time after such defendant has appeared to the writ, order that the plaintiff shall give to the defendant security for the payment of the defendant's costs, and that all further proceedings in the cause shall be stayed until such security be given, whether the prior action has been or shall have been disposed of by discontinuance, by non-suit, or by judgment for the defendant.

169. Upon finding for defendants, or any of them, judgment may be signed and execution issue, for costs against the claimants named in the writ.

For defendants.

170. The court and the judges thereof may exercise over the proceedings in the action, the same jurisdiction which is at present exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster when necessary.

Jurisdiction of court and judges in action.

#### REPLEVIN.

171. Replevin may be brought for an unlawful detention, although the original taking may have been lawful.

Replevin may be brought for unlawful detention.

172. No writ of replevin, except where the property sought to be replevied has been distrained for rent or damage feasant, shall issue, unless the party applying therefor, or his agent, shall file an affidavit in the form in appendix A, number 19, setting forth that he, or in case of an agent, his principal, has the right to the possession of the property contained in the writ as he verily believes, and that it is unjustly withheld from him.

Affidavit to be filed.

173. In all cases of replevin, the plaintiff or his agent shall give security to the sheriff, in the form in appendix A, number 20.

Security to sheriff.

174. Notwithstanding the issue of a writ of replevin, the defendant or his agent, except in cases of distress for rent or damage feasant, shall have the right to retain possession of the property contained therein, if he shall give security to the sheriff in the form in appendix A, number 21; such security, given either by the plaintiff or defendant, shall be assigned, on request, to the party entitled to the benefit thereof, by the sheriff endorsing his name thereon, which endorsement shall be sufficient to enable such party to bring action thereon in his own name, against the several parties who have executed such security.

Defendant may retain possession.

Securities may be assigned by endorsement.

175. In actions of replevin, the jury shall be at liberty to award damages to either party in the suit.

Damages may be awarded to either party.

#### BAIL.

176. Bail to the sheriff shall continue bail to the action, and shall have the power of rendering the defendant whenever they shall see fit to do so. The bail bond to be in the form in appendix A, number 22.

Bail to sheriff to be bail to action; rendering defendant.

177. A party who has given bail to the sheriff, which bail has justified when required to do so, may appear and defend the action without filing special bail.

Party having given bail may defend without filing special bail.

## CHAP. 134.

Bail, when to justify; sheriff's liability.

178. The bail to the sheriff may be called upon to justify, on the return of the writ, and the sheriff shall be liable for taking insufficient bail, but he may relieve himself at any time before judgment by causing the defendant to be rendered, and upon payment of all costs which may have been incurred by the plaintiff in consequence of such bail being insufficient.

Sheriff's return.

179. The sheriff shall return the bail bond with the capias to the court where the writ is returnable, with an assignment thereon to the plaintiff, which assignment may be made by the sheriff endorsing his name thereon, and the same shall be sufficient to enable the plaintiff to bring action thereon in his own name against the several parties who have executed the same.

Return non est inventus.

Time for render in discharge for bail.

180. In all cases where the writ of execution against the defendant in any action is returned *non est inventus*, and an action is prosecuted against his bail upon their bond, they shall be allowed to render their principal in discharge thereof at any time before the time for pleading has elapsed, if they pay to the plaintiff the costs which have been incurred in the action against them upon their bond.

Justification where bail reside at a distance, or court not in session.

181. When the bail live above twenty miles from the place where the action is brought, or where the bail live within that distance, but the court shall not be in session, they may justify before a judge or a commissioner, by affidavit, and the judge or commissioner may examine the sureties upon oath, touching the value of their respective estates.

Loss of bill of exchange, &c.

182. In case of any action founded upon a bill of exchange, or other negotiable instrument, it shall be lawful for a court, or a judge, to order that the loss of such instrument shall not be set up; provided an indemnity is given, to the satisfaction of the court or judge, against the claims of any other person upon such negotiable instrument.

## MISCELLANEOUS.

Distinction of suing as attorney, &c., abolished.

Notice of trial

183. All distinction of suing and being sued, as an attorney, shall be abolished.

184. A notice of trial shall be given to the defendant or his attorney, in every cause where the defendant resides within the county (except in the island of Cape Breton) in which the action is brought, at least twenty days; if in any other county, at least thirty days, and if the defendant resides in Cape Breton, and the action is brought in any county not in the island, or if the defendant resides out of Cape Breton, and the action is brought within any county in the island, at least forty days before the first day of the term or the sittings thereafter, and if the plaintiff shall not proceed to trial pursuant to such notice, he shall be liable to pay to the defendant, the costs of not proceeding to trial, unless he can shew

good cause to the contrary, or shall have given to the defendant or his attorney, in case he has appeared, notice of countermand of such trial at least four days, or in case the defendant resides in Cape Breton, and the action is brought in any county not in the island, or the action is brought in any county within the island, and the defendant resides out of the island, at least fourteen days before the first day of the term or the sittings thereafter, but the plaintiff shall, notwithstanding such countermand, pay all the costs which the defendant has actually been put to prior to such notice of countermand, in consequence of the notice of trial.

185. In making up the docket of civil causes for trial, the prothonotary shall be guided by the following rules: 1st, All summary and appeal causes shall have precedence, except when ordered to be tried by a jury, and then they shall be entered on the docket, according to seniority, as declaration causes; such seniority in appeal causes, to bear relation to the issuing of the original writ. 2nd, When writs are filed on the same day, priority shall be regulated by the issue of the respective writs.

Rules for making up the docket.

186. At Halifax, the lists of all jury causes for trial shall be given in to the prothonotary, on or before the Tuesday preceding the first day of the sittings at which such causes are to be tried.

Jury cause when to be set down.

187. At Halifax, the docket of jury causes for trial shall be called on the first day of each sittings at or shortly after the opening of the court, and the plaintiff's attorney or counsel, when a cause is so called, shall be required to state whether he intends to try the same at such sittings, and in default of such statement the cause shall be struck off the docket; and the attorney or counsel of the defendant shall in like manner be required to state whether he intends defending the same, and in default of such statement, the cause shall be struck off the docket, and judgment, whether interlocutory or otherwise, may be entered up for the plaintiff, and further proceedings had as if no plea had been filed; but the court or a judge upon due cause shewn, and upon such terms as may be thought proper, may order any cause to be again placed on the docket for trial as if it had not been called.

Docket, when to be called in Halifax.

Attorney or counsel to state whether cause for trial; whether to be defended.

188. The docket of causes for trial shall be called but once, both at the sittings in Halifax and on the circuit.

Docket to be called but once.

189. On circuit, the docket of new as well as of continued causes, shall be called on the first day of the term, at or shortly after the opening of the court, and the plaintiff's attorney or counsel, when the cause is called, shall state whether he intends to try the same that term, and in default of such statement the cause shall stand continued, and the defendant shall, if the plaintiff signifies his intention to try the same that term, be required to state whether he

When to be called on circuit.

Statement of attorney or counsel.

**CHAP. 134.** intends defending the same, and in default of such statement plaintiff shall have a judgment.

Absence of a material witness.

190. No rule shall be granted for the continuance of a cause upon the ground of the absence of a material witness, unless the affidavit upon which the rule is applied for shall, in addition to the usual grounds, distinctly state that the party so applying has a just defence upon the merits of the case, and that the application is not made solely for delay, but to enable the applicant to substantiate his defence.

Motions arising during trial; but one counsel on each side heard.

191. The court will hear one counsel only on each side, upon any motion arising during the trial of a cause; and if cases be cited in opposition to such motion, one counsel will be heard in reply.

Address to jury.

192. Upon the trial of any cause, civil or criminal, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed in the event of his opponent not announcing at the close of the case of the party who begins, his intention to induce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence, if any; and the right to reply shall be the same as at present.

New trial, when rule for, refused by judge.

193. When the judge shall refuse to grant a rule nisi for a new trial, in a cause tried before him, and the counsel for the party shall, on or before the last day of the term, or the sittings after term in which the cause has been tried, file sufficient bail in such reasonable amount as the judge shall direct, to respond the judgment to be finally given in the cause, no judgment shall be entered up, but a rule nisi specifying the objections, shall pass, under which the party shall be at liberty to enter the case, and it shall stand for argument in the same manner as if the rule nisi had been granted by the judge presiding at the trial.

Grounds for.

194. No new trial shall be granted on account of evidence having been improperly received on any trial, if in the judgment of the court there be other evidence sufficient to sustain the verdict.

Costs on.

195. The party in whose favor a judgment shall be given, shall be entitled to recover from the opposite party his taxable costs.

Costs on new trial.

196. When a new trial is granted on the ground of misdirection, or that the verdict was against evidence, the costs of the first trial shall abide the event, unless the court shall otherwise order.

Where less than 40s. recovered.

197. If the plaintiff in any action, not brought upon contract, expressed or implied, and heretofore deemed an action of trespass or trespass on the case, shall recover less damages than the sum of forty shillings on the trial of any issue, or on enquiry on default, he shall not recover any.



costs unless the judge before whom the issue is tried, or the assessment of damages made, shall certify that the action was brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action was brought, or that the trespass or grievance was wilful or malicious, or that the action was not frivolous and vexatious, and that the plaintiff had actually sustained damage to the amount recovered, and had by notice in writing, demanded compensation therefor, eight days before action brought; but nothing in this section shall be construed to deprive any plaintiff of his costs in any action for trespass on any lands, or for entering into any tenement in respect of which any notice not to trespass thereon shall have been previously served on or left at the last place of abode of the defendant, by or on behalf of the owner or occupier.

198. Any one of several defendants shall be entitled to his taxable costs when the plaintiff shall not prosecute his suit to final judgment against him, and also in cases where, upon the trial of the issue, a verdict shall pass in his favor, unless in case of a trial the judge before whom a trial was had shall certify at the trial that there was reasonable cause for making him a party to the action.

Defendant's costs, when plaintiff does not proceed.

199. Whenever it shall appear that the plaintiff had an opportunity in a prior suit of setting off his claim, and shall not give a satisfactory reason for not having done so, he shall pay to the defendant his costs, and shall not be entitled to recover his own.

When plaintiff had opportunity in a prior suit of setting off claim.

200. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only.

Stay of proceedings on payment.

201. On the taxation of costs, as between attorney and client, no costs shall be allowed to the attorney in respect of any excess of length in any pleading; and in case any such costs shall be payable by the plaintiff to the defendant on account of such excess, the amount thereof shall be deducted from the attorney's bill.

Costs as between attorney and client.

Excessive length of pleadings.

202. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he shall succeed in the second.

Costs of new trial.

203. An application to compel the plaintiff to give security for costs must in ordinary cases be made before issue joined.

Security for costs.

204. Prothonotaries shall have power to grant orders for the stay of proceedings in a cause until security for costs be filed, upon sufficient grounds laid by affidavit in the same way such orders are now granted by the supreme court or a judge; but any party dissatisfied with a prothonotary's decision may, at any time within twelve days thereafter apply to the supreme court, upon motion, or a

Security for costs, how obtained, &c.

**CHAP. 134.** judge at chambers, by summons upon affidavit, for a re-hearing; a plea filed in the meantime, or other proceedings taken on the part of the plaintiff or defendant, shall not prejudice the party claiming a re-hearing.

**If not given.** 205. Where the plaintiff shall fail to give security for costs within twelve months after service upon him or his attorney of a rule or order therefor, he shall be deemed out of court.

**Costs on rules.** 206. On all rules made absolute, or discharged, and on all rules opposed in the first instance, the costs shall be allowed to the successful party, unless the court shall otherwise direct.

**Costs of commissions; depositions.** 207. The costs attending the issuing of any commission, and of taking depositions thereunder when used on trial, shall be costs in the cause.

**Costs of examinations de bene esse.** 208. The costs of every rule or order for the examination of witnesses *de bene esse*, shall be costs in the cause, unless otherwise directed.

**Taxation of costs.** 209. The prothonotary shall examine and compare all bills of costs, that they contain no other or greater fees than are allowed by law, and before any such bill shall be charged against the plaintiff or defendant, it shall be allowed and signed by a judge.

**Costs to be filed, and when.** 210. All bills of costs when taxed, shall be filed among the bills of costs for the term, and every bill of costs taxed on any rule or proceeding in a country cause argued at Halifax, shall be filed immediately after taxation at Halifax, otherwise no execution shall issue for enforcing payment of such costs.

**Notice of taxation; vouchers.** 211. Before taxation of costs accruing in Halifax, one day's notice shall be given to the opposite party, his counsel or attorney in Halifax, and the bill, with all affidavits and papers substantiating the charges therein, shall be filed with the prothonotary previously to the giving of such notice, but notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

**Interlocutory costs.** 212. When interlocutory costs shall be taxed against any party, execution may be issued for the recovery thereof.

**Interest, allowance of by court or jury.** 213. Upon all debts or sums certain, the jury, or the court, or a judge where there is no jury, may allow interest to the creditor, at a rate not exceeding legal interest, from the time the debt or sum became payable, if payable at a certain time, under a written instrument; or if payable otherwise, then from the time a demand of payment in writing, containing a notice that interest will be claimed from the date of the demand until payment shall have been made.

**Damages in the nature of interest.** 214. The jury or the court, or a judge where there is no jury, may give damages in the nature of interest over and above the value of the goods at the time of the conver-

sion or seizure, and over and above the money recoverable in any action on policies of insurance. CHAP. 134.

215. Where a set off greater than the plaintiff's claim has been proved, judgment for the excess shall be given for the defendant. Set off exceeding plaintiff's claim.

216. Judgment may be ordered, as in case of a non-suit, for not duly proceeding to trial, and notice therefor may be given, notwithstanding a previous trial, or trials of the cause may have taken place. Judgment for not duly proceeding to trial.

217. Final judgment may be signed by any judge, and the judge shall set down the date upon the docket, and the prothonotary shall mark on the record the day it was filed, but no marginal note shall be required thereon. Final judgment how entered up.

218. No judgment shall have relation to any other day than the day on which it is signed. Date of

219. The additions and place of residence of every person making affidavit, except the same is made in a cause by any of the parties thereto, shall be inserted therein. Affidavit, description of the deponent.

220. In all cases in which any particular number of days not expressed to be clear days, is prescribed by this or any other act regulating the practice, or by the rules or practice of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last shall happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also. Computation of time; Sunday, Christmas day, &c.

221. When a judge's order is made a rule of court, it shall be a part of the rule of court that the cost of making the order a rule of court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party or his attorney, and disobeyed. Making judge's order a rule, costs of.

222. All causes for argument, whether upon demurrer, special verdicts, cases made, or rules nisi which have been granted, or causes in which the party has given bail to respond to the judgment as hereinbefore provided, must be entered with the prothonotary at Halifax on or before the Tuesday preceding the first day of the term; and such entry shall be deemed notice to the opposite party to be prepared for the argument; and in case of such entry being omitted from neglect or other cause, judgment shall be entered against the party who ought to have made such entry, unless the court shall otherwise order. Causes for argument; entry of.

223. In all cases where rules nisi have been granted to set aside verdicts, or which may otherwise delay judgment, the party who has obtained the rule shall enter the cause for argument on the Tuesday preceding the term. Of rules nisi to set aside verdict.

224. The party against whom any rule nisi has been granted may enter the cause with the prothonotary, and in such case the cause shall be placed on the list prepared by the prothonotary for the court in the order in which it first Ditto.

**CHAP. 134.** presents itself under the rule, and shall not be entered a second time.

Papers connect-  
ed with argu-  
ment, &c., to be  
filed.

225. The demurrer book, special verdict, case, judge's report and affidavits, or other papers upon which rules nisi have been granted, must be on file on the Tuesday before the first day of term at Halifax.

Rule nisi for  
new trial, when  
to be argued.

226. No rule nisi for a new trial shall be argued at the commencement of the term at Halifax unless the judge's report of the facts proved or the points reserved shall have been filed on the Tuesday preceding the term, which either party requiring the same shall apply for to the judge, and the judge will deliver his report to the prothonotary, who will furnish copies thereof to the parties requiring the same; and as the argument will be confined to the facts therein stated, it shall be competent for either party, on notice to the adverse party, to apply to the judge to alter or amend the same by his original notes, or otherwise by the consent of the parties or on affidavit.

Rules nisi  
moved for first  
day of term at  
Halifax.

227. When rules nisi are moved for on the first day of the term at Halifax, the court, on sufficient grounds laid, will grant the same without hearing the other side.

Business of  
terms at Hali-  
fax.

228. On the first day of term at Halifax, the court will pronounce judgment, if prepared so to do, upon such cases as have been fully argued, after which they will hear motions which do not require to be entered for argument in the order in which motions are now heard, beginning with the attorney general and proceeding through the bar according to priority.

Priority of  
counsel, how  
regulated.

229. The motions and other necessary business of the first day of term at Halifax having been disposed of, the remainder of that day and the subsequent days of the term shall be devoted to hearing arguments upon the cases duly entered with the prothonotary, in the following order: the first case upon the attorney general's list; secondly the first case upon the solicitor general's list; and so on through the whole bar, according to priority. After the first case upon the junior barrister's list has been heard, then the second case upon the attorney general's list, and so on until all the causes entered for argument have been heard; but causes entered for argument and continued over the term, shall in subsequent terms retain the places they originally occupied on the docket, and take priority of new causes. No *concilium* to be moved for upon demurrers, which will take their turn with other causes entered for argument.

Continued  
causes.

Demurrers, no  
concilium to be  
moved for.

Argument how  
conducted.

230. The party who has obtained the rule nisi shall briefly bring under the notice of the court the grounds upon which the rule was granted. The opposite party shall then shew cause, and the party supporting the rule shall reply unless the court specially direct a different course.

Copies of pa-  
pers for judges  
on argument.

231. The attorneys in the several causes for argument must provide each of the judges with copies of all papers

necessary to be perused by them before the argument **CHAP. 134.**  
commences.

232. It shall not be necessary to issue more than one summons for attendance before a judge at chambers upon the same matter, and the party taking it out shall be entitled to an order, unless cause to the contrary be shewn, or the judge shall refuse the same. Summons and order.

233. When a judge has power to grant an order, he may in place thereof grant a rule nisi returnable in term. Rules nisi may be granted by one judge.

234. The prothonotary at Halifax shall keep a book, wherein may be entered any judgment given which appertains to the supreme court of any other county, which shall be signed in the usual manner; and the prothonotary shall forthwith transmit to the prothonotary of the court in which such judgment is required to be entered, a correct transcript of the docket of judgment, and the prothonotary to whom the same may be transmitted shall copy such judgment into the county judgment book, and file the transcript with the papers in the cause; and the entry so made from the transcript shall have the like effect as if the same had been signed by a judge in the judgment book into which it shall be so copied, and the postage on the transmitting of any such papers shall be taxed as costs in the cause. Judgment, entries of; prothonotary's duty; judgment book

235. When cases shall have been fully argued and the several judges who heard the argument have decided upon the judgment to be delivered, and have reduced their opinion to writing, the judgment of the court may be pronounced by a judge at chambers, after the several opinions have been read. Judgment may be given at chambers.

236. In case hereafter of a verdict for a sum of money, in favor of a plaintiff or defendant, where final judgment is delayed by a rule nisi or other proceeding on the part of the opposite party, and judgment shall be ultimately given for the party recovering the verdict, such judgment shall be entered on the verdict with interest, unless the court or a judge, shall otherwise order. Interest on verdict.

237. The judges in term at Halifax may, from time to time, make general rules for facilitating the practice of the court, and the effectual execution of this chapter, but such rules shall not go into operation until they have been published in the royal gazette; and all rules made since the fourth day of April, 1853, are hereby confirmed. General rules

238. In all cases not provided for in this chapter, the practice and proceedings of the court shall conform as nearly as may be to the practice and proceedings of the superior courts of common law in force previous to the first year of the reign of king William the fourth; and in all cases where the proceedings and practice of the superior courts of common law in England differ from each other, those of the court of queen's bench shall be followed. Practice in cases not provided.

239. Fees for the services mentioned in the schedule to this chapter, denominated "table of fees," shall be as therein prescribed. Table of fees.

**CHAP. 134.**

Penalty for taking excessive fees.

How recovered.

Provision for judgments since September, 1851.

Warrants, &c., to be filed within ten days from date.

Defeazance to be written on warrant.

Prothonotary to keep a book of registry.

Fees.

Warrants, &c., executed before passage of act; when to be filed.

Issue may be tried by judge.

240. Any person taking greater fees, shall for such offence, forfeit to the party aggrieved, ten pounds, and also the amount of such excessive fees.

241. Actions for such forfeitures, shall be brought in the county where the offence was committed, and within six months next after the date of such offence.

242. Judgments entered in the book of country judgments, since the first day of September, 1851, and the transcripts thereof entered in the county judgment books, and all other proceedings had under such judgments, shall have the same effect as if section 234 had been in force when such judgments had been entered, and as if the same had been entered, and such other proceedings been had hereunder.

243. Every warrant of attorney to confess judgment in any personal action, and every cognovit actionem in any such action, and every defeazance or condition to which such warrant or cognovit may be subject, shall within ten days from the date of such warrant or cognovit respectively, be filed in the office of the prothonotary of the county wherein the person giving such warrant or cognovit resides; and unless such warrant or cognovit, together with the defeazance or condition to which the same may be subject shall be so filed, such warrant or cognovit shall be null and void to all intents and purposes whatsoever. Provided that every defeazance or condition above referred to shall be written on the same paper on which the warrant or cognovit is written, and in default thereof such defeazance or condition shall be void.

244. The prothonotary in each county shall keep a book wherein he shall cause to be fairly entered an alphabetical list of every warrant of attorney or cognovit actionem filed in his office under the provisions of the last section, containing the names, additions and descriptions of the respective defendants or persons giving such warrants of attorney or cognovits, and also the names, descriptions, and additions of the plaintiffs or persons in whose favor the same shall have been given, together with the number and dates of the execution and filing of the same, and also all other particulars connected with such warrants or cognovits; which book, and every warrant or cognovit so filed, may be searched and viewed by any person during office hours on a fee of one shilling for each search, and the prothonotary shall also be entitled to receive from the party filing each warrant or cognovit the sum of one shilling for entering the same.

245. All warrants of attorney and cognovits executed before the seventh day of May, 1858, shall be filed as hereinbefore directed within ninety days from this act coming into operation.

246. The parties to any cause now triable by jury, may, by consent, in open court, or writing signed by them or

their attorney or counsel, as the case may be, and at any time before trial, leave the decision of any issue of fact to the presiding judge; provided that the court, upon motion, or the presiding judge, shall, in their or his discretion, think fit to allow such trial. And such issue in fact may thereupon be tried and determined, and damages assessed, where necessary, in open court, in term, or the sittings after the term, by the presiding judge, whose decision shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial as to the power of the court or judge, the moving for a new trial, the evidence and otherwise, shall be the same as in the case of trial by jury.

247. Writs of enquiry shall be made returnable in ten days after the issuing thereof, and the party plaintiff shall be entitled to judgment for the amount awarded him, with his costs, in fourteen days after the execution of the writ. Writs of enquiry.

## TABLE OF FEES.

## PROTHONOTARY'S FEES.

Entering appearance,	£0	1	6
Entering and filing every rule of court,	0	0	6
Copy of every rule when given by prothonotary,	0	0	6
For drawing and striking a special jury, and for copies of the lists furnished to the respective parties and all other services connected therewith,	0	10	0
Swearing and impanelling jury,	0	1	0
Swearing each witness or constable,	0	0	6
Taking and entering verdict,	0	1	0
Entering judgment,	0	2	0
The prothonotary at Halifax, for the entry of a judgment not belonging to the supreme court at Halifax and for the transcript thereof,	0	2	6
Filing retraxit or discontinuance,	0	0	6
Copies of all papers, per folio,	0	0	6
Every exhibit in a cause filed in court,	0	0	4
Taking affidavit in court,	0	1	0
Filing affidavit,	0	0	6
Searching records,	0	0	6
Entering every default,	0	0	6
Drawing and taking every recognizance,	0	1	0
Entering every non-suit,	0	0	6
Sealing and signing every subpoena,	0	1	0
Continuance of every cause,	0	1	0
Filing the roll in every cause,	0	1	0
Taxing bill of costs,	0	1	0
Certificate of judgment,	0	2	6
Ditto of discharge of ditto,	0	1	0

## CHAP. 134.

*In summary suits.*

Signing and sealing writs,	£0	2	6
For all other services, including final judgment, when not tried by a jury,	0	2	6
For every alias summary writ and præcipe,	0	2	0

*In sub-summary suits.*

Signing and sealing writ,	0	1	0
Signing judgment,	0	1	6
Every subpoena or ticket	0	0	6

No commission shall be allowed or deducted from money paid into court under any rule or plea.

## COMMISSIONER'S FEES.

For administering oath and marking writ,	0	2	0
Taking depositions of witnesses, each witness,	0	5	0
And for taking depositions, per folio,	0	0	6
Travelling fees, when necessary, 3d. per mile.			

## ATTORNEY'S FEES.

*In sub-summary causes.*

Attorney,	0	9	0
Subpoena and tickets, each,	0	1	0
Execution,	0	2	6

*In summary and appeal causes.*

For writ, præcipe, affidavit and declaration,	0	11	8
All other proceedings until final judgment,	0	15	10

*In all other causes.*

Retaining fee,	0	10	0
Warrant of attorney,	0	1	6
Præcipe,	0	1	6
Every writ, summons; or other original process,	0	5	0
Copy,	0	1	6
If containing declaration, 5s. additional.			
Particulars of demand,	0	2	0
Term fee,	0	5	0
Notice of trial, notice to produce, and other necessary notices, in a cause,	0	3	6
Capias,	0	5	0
Copy,	0	1	6
Affidavit to hold to bail,	0	2	6
Entering appearance,	0	2	6
Brief and copies, not less than 7s. 6d. nor more than £5, to be taxed by the court,			
Every continuance,	0	1	0
Every discontinuance or retraxit,	0	1	0
Attending, balloting, or striking special jury,	0	10	0
Attending taking every inquisition before sheriff,	0	10	0
Making bill of costs,	0	1	6



	£	s	d	CHAP. 134.
Attending to get same taxed,	0	2	6	
Arguing a demurrer, special verdict, motion for new trial, or other special motion,	0	10	0	
Trial fee,	1	0	0	
All rules and copies, each,	0	1	0	
Every subpoena,	0	2	0	
Every ticket.	0	2	6	
Travel per mile for service, the same as to sheriff,				
Attending the examination of every witness taken before a judge or commissioner,	0	11	8	
Every necessary attendance before a judge,	0	6	8	
Every execution, habeas corpus, writ of error and writ of inquiry or revivor, each,	0	6	0	
Drafting issue, per folio,	0	0	6	
Engrossing same, per folio,	0	0	6	
Drafting record, per folio,	0	0	6	
Engrossing same per folio,	0	0	6	
All other drafting necessary to be done by an at- torney in the conducting of a cause, per folio,	0	1	0	
All necessary engrossing, per folio,	0	0	6	

## COUNSEL FEES.

In summary, sub-summary, or appeal causes, when tried before a jury, to be taxed by the court, not to exceed three pounds and ten shillings.

In all other causes after appearance and plea, to be taxed at the discretion of the judge, not to exceed five pounds, but not to be allowed in cases of default nor unless there shall have been a plea pleaded.

## APPENDIX A.

## No. 1.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or any other of our sheriffs:

We command you to summon C. D., of ———, to appear in the supreme court at ———, within ——— days after the service of this writ, at the suit of A. B., who says that the said C. D. is indebted to him [*for work and materials provided by the plaintiff for the defendant, at his request, or as the case may be,*] and he claims ——— pounds.

Issued this ——— day of ——— A. D. 18——.

—————, prothonotary.

E. F. plaintiff's attorney, [*or in person.*]

## No. 2.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or to any other of our sheriffs:

We command you forthwith upon security being given

CHAP. 134. according to law, to cause to be replevied to A. B., his cattle, [*or goods,*] viz: which C. D. of ———, unjustly detains as it is said; and that you summon the said C. D. to appear in the supreme court, at ——— within ——— days after the service of this writ, at the suit of the said A. B., who says that the said C. D. is unjustly detaining the said cattle [*or goods.*]

Issued this ——— day of ——— A. D. 18——.

—————, prothonotary.

E. F. plaintiff's attorney, [*or in person.*]

### No. 3.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or to any other of our sheriffs:

We command you to attach the goods and chattels or the estate of C. D. of ———, an absent or absconding debtor, to the value of ———; and also that you summon the said C. D. to appear in our supreme court at ——— within ——— days after the service of this writ, at the suit of A. B., who says that the said C. D. is indebted to him [*for money found to be due from the defendant to the plaintiff, on an account stated between them, or as the case may be,*] and he claims ——— pounds.

Issued this ——— day of ———, A. D. 18——.

—————, prothonotary.

E. F. plaintiff's attorney, [*or in person.*]

*To be endorsed—*

By oath for [*here insert the sum sworn to.*]

### No. 4.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or to any other of our sheriffs:

We command you to summon C. D., an absent or absconding debtor, and E. F., of ———, the agent or trustee of the said C. D., to appear in our supreme court at ———, on the ——— Tuesday of ——— next: the said C. D. then and there to answer to the suit of A. B., who says that the said C. D. is indebted to him [*for money had and received by the defendant for the use of the plaintiff, or as the case may be,*] and the said E. F. then and there to declare, discover and disclose what goods or credits of the said C. D. were in his hands or possession or under his management or control at the time of the service of this writ upon him; and the said A. B. claims from the said C. D. ——— pounds.

Issued this ——— day of ———, A. D. 18——.

—————, prothonotary.

G. H., plaintiff's attorney, [*or in person.*]

*To be endorsed—*

By oath for [*here insert the sum sworn to.*]

## No. 5.

## CHAP. 134.

SS.

Victoria, by the grace of God, &amp;c.

To the sheriff of ———, or any other of our sheriffs:

We command you to take C. D. of ———, if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit according to law, in an action at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody. And we do further command you that immediately after the execution hereof you do return this writ into our supreme court at ———, together with the manner in which you shall have executed the same, and the day of the execution thereof; or if the same shall remain unexecuted, then that you do return the same at the expiration of one month from the date hereof.

Issued this ——— day of ———, A. D., 18——.

—————, prothonotary.

E. F., plaintiff's attorney, [*or in person.*]*To be indorsed—*By oath for [*here insert the sum sworn to.*]

## No. 6.

## SPECIMENS OF FORMS.

*Particulars of demand.*

The following are the particulars of the plaintiff's claim:  
1849.

June 20.	Half year's rent to this day, of house and premises in ——— street, Halifax,	£25	10	0
Sept. 12.	10 barrels of flour, at 25s.,	12	10	0
Decr. 1.	Money received by defendant,	17	0	0
		<hr/>		
		55	0	0
	Paid,	15	0	0
		<hr/>		
	Balance due,	£40	0	0

*Or,*

To butcher's meat and goods, supplied between the 1st of Jan'y, 1849, and the 1st Jan'y, 1850,	£52	0	0
Paid,	20	0	0
	<hr/>		
Balance,	£32	0	0

*Or,*

£50. Principal and interest due on a bond, dated the  
—— day of ——.

*Or,*

£90. Principal and interest due on a covenant contained  
in a deed, dated the —— day of ——, to pay £100 and  
interest.

CHAP. 134.

Or,

£85 on a bill of exchange for £100 dated the 2d February, 1849. Accepted [*or drawn, or endorsed*] by the defendant.

Or,

£50 on a guarantee, dated the 2d February, 1849, whereby the defendant guaranteed the payment by E. F., of goods supplied, or to be supplied to him.

*In cases where interest is payable.*

The plaintiff also claims interest on £—— of the above sum from the date of the writ until judgment.

## No. 7.

In the supreme court, ——, on the —— day of ——, A. D. 18——. [*Day of signing the judgment.*]

To wit: A. B., in his own proper person, [*or by —— his attorney,*] sued out a writ of summons against C. D., with the particulars annexed as follows:

[*here copy the particulars of demand.*]

And the said C. D. has not appeared, therefore it is considered that the said A. B. recover against the said C. D. —— pounds, together with £——, for costs of suit.

## No. 8.

Notice is hereby given, that if the defendant do not appear and plead within four days after the period specified in the writ for his appearance, the plaintiff shall be at liberty to sign [*judgment by default, if there are no particulars of demand annexed; and if there be particulars of demand*] final judgment for any sum not exceeding the sum claimed in his particulars of demand, with interest at the rate specified, and costs.

## No. 9.

Cause, { A. B.,  
vs.  
C. D.

I appear for C. D., the defendant in this cause, [*or in person.*] E. F.

## No. 10.

*Writ of revivor.*

SS.

Victoria, by the grace of God, &c.

To the sheriff of ——, or to any other of our sheriffs:

We command you that you summon C. D., of ——, to appear in the supreme court at ——, within —— days

after the service of this writ, to shew cause why A. B. [or CHAP. 134.  
 'E. F., as executor of the last will and testament of A. B.,  
 deceased,' or as the case may be,] should not have execution  
 against him [if against a representative, here insert, 'as  
 executor of the last will and testament of ———, deceased,'  
 or as the case may be,] of a judgment whereby the said A.  
 B. [or as the case may be,] on the ——— day of ———, re-  
 covered against him [or as the case may be,] £——, and that  
 you notify the said C. D. that in default of his so doing, the  
 said A. B. [or as the case may be] may proceed to execution.

Dated this ——— day of ———, A. D., 18——.  
 ———, prothonotary.

G. H., plaintiff's attorney.

No. 11.

*Form of a rule or summons where a judgment creditor  
 applies for execution against a judgment debtor.*

[Formal parts as at present.]

C. D., to shew cause why A. B. [or as the case may be]  
 should not be at liberty to enter a suggestion in an action,  
 wherein the said A. B. was plaintiff, and the said E. F. was  
 defendant, and wherein the said A. B. obtained judgment  
 for £—— against the said E. F. on the ——— day of ———,  
 that it manifestly appears to the court, that the said A. B. is  
 entitled to have execution of the said judgment, and to  
 issue execution thereupon, and why the said C. D. should  
 not pay the said A. B. the costs of this application, to be  
 taxed.

NOTE.—*The above form may be modified so as to meet the  
 case of an application by or against the representative of a  
 party to the judgment.*

No. 12.

*Form of suggestion that the judgment creditor is entitled to  
 execution against the judgment debtor.*

And now on the ——— day of ———, it is suggested and  
 manifestly appears to the court, that the said A. B. [or 'E.  
 F., as executor of the last will and testament of the said  
 A. B., deceased,' or as the case may be,] is now entitled to  
 have execution of the judgment aforesaid, against the said  
 C. D. [or 'against G. H. as the executor of the last will and  
 testament of the said C. D.,' or as the case may be.] There-  
 fore it is considered by the court, that the said A. B. [or  
 'E. F. as executor aforesaid,' or as the case may be,] ought  
 to have execution of the judgment against the said C. D.  
 [or 'against G. H. as executor as aforesaid,' or as the case  
 may be.]

## CHAP. 134.

## No. 13.

*Form of writ in ejectment.*

SS.

Victoria, by the grace of God, &amp;c.

To the sheriff of \_\_\_\_\_.

We command you to summon G. H., J. K., and L. M. to appear in the supreme court, at \_\_\_\_\_, within \_\_\_\_\_ days after the service of this writ, at the suit of A. B., C. D., and E. F., who say that the said G. H., J. K., and L. M., withhold the possession to which the said A. B., C. D., and E. F., or some, or one of them, claim to be entitled, of a certain house and ten acres of land situate at \_\_\_\_\_, in the county of \_\_\_\_\_, and described as follows: [*describe the property with reasonable certainty,*] and for the withholding of which they claim \_\_\_\_\_ pounds damages.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_.

\_\_\_\_\_, prothonotary.

N. O., plaintiff's attorney.

## No. 14.

*Notice to be endorsed on the writ.*

Notice is hereby given, that if the defendant do not appear and defend the possession of the property claimed by the within writ, or such part thereof as he may be advised, the plaintiff will be at liberty to sign judgment at the expiration of four days after the period specified in the writ for his appearance, and the defendant may thereupon be turned out of possession.

## No. 15.

*Judgment in case of non-appearance.*

G. H., J. K., and L. M., were summoned to answer A. B., C. D., and E. F., for withholding possession of a house and ten acres of land, situate at \_\_\_\_\_, in the county of \_\_\_\_\_, and described as follows\*:

And no appearance has been entered to the said writ, [*or where defence has been made to a part, except as to—(describe it.)*] Therefore it is considered that the said A. B., C. D., and E. F., do recover possession of the premises above mentioned, [*or where defence is to part, except as to part for which defence has been made as aforesaid,*] with the appurtenances, and also £\_\_\_\_\_, for his cost of suit [*in cases where damages shall have been assessed, add,* and that he do also recover £\_\_\_\_\_, for his damages assessed in respect of the withholding possession of the same by the defendant.]

## No. 16.

## CHAP. 134.

*Judgment in case of appearance.*

[*As in the last form to the\*.*]

And the defendants appear and defend the possession [*or of part thereof, describing the part.*] Jury impannelled and sworn, who say that the plaintiffs [*or one of them, as the case may be,*] are entitled to possession of the premises, [*or to the said part thereof;*] and they do assess damages for the detention thereof in the sum of £——, to be paid to the said A. B., C. D., and E. F.

Therefore it is considered that the said A. B., C. D., and E. F., do recover [*as above where judgment is for non-appearance,*] and also the sum of £——, by the jury assessed as aforesaid, together with costs of suit.

## No. 17.

*Forms of pleas in ejectment.*

The said C. D., [*defendant*] says that the plaintiffs are not, nor is either of them, entitled to the possession of the said messuage and lot of land claimed by them. [*Or if the defendant only defend for a part,*]—The said C. D. says he only defends for a part of the premises claimed by the plaintiff, and which is thus described: [*describe it with reasonable certainty,*] and he disclaims all right and title to the residue of the said premises, or to the possession thereof; and as to the part for which he defends, says, that the said plaintiffs are not, nor is either of them, entitled to the possession of the part of the said premises above specified.

*Plea by landlord shall commence thus:* And E. F. admitted to defend as landlord of the said premises, [*or part thereof, describing the part,*] says that

## No. 18.

*Form of a plea under tenancy in common.*

And the defendant says that he is tenant in common of the premises, [*or part as the case may be,*] with the said plaintiff, [*or with A. B., one of the said plaintiffs,*] and defends as such, and admits the right of the said [*claimant*] to to an undivided share of the said property, and denies any actual ouster of him from the said property.

## No. 19.

*In the supreme court.*

A. B., of ——, in the county of ——, maketh oath and saith that he hath the right to the possession of the following cattle [*or goods as the case may be*] to wit:——, as he verily believes, and that C. D. unjustly detains the same.

*Replevin bond.*

[*Bond in the usual form from A. B. (plaintiff), and E. F. and G. H.*]

Whereas the said A. B. has sued out a writ of replevin against the said C. D. to obtain possession of certain cattle [or goods] to wit: ———, which the said A. B. asserts to be his property.

Now, the condition of this obligation is such, that if the said A. B. shall not prosecute his suit with effect and without delay, or if suit is carried on and continued between the said A. B. and C. D. touching the property of the said cattle [or goods] and the court shall adjudge that the said cattle [or goods] shall be restored to the said C. D. with damages for detaining the same, then if the said A. B. shall restore the said cattle [or goods] and pay and satisfy any judgment that may be obtained against him, this bond shall become void.

[*Where the plaintiff himself does not join in the bond, the form must be altered to conform to the fact.*]

## No. 21.

*Security given by the defendant to obtain a return of property.*

[*Bond in the usual form from C. D. (defendant) and E. F. and G. H.*]

Whereas the said C. D. claims to retain certain cattle [or goods] to wit: ———, to recover possession of which the said A. B. has sued out a writ of replevin.

Now the condition of this obligation is such, that if the court shall adjudge that the said cattle [or goods] shall be restored to the said A. B., with or without damages for detaining the same, then if the said C. D. shall restore the cattle [or goods], and pay and satisfy any judgment that may be recovered against him, this obligation shall be void, but otherwise shall remain in force.

[*Where the defendant himself does not join in the bond, the form must be altered to conform to the fact.*]

## No. 22.

*Bail bond.*

[*Bond in the usual form C. D. (defendant) and E. F. and G. H.*]

The condition of this obligation is such, that if the above bounden C. D. do appear in the supreme court at ———, on the ——— day of ———, to answer to the suit of A. B.,



and in case judgment shall be obtained against the said C. D., if he shall satisfy such judgment, or shall render himself, or be rendered by the said E. F. and G. F. into the custody of the sheriff of the county of ———, then the said obligation to be void. CHAP. 134.

## APPENDIX B.

## SPECIMENS OF FORMS OF PLEADINGS.

*Statements of causes of action in the writ.*

To answer the said A. B., who says that C. D. is indebted to him for [*here state the subject of the claim as in the following forms,*] and the plaintiff claims ——— pounds:

For work done and materials provided by the plaintiff for the defendant, at his request.

For money lent by the plaintiff to the defendant.

For money paid by the plaintiff for the defendant, at his request.

For money received by the defendant for the use of the plaintiff.

For money found to be due from the defendant to the plaintiff on an account stated between them.

For a message and lands sold and conveyed by the plaintiff to the defendant.

For the good will of a business of the plaintiff, sold and given up by the plaintiff to the defendant.

For the defendant's use, by the plaintiff's permission, of messages and lands of the plaintiff.

For the defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

For the hire of [*as the case may be*] by the plaintiff, let to hire to the defendant.

For freight for the conveyance by the plaintiff, for the defendant at his request, of goods in ships.

For the demurrage of a ship of the plaintiff kept on demurrage by the defendant:

Who says,—that the defendant on the ——— day of ———, A. D. ———, by his promissory note, now over due, promised to pay to the plaintiff ——— pounds, two months after date, but did not pay the same.

Who says,—that one A. B. on, &c. [*date*] by his promissory note, now over due, promised to pay to the defendant, or order, ——— pounds, two months after date; and the defendant endorsed the same to the plaintiff, and the said note was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

Who says,—that the plaintiff on, &c. [*date*] by his bill of exchange, now over due, directed to the defendant, required the defendant to pay to the plaintiff ——— pounds, two

CHAP. 134. months after date; and the defendant accepted the said bill, but did not pay the same.

Who says,—that the defendant and the plaintiff agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

Who says,—that the plaintiff and defendant agreed to marry one another on a day now elapsed, and the plaintiff was ready and willing to marry the defendant on that day, yet the defendant neglected and refused to marry the plaintiff.

Who says,—that the defendant by warranting a horse to be then sound and quiet to ride, sold the horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

Who says,—that the plaintiff and the defendant agreed by charter party, that the plaintiff's ship, called the "Ariel," should, with all convenient speed, sail to R, or so near thereto as she could safely get; and that the defendant should there lade her with a full cargo of tallow or other lawful merchandize, which she should carry to H, and there deliver on payment of freight, at £ — per ton; and that the defendant should be allowed ten days for loading and ten for discharge, and ten days on demurrage, if required, at £ — per day; and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R, and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

Who says,—that the plaintiff let to the defendant a house, No. —, for seven years, to hold from the — day of —, A. D., 18—, at £ — a year, payable quarterly, of which rent — quarters are due and unpaid.

Who says,—that the plaintiff, by deed, let to the defendant a house, No. —, to hold from the — day of — A. D. —; and the defendant, by the said deed, covenanted with the plaintiff well and substantially to repair the said house during the said term, [*according to the covenant,*] yet the said house was, during the said term, out of good and substantial repair.

*For wrongs, independent of contract.*

A. B. says that the defendant broke and entered certain land of the plaintiff called the big field, and depastured the same with cattle.

That the defendant assaulted and beat the plaintiff, and gave him into custody to a policeman, and cause him to be imprisoned in a police office.

That the defendant debauched and carnally knew the plaintiff's wife.

That the defendant converted to his own use the plaintiff's goods, that is to say: iron hoops, household furniture, CHAP. 134.  
[as the case may be.]

That the defendant detained from the plaintiff, his title deeds of land called Belmont, in the county of——, that is to say, [describe the deeds.]

That the plaintiff was possessed of a mill, and by reason thereof, was entitled to the flow of a stream for working the same; and the defendant by cutting the bank of the said stream, diverted the water thereof away from the said mill.

That the defendant falsely and maliciously spoke and published of the plaintiff the words following, that is to say:—"he is a thief."

[If there be any damage here state it, with such reasonable particularity as to give notice to the plaintiff of the peculiar injury complained of: for instance] whereby the plaintiff lost his situation as ——, in the employ of ——.

That the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper, called "——" the words following, that is to say: "he is a regular prover under bankruptcies;" the defendant meaning thereby that the plaintiff had proved, and was in the habit of proving fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

#### Commencement of a plea.

The defendant by ——, his attorney, [or in person,] says, [here state the substance of the plea.]

And for a second plea the defendant says [here state the second plea.]

NOTE.—The several pleas ought to be written in separate paragraphs, and numbered either with figures or in words, in the body thereof, to prevent confusion.

#### Pleas in actions on contract.

That he did not promise as alleged.

[The plea is applicable to other declarations on simple contracts, not on bills and notes. It would be unobjectionable to use, "did not warrant," "did not agree," or any other appropriate denial.]

That the alleged deed is not his deed.

That the alleged cause of action did not accrue within six years, [state the period of limitation applicable to the case] before this suit.

That before the action he satisfied and discharged the plaintiff's claim by payment.

That the plaintiff at the commencement of this suit, was and still is indebted to the defendant, in an amount equal to [or greater than] the plaintiff's claim, for [here state the cause of set off, as in a declaration; see forms ante.]

CHAP. 134. That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

*Pleas in actions for wrongs, independent of contracts.*

That he did not commit the assault.

That he did what is complained of by the plaintiff's leave.

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

*Replications.*

The plaintiff's joins issue upon the defendant's —— pleas.

The plaintiff as to the second plea, says [*here state the answer to the plea, as in the following forms.*]

That the alleged release is not the plaintiff's deed.

That the alleged release was procured by the fraud of the defendant.

That the alleged set off did not accrue within six years before this suit.

That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested the defendant to leave the said land, which the defendant refused to do, and thereupon the plaintiff laid his hands on the defendant to remove him, doing no more than was necessary for that purpose, which is the alleged first assault of the plaintiff.

*New assignment.*

The plaintiff as to the —— and —— pleas, says, that he sues not for the trespasses therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas, [*as the case may be.*]

[*If the plaintiff replies, and new assigns, the new assignment may be as follows:*]

And the plaintiff as to the —— and —— pleas, further says, that he sues not only for the trespasses in those pleas admitted, but also for, &c.

[*If the plaintiff replies, and new assigns to some of the pleas, and new assigns only as to the others, the form may be as follows:*]

And the plaintiff as to the —— and —— pleas, further says, that he sues not for the trespasses in the —— pleas [*the pleas not replied to,*] admitted, but for the trespasses in the —— pleas [*the pleas replied to,*] admitted, and also for, &c.

## Part the Second.

1. In case any defendant being a British subject, is residing out of this province, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in schedule A, to this act annexed, which writ shall bear the endorsement contained in the said form purporting that such writ is for service out of this province: And the time for appearance by the defendant to such writ shall be regulated by the distance from Nova Scotia of the place where the defendant is residing, and it shall be lawful for the court or judge, upon being satisfied by affidavit that there is a cause of action which arose within this province, or in respect of a breach of a contract made within the province, in whole or in part, or intended to be executed in whole or in part within this province, or, in respect of a contract made and entered into between parties, one of whom, at the time of making such contract, shall reside within this province, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the province in order to defeat or delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case; provided always, that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of enquiry, or before a judge; and the making such proof shall be a condition precedent to his obtaining judgment.

Proceedings  
against a British  
subject resident  
out of this  
province.

2. In any action against a person residing out of the province, and not being a British subject, the like proceedings may be taken as against a British subject resident out of this province, save that in lieu of the form of the writ of summons in the schedule A, to this act annexed, the plaintiff shall issue a writ of summons according to the form contained in the schedule B, hereto annexed, and shall in manner aforesaid serve a notice of such last mentioned writ upon the defendant therein mentioned, which notice shall be in the form contained in the said schedule B, and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the court or a judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

Proceedings  
against a for  
eigner resident  
out of this pro-  
vince.

**CHAP. 134.**

Amendment of writ.

3. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof, any of the matters required by this chapter to be inserted therein, or indorsed thereon, such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended upon application to be made to the court out of which the same shall issue, or to a judge; and such amendment may be made upon any application to set aside the writ upon such terms as to the court or judge may seem fit.

Substitution of forms.

4. If either of the forms of writ of summons contained in the schedules A and B, shall by mistake or inadvertence be substituted for the other of them, such mistake or inadvertence shall not be an objection to the writ, or any other proceeding in such action, but the writ may upon an *ex parte* application to a judge, whether before or after any application to set aside such writ, or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.

Concurrent writ.

5. A writ for service within the province may be issued and marked as a concurrent writ with one for service out of the province; and a writ for service out of the province may be issued and marked as a concurrent writ with one for service within the province.

Affidavit of service.

6. Any affidavit of service of writ or notice, or any other affidavit for the purpose of enabling the court or a judge to direct proceedings to be taken against defendants out of the province, may be sworn before any judge of a court of record or justice of the peace in any of her majesty's dominions, or before any consul general, or consul, vice consul, or consular agent, appointed by her majesty at any foreign port or place, whose official character and signature shall be certified under the hand and seal of a notary public: provided always, that if any person shall within this province use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing such signature to be false or counterfeit, he shall be guilty of felony, and shall, upon conviction, be liable to be imprisoned in the provincial penitentiary for a term not exceeding three years nor less than one year, with hard labor.

Penalty for tendering affidavit with false signature.

## SCHEDULES.

## A.

*Writ where the defendant, being a British subject, resides out of the jurisdiction of this province.*

SS.

Victoria, by the grace of God, &amp;c.

To C. D. of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_

We command you that within [*here insert a sufficient number of days within which the defendant might appear with*

*reference to the distance he may be at from this province,]* CHAP. 134.  
 days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the supreme court of Nova Scotia, at \_\_\_\_\_, in an action at the suit of A. B., who says that the said C. D. is indebted to him [*for work done and materials provided by the plaintiff for the defendant at his request, or as the case may be*] and take notice that in default of your so doing, the said A. B. may, by leave of the court or judge, proceed therein to judgment and execution; and he claims \_\_\_\_\_.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D.

\_\_\_\_\_, prothonotary.

E. F., plaintiff's attorney, [*or in person.*]

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be served within \_\_\_\_\_ calendar months from the date hereof; or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the writ before service thereof.*

This writ is for service out of the jurisdiction of the court, and was issued by E. F. of \_\_\_\_\_, attorney for the said plaintiff, [*or, this writ was issued in person by A. B. who resides at \_\_\_\_\_, mention plaintiff's place of residence.*]

B.

*Writ where a defendant, not being a British subject, resides out of the jurisdiction of this province.*

3S.

Victoria, by the grace of God, &c.

To C. D. of \_\_\_\_\_, in \_\_\_\_\_.

We command you that within [*here insert a sufficient number of days within which the defendant might appear, with reference to the distance he may be at from Nova Scotia*] days after notice of this writ is served on you, inclusive of the days of such service, you do appear or cause an appearance to be entered for you in our supreme court of Nova Scotia at \_\_\_\_\_, in an action at the suit of A. B., who says that the said C. D. is indebted to him [*for work and materials provided by the plaintiff for the defendant at his request, or as the case may be*] and take notice that in default of your so doing the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution; and he claims \_\_\_\_\_.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D.

\_\_\_\_\_, prothonotary.

E. F., plaintiff's attorney, [*or in person.*]

## CHAP. 135.

*Memorandum to be subscribed on the writ.*

N. B.—Notice of this writ is to be served within six calendar months from the date thereof, including the day of such date, and not afterwards.

Indorsements as in schedule A.

*Notice of the foregoing writ.*

To G. H., of ———, in ———

Take notice that A. B., of ———, in the province of Nova Scotia, has commenced an action at law against you C. D., in the supreme court of Nova Scotia, at ———, by a writ of that court, dated the ——— day of ———, A.D. 18— in which he says that you are indebted to him [*for work done and materials provided by the plaintiff for the defendant, at his request, as the case may be,*] and you are required within ——— days after receipt of this notice, to defend the said action, by causing an appearance to be entered for you in the said court, to the said action, and in default of your doing so, the said A. B. may, by leave of the court or a judge, proceed thereon to judgment and execution.

The following are the particulars of the said A. B.'s claim, &c. &c.

[signed] E. F., plaintiff's atty.,

[*or in person.*]

## CHAPTER 135.

## OF WITNESSES AND EVIDENCE, AND THE PROOF OF WRITTEN DOCUMENTS.

Commissions for taking depositions of absent witnesses, now issued.

1. In any civil action, the court or a judge, upon sufficient cause being shewn by affidavit, may order a commission to issue for taking the deposition of witnesses residing out of the province, in such manner and under such restrictions as the court or judge may direct; and the depositions so taken may be read in evidence at the trial of the cause.

Depositions of witnesses about to leave the province, aged or infirm, how taken.

2. In civil causes depositions of witnesses who are about to leave the province, or are aged, infirm, or otherwise unable to travel, may be taken before a judge or commissioner, on due notice being given to the adverse party; and any party upon shewing sufficient cause by affidavit may obtain from a judge an order in such terms as he shall think fit, to compel an unwilling witness in such cases to give evidence before the judge or commissioner.

When such witnesses do not reside in the county where the cause is pending.

3. Where such witnesses reside in any other county than that in which the cause is to be tried, a judge, on sufficient cause being shewn by affidavit, may give such order as he shall think fit for the deposition *de bene esse* of such



witnesses to be taken before a judge or commissioner by CHAP. 135.  
interrogatories or otherwise.

4. In all cases of depositions to be taken before any judge or commissioner, at least twenty-four hours' notice in writing shall be given to the adverse party or to his attorney, where such party or his attorney resides within the county, otherwise at least eight days' notice shall be given in like manner, and such notice shall in all cases contain the names of the witnesses to be so examined.

Notice of examination to be given; length and contents of notice.

5. Where any order shall be made for the examination of witnesses, and the order, together with a notice containing the time and place where such attendance is required, signed by the person appointed to take the examination, shall have been duly served on the witness, and the witness shall have been tendered his reasonable fees, the refusal to obey any such order shall be deemed a contempt of court.

Refusal on the part of a witness to obey an order for examination, a contempt of court.

6. No witness shall be compelled under any such order to produce any writing or document that he could not be compelled to produce at the trial of the cause.

Writings and documents, what to be produced.

7. No such deposition shall be read in evidence without the consent of the party against whom the same is offered, unless the judge shall be satisfied that the deponent is dead, or beyond the jurisdiction, or unable from some infirmity to attend the trial, in which case the deposition certified under the hand of the judge or commissioner shall, without proof of his signature, be received and read in evidence, saving all just exceptions.

Depositions, when to be read in evidence.

8. Either party in any civil action that has been continued from one term to another, may exhibit to the adverse party or his attorney, any written or printed document to be used at the trial of the cause, and require him within eight days to enter into a rule to admit the same, and if the party so required shall neglect or refuse so to do, and the judge before whom the issue is tried shall be of opinion that the instrument proved was necessary to support the case of the party producing it, the party so neglecting or refusing shall be liable to pay the fees of the witnesses necessary for proving the same.

Written or printed documents in continued causes may be exhibited for admission; notice, when and how given; costs in case of refusal.

9. No witnesses' fees shall be allowed in any case within the preceding section, to a party who shall have adduced in support of an issue, of which it was incumbent on him to prove the affirmative, any written or printed document which shall not have been exhibited a reasonable time before the trial or inquiry to the opposite party, unless sufficient cause shall be shewn on taxation, why the notice could not have been given.

Costs of proof of such documents to be disallowed where the party neglects to exhibit.

10. No charge for preparing to prove any such document incurred before the service of the notice, or after an offer by the adverse party to admit the same, shall be allowed, except those charges necessarily incurred in consequence

What costs relating to proof of written documents, to be allowed, and what not.

**CHAP. 135.** of some act of the adverse party, after the service of notice and before the offer of admission.

In case the documents are not admitted or requisite, party proving them to pay the cost.

11. In cases of written documents exhibited under the eighth section, and not admitted if the court or a judge who tried the cause or the judge who shall tax the costs, shall be of opinion, on hearing the parties, that the written documents were not required on the trial, and that the party producing or proving them had not reasonable ground for believing they would be required, the party proving the document shall pay the costs thereof, whatever may be the result of the cause.

When judge shall think that the party declining to admit documents has just grounds, costs to be costs in the cause.

12. Notwithstanding such written document may have been required, if the court or the judge who tried the cause or the judge who may tax the costs, shall be of opinion on hearing the parties, that the party declining to admit such document had reasonable and just grounds for declining, such party shall not be liable for the cost of proving the written documents absolutely and in any result of the cause, but such costs shall be costs in the cause subject to the ordinary rules.

Competency restored to witnesses interested, &c.  
Parties in suits may give evidence, &c.

13. No person shall be an incompetent witness by reason of incapacity from crime or from interest.

14. On the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action, or other proceeding, in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or defended, and the husbands and wives of the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought, or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the suit, action, or other proceeding.

In criminal proceedings parties charged and husbands and wives, not competent.

15. But nothing herein contained shall render any person who, in any criminal proceeding, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable, to give evidence for or against himself, or shall render any person compellable to answer any question intending to criminate himself; and nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding, or in any proceeding instituted in consequence of adultery.

Communication between husband and wife.

16. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any

communication made to her by her husband during the marriage. CHAP. 135.

17. Nothing in sections fourteen, fifteen, and sixteen contained, shall apply to any action, suit, proceeding or bill, in any court of common law or court of marriage and divorce, instituted in consequence of adultery. Not applicable to cases of adultery.

18. All proclamations, treaties, and other acts of state, of any foreign state, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any court of justice in the United Kingdom of Great Britain and Ireland, or in any foreign state, or in any British colony; and all affidavits, pleadings, and other legal documents, filed or deposited in any such court, may be proved in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, either by examined copies or by copies authenticated as hereinafter mentioned, that is to say: if the document sought to be proved be a proclamation, treaty, or other act of state, the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any British, foreign, or colonial court, or an affidavit, pleading, or other legal document, filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the said British, foreign, or colonial court to which the original document belongs, or in the event of such court having no seal, to be signed by the judge, or if there be more than one judge, by any one of the judges of the said court, and such judge shall attach to his signature a statement in writing on the said copy, that the court, whereof he is a judge, has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement. Proclamations, &c., judgments, &c., in what cases admitted as evidence, &c.—how proved.

19. Every document which, by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any court of justice in England, or Wales, or Ireland, without proof of the seal or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes, in any court of justice in this Documents admissible in evidence in England, without proof of signature, &c., admissible here.

**CHAP. 135.** province, or before any person having therein, by law or by consent of parties, authority to hear, receive, and examine evidence without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

Certified copies of papers filed in court admissible as evidence.

20. Copies of any document, writing or proceeding, filed in any court in this province, shall be received as evidence to the same extent as the original—provided such copies be certified under the seal of the court, or by the proper officer under his hand.

Affidavits to hold to bail made abroad.

21. All affidavits for the purpose of holding persons to bail in this province, or having relation to any judicial proceeding in any court of justice therein, purporting to be made before a judge of any court of justice in the United Kingdom, or in any foreign state, or in any British colony, if in other respects conformable to law and the practice of the court in which they are designed to be used, may, notwithstanding they are made before a judge of a British, foreign, or colonial court, be received and acted upon, and shall have the same effect as if made before a judge or other lawful authority in this province; provided the same purport to be sealed with the seal of the British, foreign, or colonial court, before one of the judges of which they purport to be made, or in the event of such court having no seal provided, the judge whose name is subscribed thereto, shall have attached to his signature a statement in writing, on the affidavit, that the court whereof he is a judge, has no seal; but if any such affidavit shall purport to be sealed and signed, or to be signed, without being sealed, as hereinbefore respectively directed, the same shall be respectively received and acted upon as aforesaid, and admitted in evidence in every court of this province, without any proof of the signature of the judge and seal of the court, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are alone required, or of the judicial character of the person appearing to have made such signature, or signature and statement respectively.

Proof of register, &c., of British ships.

22. Every register of, or declaration made, in respect of any British ship, in pursuance of any of the acts relating to the registry of British ships, may be proved in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive, and examine evidence, either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of one shilling: and every register, or copy of register, and also every certificate of registry granted under any of the acts

relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive, and examine evidence as presumptive proof of all the matter contained or recited in such register, when the register, or such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed upon, such certificate of registry when the said certificate is produced. CHAP. 135.

23. If any officer, authorised or required by this chapter to furnish any certified copies or extracts, shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanor, and be liable, upon conviction, to imprisonment for any term not exceeding three years.

Punishment for giving false certificate.

24. Every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having, by law or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them, respectively.

Parties authorized to administer oaths.

25. If any person shall forge the seal, stamp, or signature of any document in this chapter mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall, on conviction, be liable to imprisonment for any term not exceeding three years, nor less than one year; and whenever any such document shall have been admitted in evidence by virtue of this chapter, the court, or person who shall have admitted the same, may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the court, or other person, for such period, and subject to such conditions as to the said court or person shall seem meet, and every person who shall be charged with committing any offence under this chapter may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county, district or place in which he shall be apprehended or be in custody; and every accessory before or after the fact, to any such offence, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed in any county, district, or place in which the principal offender may be tried.

Punishment for forging documents referred to in this chapter.

26. A copy of any grant of lands, or of any proceedings in her majesty's council respecting the titles of lands, certified by the provincial secretary, or clerk of the council, shall be received as evidence.

Copies of grants admissible as evidence.

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Certified copy of deed may be received in evidence.

27. A copy of any deed from the books of registry, certified under the hand of the registrar, or proved to be a true copy taken therefrom, shall be received as evidence in the absence of the original, if it shall be made to appear to the court, by affidavit, that such original is not in the possession or under the control of the party, and that he has enquired for, and been unable to procure the same.

Probate of will, or certified copy, may be received in evidence.

28. The probate of a will, or a copy thereof, certified under the hand of the judge or registrar of probate, or proved to be a true copy of the original will, when such will has been recorded, shall be received as evidence; but the court may, upon due cause shewn upon affidavit, order the original will to be produced in evidence.

Notice to be given to the opposite party.

29. A party intending to avail himself of the two preceding sections, must give notice, in writing, of such his intention to the opposite party, at least ten days previous to the trial, with a schedule of the deeds or wills so intended to be given in evidence, and of the books wherein the same are recorded; but the judge may dispense with such notice if he be satisfied that no injustice has been done by the want thereof.

Copy of grant.

30. A copy of any duplicate original of a grant, certified by the surveyor general, or by the registrar of deeds of any county where such grant is recorded, shall be received as evidence.

Plans certified by prothonotary.

31. A certificate of the prothonotary at Halifax, on the plan of any township returned under the thirty-first section of chapter one hundred and thirteen, shall be presumptive evidence that the same is the original plan which it is alleged to be in such certificate, and such plan shall thereupon be received in evidence as such.

Justices may issue subpoenas where witness resides more than five miles distant.

32. Where a witness in a cause resides more than five miles from the place where the trial is to be had, a justice of the peace may issue a summons for such person to attend at the trial thereof, which summons shall have the same effect as a subpoena, and may be in the usual form of a justice's subpoena with the necessary alterations.

Witness' fees to be tendered.

33. No person shall be obliged to attend or give evidence in any cause, before he is tendered his reasonable charges for such attendance.

Judge's testimony, how taken when necessarily absent from any county.

34. The testimony of a judge of the supreme court may be taken before any other judge or a commissioner, in the same manner as in the case of a witness about to leave the province; and the testimony may be used on the trial, though the judge be not out of the province, if he shall be necessarily absent from the county on official business.

Affirmation.

35. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer or qualified persons, to take affidavits or

depositions, upon being satisfied of the sincerity of such objections, to permit such person, instead of being sworn, to make his solemn affirmation or declaration, in the words following, videlicet : CHAP. 135

"I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do solemnly, sincerely, and truly affirm and declare, &c."

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

36. If any person making such solemn declaration or affirmation, shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending, shall incur the same penalties as by the laws of this province are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

Penalty for affirming falsely.

37. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or by leave of the judges, prove that he has made at other times a statement inconsistent with his present testimony; but, before such last mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Party producing witness not to impeach his credit by evidence of bad character.

May contradict him by other evidence.

38. If a witness, upon cross examination, as to a former statement made by him, relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given, that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness and he must be asked whether or not he has made such statements.

Evidence of inconsistent statement of a witness when to be received.

39. A witness may be cross examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shewn to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always, that it shall be competent for the judge at any time during the trial to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Examination of witness as to previous statements in writing.

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Examination of witness relative to his conviction of crime.

40. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor; and, upon being so questioned, if he either deny the fact or refuse to answer, it shall be lawful for the opposite party to prove such conviction, and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the courts where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more, shall be demanded and taken) shall, upon proof of the identity of the person, be sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed the same.

Proof of instruments.

41. It shall not be necessary to prove, by the attesting witness, any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

Proof by comparison of hand writing.

42. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

New matter in affidavits may be answered.

43. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the court or a judge, to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits, subject to all such rules as may hereafter be made respecting such affidavits.

On hearing motion judge may order production of documents, and appearance of witnesses.

44. Upon the hearing of any motion or summons, it shall be lawful for the court or a judge, at their discretion, and upon such terms as they shall think reasonable, from time to time, to order such documents as they may think fit to be produced, and such witnesses as they may think necessary to appear and be examined *viva voce*, either before such court or judge, or before a commissioner, and upon hearing such evidence, or reading the report of such commissioner to make such rule or order as may be just.

Mode of examination of witnesses, &c.

45. The court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon, as nearly as may be, in the same manner as rules or orders made for the depositions *de bene esse* of witnesses, to be taken before a judge or commissioner are now proceeded upon; and it shall be lawful for the court, or judge, or commissioner, to adjourn



the examination from time to time as occasion may require, and the proceedings upon such examinations shall be conducted, and the depositions taken down, as nearly as may be, in the mode now in use with respect to the *viva voce* examination of witnesses *de bene esse* when about to leave the province. CHAP. 135.

46. Any party to any civil action or other civil proceedings in the supreme court, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons, for an order to such person to appear and be examined upon oath, before a judge or commissioner, to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit; and a judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may thereupon impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think fit.

Judge may compel appearance if party refuses to make affidavit, or to produce documents.

47. Such order shall be proceeded upon, as nearly as may be, in like manner as an order made under the second section, and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be, in the mode now used with respect to the examination *de bene esse* of witnesses about to leave the province.

Order, how to be proceeded on.

48. Upon the application of either party to any cause or other civil proceeding in the supreme court, upon an affidavit of such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the court or judge to order that the party, against whom such application is made, or if such party is a body corporate, that some officer to be named of such body corporate shall answer on affidavit, stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they are in, and whether he objects, and if so, on what grounds, to the production of such as are in his possession or power; and upon such affidavits being made, the court or judge may make such further order thereon as shall be just.

Production of documents in hands of the opposite party.

49. In all causes in the supreme court, by order of the court or a judge, the plaintiff may with the declaration, and the defendant may, with the plea, or either of them by leave of the court or a judge, may, at any other time, deliver to the opposite party, or his attorney, provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter, interrogatories

Interrogatories may, by order, be delivered with declaration or plea.

CHAP. 135. in writing, upon any matter as to which discovery may be sought; and require such party, or in the case of a body corporate, any of the officers of such body corporate, within ten days, to answer the question in writing, by affidavit, to be sworn and filed in the ordinary way; and any party or officer omitting without just cause, sufficiently to answer all questions as to which a discovery may be sought, within the above time, or such extended time as the court or a judge shall allow, shall be deemed to have committed a contempt of the court, and shall be liable to be proceeded against accordingly.

Application for order, how made.

50. The application for such order shall be made upon the affidavit of the party proposing to interrogate, and of his attorney or agent, or in case of a body corporate, of their attorney or agent, stating that the deponents believe that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay: provided, that when it shall happen from unavoidable circumstances that the plaintiff or defendant cannot join in such affidavit, the court or a judge may, if they think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit.

In case of insufficient answer, party may, by order, be examined orally.

51. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the court or a judge, at their discretion, to direct an oral examination of the interrogated party, as to such points as they may direct, before a judge or commissioner; and the court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of such party before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon, and otherwise, as to such court or judge shall seem just.

Oral examination, how taken.

52. Such rule or order shall have the same force and effect, and may be proceeded upon, as nearly as may be, in like manner as an order made for the deposition *de bene esse* of witnesses about to leave the province, to be taken before a judge or commissioner, except that the answers to the interrogatories, or the oral examinations, shall be held to be taken absolutely, and not *de bene esse*, unless otherwise specially ordered.

Depositions to be kept in office of prothonotary

53. Whenever, by virtue of sections forty-four, forty-five, forty-six, forty-seven, fifty-one, and fifty-two, an examination

of any witness has been taken before a judge of the supreme court, or before a commissioner, the depositions taken down by such examiner shall be returned to, and kept in the office of the prothonotary of the court, and office copies of such depositions may be given out, and the depositions may be otherwise used in the same manner as in the case of depositions now taken *de bene esse* of witnesses about to leave the province, except that the depositions shall be held to be taken absolutely, unless otherwise specially ordered. CHAP. 135.

54. It shall be lawful for every judge or commissioner named in any such order or rule as aforesaid for taking examinations under sections forty-four, forty-five, forty-six, forty-seven, fifty-one, and fifty-two, and he is hereby required to make, if need be, a special report to the court, touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorised to institute such proceedings, and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the court. Report of judge or commissioner.

55. The costs of every application for any rule or order to be made for the examination of witnesses by virtue of sections forty-four, forty-five, forty-six, forty-seven, fifty-one, and fifty-two, and of the rule or order, and proceedings thereon, shall be in the discretion of the court or judge by whom such rule or order shall be made. Costs.

56. The term commissioner, when used in this chapter, shall include a commissioner appointed for taking affidavits to hold to bail, and a commissioner specially appointed under this chapter. Term "commissioner."

57. If the parties in any cause pending in any court, consent in writing, to examine witnesses residing out of the province, whether by interrogatories or *viva voce*; such consent and the proceedings had thereunder shall be as valid in all respects as if a commission had been sued out and the proceedings had thereunder. Examination abroad by consent.

58. Rules for commissions for the examination of witnesses residing out of the province may be made by any prothonotary, upon the usual ground laid in the same way as the supreme court or a judge thereof grant the same. Rules for commissions may be granted by prothonotary.

59. Examination of witnesses residing abroad may be opened by the prothonotary of the court at the instance of either party; and either party may notify the other of their being so returned, and no objections to such examinations being read shall avail, unless taken within eight days next after such notice served; the party objecting shall be required to specify his objections in writing, and the court or a judge, on summons, may then hear such objections and decide thereon. Proceedings on return of commission.

60. No examination of witnesses residing abroad, or taken *de bene esse*, shall be set aside by the court or any Objections to examinations to be made on affi-

**CHAP. 136.** judge thereof, unless the party objecting shall lay grounds by affidavit, which may be opposed as in other cases; and unless the court or judge shall be of opinion that the objections are not of a purely technical character, and that substantial justice requires that such objections should prevail, which shall be so expressed in the order.

**Application of sections.** 61. Sections fourteen, fifteen, sixteen, and seventeen shall not apply to any actions commenced before the fourth day of April, 1855.

## CHAPTER 136.

### OF JURIES.

**Qualification of grand jurors.** 1. All persons not hereinafter exempted, or who may not otherwise by law be exempted, who shall have resided twelve months within the county, and shall hold a freehold estate within the same, if within the county of Halifax of the yearly value of thirty pounds, and if in any other county of the yearly value of fifteen pounds, or shall be possessed of a personal estate, if within the county of Halifax of the value of five hundred pounds, and if in any other county of the value of three hundred pounds, shall be qualified to serve as grand jurors for such county.

**Qualification of petit jurors.** 2. All persons not hereinafter exempted, or who may not otherwise by law be exempted, whether liable to serve as grand jurors or not, who shall have resided twelve months within the county, and shall own property within the county to the value of two hundred pounds, shall be qualified to serve as petit jurors for such county.

**Persons exempted from serving on juries; no persons liable to serve oftener than once in three years, except in special cases.** 3. The members of the executive and legislative councils and of the house of assembly, and the officers thereof while in session, the receiver general, the financial secretary, and the secretary of the province, the surveyor general of crown lands, and the clerks employed in their several offices, the registrar of deeds, the officers of her majesty's courts, justices of the peace and members of the corporation of the city of Halifax, the officers composing the staff of the army, the clerks belonging to the several departments of the army, the officers and clerks belonging to and laborers employed in the naval yard, naval hospital-establishment, the victualling establishment or her majesty's ordnance, or the departments of the customs, or excise, or post office; ministers, attornies, physicians, surgeons, keepers of light houses, millers, licensed ferrymen, teachers of academies, licensed schoolmasters, mail couriers, engine-men and firemen, sworn electric telegraph operators, persons

under twenty-one and above sixty years of age, and the cashiers or accountants and tellers actually employed in the several banks, shall be exempted from serving on juries; and no person shall be liable to serve on grand or petit juries more than once in three years respectively, unless in cases where a new summons shall be issued for jurors to supply the place of jurors not attending as hereinafter directed. CHAP. 136.

4. The sessions shall from among their number appoint a committee of five justices, resident in different sections of the county or district, for the purpose of preparing and revising the grand and petit jury lists of the county or district, and shall from time to time appoint others to act in the room of such as may die or be removed. Committee for preparing and revising jury lists, how appointed.

5. The committee, having been sworn, shall have free access to all public papers and accounts, and shall prepare and annually revise the lists, and shall transmit copies thereof to the prothonotary. Duty of committee: access to public papers, &c., free.

6. The lists shall be valid though all the justices appointed shall not act in the compilation or return thereof. Lists valid, tho' the whole committee do not act.

7. The list of grand jurors shall contain all the christian names and the surnames of all those qualified to serve as grand jurors, their places of residence, trades, callings or employments, and whether senior or junior, or by any other appellation by which they may be usually called or known. Lists of grand jurors to contain names, additions, &c.

8. The list of petit jurors shall contain all the christian names and the surnames of all those qualified to serve either as grand or petit jurors, their places of residence, trades, callings or employments, and whether senior or junior, or by any other appellation by which they may be usually called or known. Lists of petit jurors, like particulars.

9. The court of general sessions in every county or district of this province, shall, from time to time, as they may think requisite, fix and determine what number of such persons, qualified to serve as grand jurors for each of the townships, settlements, or electoral districts, in the county or district, shall be annually summoned to serve as such jurors. General sessions to determine the number of jurors to be summoned annually.

10. When the lists of jurors shall have been completed by the committee, a copy shall be given by them to the clerk of the peace, and another copy to the prothonotary, who shall forthwith post up a copy of such list in their offices, respectively, and keep the same posted up for at least one month; and such committee, or a majority thereof, shall meet in the county or district court house, within two months from the last day of the sessions at which they were appointed, to revise such lists, a notice of the time of holding such meeting to be given on such lists so posted up, and shall hear and decide upon objections to the correctness of such lists, either as to names appearing thereon, or as to names omitted therefrom. Copies of jury lists to be posted; notice to be given thereon, &c.; errors or omissions in.

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Corrected lists to be furnished to prothonotary, effect of omissions, &c.

11. The committee shall thereupon forthwith furnish the prothonotary with a copy of such lists so corrected and signed by them, and the lists shall be held valid, notwithstanding the omission of persons qualified or the insertion of the names of persons not qualified as grand or petit jurors, respectively.

Lists to be posted in prothonotary's office; names drawn to be marked.

12. The list of jurors shall be kept posted up in the prothonotary's office, and when the juries are drawn to serve for each year, the prothonotary shall mark opposite to the name of each person the year he was drawn to serve and whether as a grand or petit juror.

Remuneration to committee revising lists.

13. The grand jury, in general sessions, shall vote annually a compensation of seven shillings and six pence to each of the committee of justices who revise the lists as aforesaid, with travelling fees at the rate of three pence per mile coming and returning; and six pence per folio for copies of the lists furnished by them.

Inserting names of incompetent or omitting competent persons in lists, &c.

14. Any justice appointed to revise such lists, who shall knowingly put any person thereon who is not qualified, or omit any person who is qualified, or who shall wilfully neglect his duty in any other respect, shall be liable to a penalty of not less than ten, nor more than fifty pounds.

Where jurors have not been drawn for the current year.

15. In any county or district where grand or petit jurors have not been drawn for the current year, a special sessions may appoint a committee of justices to revise the lists of jurors, and after the same are revised in manner directed by this chapter, and returned by the committee to the prothonotary, he, together with the sheriff or his deputy, shall forthwith draw a jury or juries, as may be required, and the prothonotary shall issue *venures* for summoning the same; and such lists need not be drawn in open court, or signed by a judge of the supreme court.

Form of revised lists.

16. Revised lists of grand and petit jurors, hereafter to be prepared, shall be in the forms of schedule A, hereto annexed.

Designation of jurors to be written upon tickets, &c.

17. The designations of jurors shall hereafter be written upon the tickets containing their names, and also upon the several panels and *venures* in the same way as they are upon the revised lists.

Revising committee to be chosen annually, duration of

18. The committee of justices to revise the lists shall be chosen annually, but shall continue in office until their successors are appointed.

Lists of petit jurors for Halifax sessions, how prepared.

19. The committee appointed for the county of Halifax shall also prepare and annually revise a list of those persons not qualified to serve as grand or petit jurors, and shall return such list to the clerk of the peace, which list shall be the list from which the petit juries for the sessions at Halifax shall be drawn; and such petit juries shall be drawn, summoned and sworn in the same manner, and subject to the same rules and penalties as petit juries in the supreme court.

20. No person living more than fifteen miles from the city of Halifax shall be placed on any list for the county of Halifax.

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What distance from Halifax to exempt.

21. The general sessions for the district of Saint Mary's shall appoint three justices to revise the list of grand jurors for the district, as often as may be requisite.

St. Mary's district grand jury list, how revised.

22. The inhabitants residing within the district of Saint Mary's shall alone be liable to attend as jurors at the sessions held in the district, and they shall not be liable to attend as jurors at the sessions held at Guysborough; but nothing in this section shall be construed to exempt such persons from their liability to attend as jurors at the supreme court at Guysborough.

Liability of persons residing within St. Mary's district to serve as grand jurors.

23. The clerk of the peace for the district of Saint Mary's shall draw from the list a grand jury on the last day of the sittings or term of the sessions, to be summoned to attend the next term or sittings of the court.

Saint Mary's district grand jury, how drawn for the sessions.

24. The prothonotary, as soon as possible after the return of such lists, shall have the names of all persons mentioned therein written on distinct and separate pieces of paper, so folded as to conceal the names thereon, and shall place the same in separate boxes; those names placed on the grand jury list being put into the grand jury box, and those on the petit jury list into the petit jury box.

Names of grand and petit jurors to be placed by prothonotaries in separate boxes.

25. During the sitting of the court on the last term in each year, the prothonotary shall draw from the grand jury box in open court, and before drawing the petit jury, the number of names fixed and determined by the sessions or by the committees thereof, to serve as grand jurors for each township or settlement in such county or district during the ensuing year, and shall thereupon make a list of such names as shall first be drawn, setting aside the names of those who have served within two years then next preceding, which list shall be signed by the presiding judge; and the prothonotary shall issue writs of *venire facias* for the summoning of such jurors, and shall deliver the same to the sheriff at least thirty days before the first term or sittings of the supreme court or general sessions at which such grand jury shall be bound to attend, and the sheriff shall thereupon cause such jurors to be summoned at least four days before the time appointed for their attendance.

Grand jury, how drawn and summoned.

26. The prothonotary for the county of Guysborough, immediately after drawing the grand jury for the supreme court, shall draw in the usual mode from the apartments of the grand jury box allotted to those portions of the county not included in the district of Saint Mary's, a grand jury to attend at the sessions in Guysborough, who shall be summoned in the usual manner, and shall return the names of such grand jury into the box; such drawing shall not exempt them from serving as grand jurors at the supreme

Grand jury for Guysborough sessions, how drawn, &amp;c.

**CHAP. 136.** court, but they shall not be liable to serve as jurors at the sessions oftener than once in three years.

Foreman of grand jury, how chosen.

27. When above twelve of the grand jury shall assemble in court for the first time in each term, they shall choose a foreman, who shall be foreman of such jury for the term, and such foreman and jury shall be sworn in the usual manner.

Petit jurors, how drawn and summoned.

28. At each term of the supreme court the prothonotary shall, in open court, draw from the petit jury box a number of names to form the panel of petit jurors for the ensuing term, and setting aside the names of all those who shall have served either as grand or petit jurors within two years then next preceding, or who shall then be serving or drawn as grand jurors, shall prepare a list containing the names of those first drawn, and have the same signed by the presiding judge, and shall issue writs of *venire facias* for the summoning thereof, and deliver the same to the sheriff at least thirty days before the ensuing term; and the sheriff shall cause such jurors to be summoned at least four days before the time appointed for their attendance.

Special juries, how obtained; motion for, when to be made.

29. In any civil cause, information or indictment for a misdemeanor, the court upon motion shall order a special jury for the trial thereof, which motion shall be made within the time limited for the defendant's appearance; but the court may at its discretion, upon sufficient cause shewn, allow such jury at any future day; and the court may order a special jury for the assessment of damages upon motion in cases where the assessment is to be made before them.

How drawn, struck, and summoned.

30. When special juries are ordered, the prothonotary shall draw thirty-six names from the petit jury box in civil cases, and forty-eight in cases of information, or indictment for misdemeanor, setting aside the names of any persons then serving as grand jurors; and the number having been reduced to eighteen in civil cases, and twenty-four in cases of information or indictment, in the usual manner, they shall be summoned at least forty-eight hours before the time appointed for their attendance.

Panel to be returned.

31. There shall be returned a panel of twenty-four jurors to each short term in the country, and two panels of twenty-four jurors each, at each extended term in those counties where the term can be so extended; in Halifax the panel shall consist of thirty-six jurors.

Halifax to have two panels; mode of service.

32. There shall be two panels of jurors drawn and summoned for each sittings after term at Halifax, the first whereof shall be summoned for and bound to attend on the first Wednesday of such sittings, and thence until the second Wednesday thereof; and the other shall be summoned for and bound to attend on the second Wednesday thereof, and thence until the termination of the sittings, except at the Michaelmas sittings, when the first panel shall again attend on the third Wednesday for a week; and the



respective panels shall so continue to attend by alternate weeks until the termination of the sittings. CHAP. 136.

33. There shall be two panels of jurors drawn and summoned for the county of Pictou at the October term, and for the county of Cumberland at the June term, the first of which panels shall be summoned for and bound to attend on the first day of the term, and thence until the succeeding Monday, and the other shall be summoned for and bound to attend on the first Monday of such term, and thence until the termination of the sittings.

Pictou and Cumberland to have each two panels at their long terms respectively.

34. A jury impanelled for the trial of a cause which shall go over the time specified for the attendance of such jury, shall not on that account be discharged.

Jury impanelled when not to be discharged.

35. The whole panel of jurors shall be called on the first day on which they are bound to attend, and before any cause to be tried by a jury shall be proceeded in, and all jurors not then in attendance shall be fined.

Panel to be called on the first day, absent jurors to be fined.

36. When the second panel shall not have been called upon to serve as a jury, their names shall be returned into the boxes as if not drawn.

Second panel, when not called, to be returned as not made.

37. If a sufficient number of grand or petit jurors do not attend, or if it is probable that a sufficient number may not attend, the names of those who do not attend shall be returned to the box as if they had not been drawn, and the prothonotary shall draw the names of others liable to serve, and shall cause the sheriff immediately to summon those whose names have been so drawn to attend forthwith.

Names of jurors not attending to be returned to the box, and others to be summoned forthwith.

38. Any grand juror who, having been duly summoned, shall not attend, shall be fined not less than ten nor more than forty shillings for each day's neglect.

Grand jurors finable for non attendance.

39. All fines for non-attendance of jurors shall be levied by warrant of distress; such warrant shall be made out and delivered by the prothonotary to the sheriff, immediately after the calling of the jury each day, and the sheriff shall proceed at once to enforce the same, and shall forthwith return to the prothonotary a statement of all fines received by him, which statement shall also set forth the reasons why such fines, if any, have not been collected; and the sheriff shall at the same time pay over to the prothonotary the full amount by him received, deducting ten per cent., and the prothonotary shall immediately lay such statement before the court, if then sitting, or otherwise at the next term thereof in the county; and he shall also at the end of each term pay over the amount of fines collected, deducting five per cent., to the county treasurer for county purposes, and shall take his receipt therefor, which shall be laid before the court at its next sitting.

Fines, how levied; how, when, and to whom payable.

40. Every petit or special jury, for the trial of civil causes, inquisitions, and issues, shall consist of nine persons, of whom seven, after at least four hours deliberation, may

Jurors, number of in civil cases.

**CHAP. 136.** return a verdict; and the petit jury for criminal trials shall consist of twelve persons who must be unanimous in their verdict.

**Jurors not to be deprived of food, &c.** 41. The practice of keeping a jury without meat, drink, or any other comfort until they agree upon their verdict is abolished.

**Pay of jurors.** 42. Each petit and special juror shall be entitled to receive and be paid the sum of two shillings and sixpence per day, for his actual attendance as a juror at the supreme court, and also six pence per mile for every mile he shall necessarily travel from his place of residence to the court house; such actual attendance and distance to be ascertained by the oath of the juror.

**List of jurors to be prepared, with their attendance and travel; to be paid out of county funds.** 43. The prothonotary in each county shall, on the last day of the sittings of the supreme court in each term, and of the sittings of such court in Halifax, and also, at the end of the first week of the sittings in those counties where the sittings can be extended, prepare and certify a list of the jurors who actually attended such court, with the number of days attendance, and the actual travel of each juror respectively, and the amount to which each juror is entitled, and shall deliver such list to the presiding judge, who shall certify the same; and the treasurer shall forthwith thereupon pay, out of the county funds, to each juror, the amount which such juror appears entitled to receive, upon such list.

**Fund to be raised by fees.** 44. To provide a fund towards the payment of jurors under this chapter, the following fees shall be paid by plaintiffs to the prothonotary, and by him into the county treasury, viz.: on the issuing of writ of mesne process, except in summary and subsummary suits, two shillings and six pence, and on the swearing of every jury, thirty shillings; the above fees to be taxed and allowed, and included in the costs in the cause.

**Fines, and mode of collection.** 45. Any petit or special juror who shall not answer to his name, when called, shall forfeit his day's pay, and for each day's absence, shall pay a fine of ten shillings, to be collected as follows: the judge, on the sheriff's affidavit, that the juror was duly summoned to attend the court, shall, on the last day of the term or sittings, unless such juror shall have been previously excused, order an execution to be issued for the amount of the fines, in the name of the prothonotary, who shall have the same collected immediately and shall pay the same into the county treasury, and the prothonotary shall have a commission of five per cent., and the sheriff ten per cent. on the amount so collected.

**Accounts of receipts and payments.** 46. The county treasurer shall keep an account of all receipts and payments under the two last sections, such account to be laid before the sessions with his other accounts.

**Jurors, how relieved from fines.** 47. The court or presiding judge may relieve any juror from such fine, in whole or in part, on sufficient reason

being shewn on oath, which, if in writing, may be made CHAP. 136.  
before a justice of the peace.

48. Talesmen shall be entitled to receive one shilling Pay of talesmen.  
and three pence on giving a verdict on the trial of civil causes, inquisitions and issues; such sum to be paid by the prothonotary out of the thirty shillings paid in by the plaintiff in the cause in which such talesmen were awarded and returned.

49. In all criminal trials four jurors may be peremp- Challenge on part of crown.  
torily challenged on the part of the crown.

50. In case of the illness of a juror after he shall have Proceedings in of illness of juror.  
been sworn in any civil cause, it shall be in the discretion of the presiding judge to allow the cause to proceed without him; and the verdict shall be valid, provided seven of the remaining jurors shall concur therein.

51. The court or presiding judge may amend the lists Amendment of jury lists provided.  
of jurors by striking out the names of persons not liable to serve, or inserting the true name or addition of any person therein improperly designated or described, or by adding the name of any qualified person brought to their knowledge; and the prothonotary shall keep a memorandum of all such amendments and annually return the same to the clerk of the peace, to be laid before the revising justices.

52. The prothonotary shall cause the names of the spe- Special jury, how drawn and called on trial.  
cial jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall proceed to draw the jury therefrom, and the nine or twelve, in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, shall be the jury for the trial of the cause or assessment of damages.

53. The prothonotary shall cause the names of the petit Petit juries, how drawn and called on trial.  
jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall, on the first cause being called, proceed to draw the jury therefrom, and the nine or twelve in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, and shall not be challenged, shall be the jury for the trial of the cause; and when another cause shall be called, the prothonotary having returned into the box the names of those who have been challenged, or who have not appeared, shall proceed to draw the jury therefrom until all the names have been drawn, when the names of such as have served on previous juries shall be returned to the box, to be drawn in like manner.

54. When a full jury shall not appear, or appearing, Tales may be prayed by either party.  
shall be challenged or otherwise prove deficient, *a tales de circumstantibus* shall at the instance of either party be awarded and returned immediately.

**CHAP. 137.** 55. In all civil causes, informations, and indictments for misdemeanors, either party may peremptorily challenge, if in Halifax four, if in any other county three, of the jurors or talesmen.

Challenges without cause allowed.

Duties of prothonotary to be performed by clerk of peace in certain cases.

Duration of sections.

56. The duties imposed by this chapter on the prothonotary shall be performed by the clerk of the peace where necessarily devolving on him.

57. Sections thirty-one, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-eight, forty-nine and fifty, shall remain in force until the first day of June, 1859, and from thence to the end of the then next session of the general assembly.

#### SCHEDULE A.

County of \_\_\_\_\_.

*The return of revising magistrates, of persons qualified to serve as grand or petit jurors.*

Township or settlement.	Christian and surname at full length, and whether senior or junior.	Trade, calling, or employment.	Appellation—by which known.

## CHAPTER 137.

### OF THE RELIEF OF INSOLVENT DEBTORS.

Commissioners appointed, how.

Prisoner to exhibit petition and schedule annexed.

1. Commissioners for giving relief to insolvent debtors shall be appointed by the governor in council.

2. Where any person imprisoned upon any writ of mesne process, execution or attachment for non-payment of costs, issuing out of the supreme court, shall desire to take the benefit of this chapter, he shall exhibit a petition to a judge of the supreme court, or to two commissioners, praying for his discharge. The petition shall be accompanied by a schedule of all the property, real and personal, of the debtor, of all debts due or growing due to him, and of all securities by him held, which might by any possibility be made available, or which might become assets in the hands of his representatives, and also, so far as the same can be obtained

by the debtor, a statement showing the amount of his liabilities. CHAP. 137.

3. The judge or commissioners shall thereupon forthwith issue a summons calling upon the creditor at whose suit the debtor is imprisoned, at a certain time or place to be therein named, to show cause why such prisoner should not be discharged. Summons thereupon to issue.

4. True copies of the summons and schedule shall be served on the creditor, his attorney or agent, or where a debtor is imprisoned at the suit of the crown, on the attorney general, at least forty-eight hours before the time appointed for shewing cause; and where the creditor, his attorney or agent, or the attorney general, shall reside more than twenty miles from the place so appointed, twenty-four hours additional shall be allowed for every additional twenty miles. The service of such copies, if not admitted, must be proved on oath by the person serving the same, which oath may be administered by a justice of the peace, and a further time may be allowed for the examination, in the discretion of the judge or commissioners, where the creditor himself has not been served. Copy of summons and schedule, how served; time from date of service till return to be proportioned to distance.

5. At the time appointed the judge or commissioners shall, if desired by the creditor, administer an oath to the debtor in the following form: Oath to be administered to prisoner if required.

“I, A. B., do swear that I will true answer make to all such questions as shall be asked me on this examination.”

6. The judge or commissioner shall give an order for the discharge of the debtor, unless in the cases hereafter provided for, upon the debtor's making an assignment to the creditor, in trust for the payment of the debt, of his real and personal property, upon his taking and subscribing an oath to the following effect: Order for discharge upon assignment made and oath taken; form of oath; confession may be required in case of mesne process.

“I, A. B., do swear that the schedule annexed to my petition contains a true account of all the real and personal estate which I or any person in trust for me at the time of my petition had, or now have, or may hereafter have, except the wearing apparel and bedding for me and my family, and the tools or instruments of my trade or calling, not exceeding ten pounds in the whole; and that I have not since my imprisonment or before, conveyed in trust for myself, or otherwise except as in such schedule mentioned, any part of my property whereby to defraud any of my creditors. So help me God.”

The taking of which oath may be waived by the creditor; and in case of imprisonment under mesne process, if the judge or commissioners are satisfied of the existence and amount of the debt, the debtor shall sign a confession of judgment therefor, and shall do such other acts as the judge or commissioner shall direct.

7. When a debtor is imprisoned at the suit of the crown and the judge or commissioners are satisfied of the insol- Debtors at the suit of the crown, how discharged.

CHAP. 137. vency of such debtor, he or they shall certify the same, to get her with an inventory of all the property of the debtor, and the governor may thereupon by warrant under his hand and seal, order the attorney general to assent on behalf of her majesty to the discharge of the insolvent, either with or without an assignmnet of his property.

Prisoner may be remanded on affidavit.

8. If the creditor, or in his absence his attorney or agent, shall forthwith, in the presence of the judge or commissioners, make an affidavit in writing, stating that he has good reason to be dissatisfied with the account given, and believes that the debtor has not disclosed the whole truth, or has other property than that by him admitted, the judge or commissioner shall remand the debtor, and appoint another day for the further hearing of the matter, and shall on that day again meet and discharge or remand the debtor, or make such further order as the justice of the case may require.

In cases of fraud, prisoner may be remanded for a period not exceeding one year.

9. When upon the examination of the debtor, or of any witnesses that may be produced on either side, and which witnesses shall be bound to attend on subpoena as in actions depending in the supreme court, the debt shall appear to have been fraudulently contracted, or any fraudulent circumstances have occurred in respect of such debt, or in respect of the delay of payment thereof, or in respect of the conduct of the debtor with regard to the disposition of his property, the judge or commissioner may remand the debtor for such time, under one year, as he or they shall deem proper under the circumstances, at the end of which time the debtor shall be discharged on making the affidavit and assignment of his property before a judge or any two commissioners.

Two justices may relieve in case of process issuing out of justices court.

10. Where the debtor is imprisoned under a capias or execution issued by a justice or justices of the peace, any two justices shall possess the same powers in respect to the relief of insolvent debtors as a judge.

Appeal to be had by either party.

11. In cases where the hearing shall be had before commissioners or justices of the peace, the debtor shall be entitled to an appeal; and if the creditor, or in his absence his attorney or agent, shall demand an appeal, and shall make an affidavit in writing that he is dissatisfied with the decision and that the appeal is not made for the purpose of delay only but that substantial justice may be done him therein, or to that effect, the commissioners or justices shall grant such appeal and remand the debtor.

Supreme court, a judge thereof, or a special sessions, to be the court of appeal.

12. The supreme court shall be the court of appeal if it shall be sitting within the same county at the time the order appealed from was made, or if such sitting shall be held within ten days from the making of such order; when such shall not be the case, then any judge of the supreme court, if within such county, and in case a judge shall not be present, then a special sessions of the peace shall be the court

of appeal. The special sessions shall be summoned by the prothonotary and be held within three days, and shall consist of any three justices of such county not concerned in the making of the order, the custos to be one in all cases where he shall not have been concerned, absent from the county or incapacitated by illness from attending.

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13. The court of appeal shall hear and determine such appeal, and make such orders therein from time to time as it shall deem proper, such orders being not inconsistent with this chapter.

Powers of the court of appeal.

14. The judge, commissioners, justices, and court of appeal, shall return to the supreme court of the county all the papers connected with their proceedings on such applications and appeals.

Papers to be returned to the supreme court.

15. Upon receiving an order to that effect from the judge, commissioners, justices or court of appeal, the officer in whose custody such prisoner shall be, shall discharge him therefrom as regards the suit expressed in the order.

Prisoner to be discharged by order.

16. Where any person shall be discharged under the provisions of this chapter, the property subsequently acquired by him may nevertheless be levied upon for the debt.

Property subsequently acquired liable for the debt.

17. When any person shall be discharged under the provisions in this chapter, the party at whose suit he has been committed to jail, or in case of his absence from the province his attorney, shall be liable to pay the sheriff his fees for the service return and travel necessary in serving the process.

Sheriff's fees, who liable therefor on a discharge.

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## TITLE XXXVII.

### OF ACTIONS RELATING TO REAL PROPERTY.

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#### CHAPTER 138.

##### OF THE WRIT OF DOWER.

1. When the heir or other person having the freehold, shall not within one month next after demand made, assign to the widow her reasonable dower, she may sue for and recover the same by writ of dower.

Widow entitled to sue for dower when not assigned within one month after demand.

2. The writ of dower shall be, as near as may be, in the form heretofore used.

Writ to be in the form heretofore used.

3. Upon judgment being given for the widow, reasonable damages shall be assigned to her from the time of the demand made.

Damage may be assigned for withholding dower.

## CHAP. 139.

Form of writ of seisin.

Dower, how set forth.

Of special endowment, where property indivisible.

Waste not to be committed or suffered.

4. Writs of seisin thereon shall be, as near as may be, in the forms heretofore used.

5. The officer to whom the writ is directed shall cause the dower to be set forth by five freeholders of the neighborhood, three of whom at least shall concur, who shall be sworn before a justice of the peace, to set forth the same impartially, without favor or affection, and as conveniently as may be.

6. Where no division can be made by metes or bounds, the widow shall be endowed in a special manner as of a third part of the rents or otherwise.

7. A woman endowed of lands shall not commit or suffer waste thereon, but shall maintain the buildings with the fences and appurtenances in good repair, during her term.

## CHAPTER 139.

## OF THE PARTITION OF LANDS.

Partition may be as at common law or under this chapter.

Proceedings to be commenced by petition to supreme court.

Petition, by whom maintained

Who may maintain petition.

Duration of partition as between tenants for years.

Contents of petition; amendments to be allowed at any stage.

1. All persons holding lands as joint tenants, coparceners or tenants in common, may be compelled to divide the same, either by writ of partition at the common law, or in the manner provided in this chapter.

2. Any one or more of the persons so holding lands, may apply, by petition to the supreme court for the county where the lands lie, for a partition of the same, and such court may cause partition to be made accordingly; and the shares of the petitioners shall be set off and assigned to them, and the residue of the premises shall remain for the persons entitled thereto, subject to a future partition among them if there is more than one person so entitled.

3. Such petition may be maintained by any person who has an estate in possession, but not by one who is entitled only to a remainder or reversion.

4. No tenant for any term of years, unless twenty years thereof at the least remain unexpired, shall maintain such a petition against any tenant of the freehold; but when two or more persons hold jointly or in common, as tenants for any term of years, either of them may have his share set off and divided from the others in the same manner as if they had all been tenants of the freehold.

5. Such partition between two or more tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners.

6. Every petition for a partition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises who would be bound by the



petition, whether they have an estate of inheritance, or for life, or years, and whether it be an estate in possession or in remainder or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion after his estate shall be considered as one of the persons so interested, and shall be entitled to notice accordingly; such petition or any subsequent proceeding had thereon may be amended at any time upon such terms as the court or a judge may impose. CHAP. 139.

7. The petition shall be filed in the same manner as a declaration, and a summons to appear and answer thereto shall be signed by the prothonotary, and a copy thereof with a copy of such petition, accompanied by a rule to plead and the usual notices, shall be served on each of the parties named in the petition as interested in the premises, if they shall be found within the province, the like number of days before the sitting of the court as is required in declaration suits.

Petition to be filed, a summons to issue and be served with a copy of petition; rule to plead, &c. as if it were a declaration.

8. If any of the persons so named as interested are absent from the province, or if there are persons interested in the premises and who would be bound by the partition whose names are unknown to the petitioner, the court or a judge thereof shall order notice to be given to the persons interested who are so absent or unknown, by a publication of the petition or of the substance thereof, with the order of the court or a judge thereon, in one or more newspapers to be designated in the order, or by delivering to such absent party an attested copy of the petition and order, or in such other manner as such court or judge shall consider to be most proper and effectual.

Proceedings where some parties are absent, &c.

9. If any person entitled to notice shall fail to appear, and if the service of the summons or other notice to him shall appear to the court to have been insufficient, the court or a judge may order such further notice as shall be thought proper.

Where a party fails to appear the court may order further notice.

10. If in any stage of the proceedings it shall appear to the court that any person interested, whether named in the petition or not, is out of the province, and has not opportunity to appear and answer to the suit, it shall be continued from term to term, until sufficient time has been allowed to enable him to appear and answer thereto.

Proceedings where it appears that a party out of the province has not had an opportunity of appearing.

11. The court or a judge may assign a guardian for the suit for any infant or insane person who is interested in the premises, in the same manner as a guardian is admitted for an infant plaintiff or defendant at common law.

Guardians may be appointed.

12. Any person interested in the premises of which partition is prayed for, may appear and answer to the petition, and may plead either separately or jointly with any other defendants, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the replication and farther pleadings shall

Defendants may appear jointly or separately, and pleadings, &c., may be had as in other cases.

**CHAP. 139.** be conducted as in other actions until issue is joined, which shall be tried and determined as in other cases; all such pleadings to be filed and served in the same way as the pleadings in declaration suits, and notices of trial to be given in like manner.

Replication where a party's right to appear and defend is contested.

13. If any person who is not named in the petition shall appear and plead as a defendant, the petitioner may reply that such person has no estate or interest in the lands described in the petition, and may pray judgment if he shall be admitted to object to the petition; and the petitioner may in the same replication plead over in answer to such plea any other matter in like manner as he might have done if he had not disputed the defendant's right to appear.

Proceedings thereon.

14. If upon such a replication it shall appear that the defendant has no estate or interest in the lands, the matter of his plea or objection shall be no further inquired of.

Costs of trial, how regulated.

15. If upon the trial of any issue of law or of fact it shall appear that the petitioner is entitled to have partition as prayed for, he shall recover his costs of such trial against the party who objected thereto, and shall have execution therefor in the usual form; but if such issue is found or decided against him, in whole or in part, the adverse party shall recover against him the costs of the trial and shall have execution accordingly, and judgment may notwithstanding be entered for the petitioner to have partition and to have assigned to him such part of the premises, if any, as he shall be entitled to.

Proceedings in cases of default; rule for partition thereon.

16. If the defendant shall make default, or if upon such trial it shall appear that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition or for a less share, a rule that partition shall be made shall pass, but the court shall have the same power of setting aside defaults and of granting new trials as in other cases.

Commissioners appointed to make partition under rule.

17. When such rule shall have passed the court shall appoint three disinterested persons as commissioners, to make partition and to set off to the petitioners the shares belonging to them, which shall be expressed in the rule in that behalf.

Petitioners may have their shares set off jointly or separately.

18. If there are several petitioners they may have their shares set off together, or the share of each one may be set off in severalty at their election.

Commissioners, how sworn.

19. The commissioners, before proceeding to the execution of their duties, shall be sworn before any justice, faithfully and impartially to perform the same; a certificate of which oath shall be made on the warrant by the person who administered it.

Commissioners to give notice of time and place of partition.

20. The commissioners shall give sufficient notice of the time and place appointed for making the partition to all persons interested therein, who are known and within the province, that they may be present if they see fit.

The three commissioners shall meet, but the acts of two to be valid.

21. The three commissioners shall meet for the performance of any of their duties, but the acts of any two of them shall be valid.

22. When the premises of which partition is demanded, are such as cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share, and cannot be divided without damage to the owners, the whole estate, or the part thereof so incapable of division, may be set off to any one of the parties who will accept it, he paying or securing to any one or more of the others, such sums of money as the commissioners shall award, to make the partition just and equal. But the partition in such case shall not be established by the court until all the sums so awarded shall be paid to the parties entitled thereto, or secured to their satisfaction.

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Partition, how effected where the premises cannot well be divided.

23. In the case mentioned in the preceding section, the commissioners instead of setting off the premises, or a part thereof, in the manner therein provided, may assign the exclusive occupancy and enjoyment of the whole or the part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein.

Same subject.

24. When the whole or any specific part of the premises is assigned in the manner provided in the preceding section, the person entitled for the time being to the exclusive occupancy, shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants would be to his landlord; and the other tenants in common may have their remedy therefor against him by action on the case, either jointly or severally at their election.

Tenant liable for misconduct where he has the exclusive occupancy.

25. Whilst any estate is in the exclusive occupancy of any co-tenant under such an assignment as before mentioned, he shall be entitled to the same remedy against any person who shall trespass upon or otherwise injure the premises as if he held the same under a lease for the same term for which they were so assigned to him; and he and all the other tenants in common shall also be entitled to recover against the wrong doer such other and further damages as they shall have sustained by the same trespass or injury, in like manner as if the premises had been leased by them for such term; and all joint damages recovered by any such tenants in common, by force of this or the preceding section, shall be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered.

Liabilities in case of sole occupancy by one tenant in common.

26. The commissioners shall make a return of their proceedings under their hands, together with their warrant, to the court, and if their proceedings are confirmed by the court, judgment shall be thereupon rendered that the partition so made be final; and the return shall then be filed, and a certified copy thereof by recorded, in the registry of deeds in the county where the lands lie.

Commissioners' returns to be made for confirmation by the court; when confirmed to be filed and registered.

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Return may be set aside and new proceedings had.

Final judgment upon whom conclusive.

Part owners absent from the province, for whom a share was left, may apply within three years for a new partition.

Court may, if justice require it, order a new partition.

Commissioners duty on such new partition.

Improvements to be considered in new partition, and proceedings in such case.

Persons not parties to the partition claiming to hold the premises in severalty, not bound by the judgment, but may take proceedings as in other cases.

27. The court for any sufficient reason shewn may set aside the return and commit the case anew to the same or to other commissioners to be appointed, whereupon the same proceedings shall be had as above directed.

28. The final judgment confirming and establishing the partition shall be conclusive as to all rights, both of property and possession, of all parties and privies to the judgment, including all persons who might by law have appeared and answered to the petition, except as is hereafter provided.

29. If any person who was a part owner with the petitioners, and for whom a share is left upon the partition, should be out of the province when the summons or notice to him is served, and should not return in time to appear and answer to the suit, he may, at any time within three years after the final judgment, apply to the court for a new partition of the premises.

30. If upon such an application, and after hearing of all parties interested therein, it shall appear to the court that the share left for the applicant was less than he was entitled to, or that the part left for him was not at the time of the partition equal in value to his share of the premises, the court may order a new partition thereof, which shall be made in the manner before provided.

31. In such new partition the commissioners shall not be required to make a new division of the whole premises, but they may take from any one share or shares and add to any other or others so much as shall in their judgment be necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided; or if an equal partition of the lands cannot be made without inconvenience to the owners, the commissioners may award money to be paid by one party to another as before provided, to equalize the shares.

32. If after the first partition, any improvement shall have been made on any part of the premises which, by the new partition, shall be taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners, and to be paid by the party to whom such part of the premises shall be assigned on the new partition; and the court may order execution therefor in the usual form.

33. If any person who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises therein mentioned, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action for the land claimed by him against any or all of the petitioners or defendants, or of the persons holding under them as the case may require, within the same time in which he might have brought it if no such judgment for partition had been rendered.

34. When any person who has not appeared and answered to the petition shall claim the share that was assigned to, or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit; but he shall not be prevented thereby from bringing his action for the share claimed by him against the person to whom it was assigned, or for whom it was left.

A person not appearing, but claiming a share assigned to a part owner, shall be bound by the partition, but may have an action for the share.

35. The action in such case shall be brought against the tenant in possession, in like manner as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land; and it may be brought within the same time in which it might have been brought if no such judgment for partition had been rendered.

Action in such case, how and against whom brought.

36. If two or more persons appear as defendants claiming the same share of the premises to be divided, it shall not be necessary to decide upon their respective claims, except only for the purpose of determining which of them shall be admitted to appear and plead in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties shall prove to be entitled to it, in a suit to be thereafter brought between themselves.

Proceedings where two persons claim the same share before division.

37. If in such a case it shall be decided in the original suit for partition, upon the replication of the petitioners or otherwise, that either of the defendants is not entitled to the share that he claims, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares; but he shall not be prevented thereby from bringing his action for the share claimed by him against the other claimant thereof, in the manner provided in the three preceding sections.

The defendant against whom judgment on the partition is given, shall not be precluded thereby from subsequently contesting his right with the other.

38. If any person who has not appeared and answered as above, shall claim any part of the premises mentioned in the petition, as a part owner with those who were parties to that suit, or any of them, and if the part or share so claimed was not known or not allowed and left for him in the process for partition, he shall be concluded by the judgment so far as it respects the partition; but he shall not be prevented thereby from bringing an action for the share or proportion claimed by him, against each of the persons who shall hold any part of the premises under the judgment for partition.

Rights of a party not appearing where the share was not known or allowed, how far effected by the partition judgment.

39. If the plaintiff shall prevail in the case last mentioned he shall not be entitled to demand a new partition of the whole premises, but he shall recover against each of the persons holding under the judgment for partition, the same proportion or share of the part held by him that the plaintiff was entitled to out of the whole premises before the partition thereof.

Redress in such case, how and against whom obtained.

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Rights of heir or devisee where, after partition, it shall appear that the ancestor or testator died before partition, how affected.

40. If after making of partition it shall appear that any person for whom a share was left or to whom a share was assigned, had died before such partition was made, the heir or devisee of such deceased person shall not by reason of such heir or devisee having been a party to the suit, either as a petitioner or as a defendant, be barred from claiming the share that belonged to the deceased person; but the heir or devisee in such case shall have the same rights and the same remedies in all respects as if such heir or devisee had not been a party to the suit, and had not notice of the pendency thereof.

Remedy where a party is evicted by a person having a paramount title.

41. If any person to, or for whom any share shall have been assigned or left upon any judgment for partition, shall be evicted thereof, by any person, who at the time of the partition, had a title thereto paramount to the title of those who were parties to the suit for partition, the person so evicted shall be entitled to a new partition of the residue, in like manner as if the former partition had not been made.

Lien by mortgage or attachment, how affected by the judgment.

42. Any person having a mortgage, attachment, or other lien upon the share of any part owner, shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares; but his lien shall remain in full force upon the part that shall be assigned or left for such part owner.

Suit not to abate for the death of a party named on a partition.

43. In the case of the death of any party in a petition for partition, the suit need not abate, but may be conducted and prosecuted to final judgment, under such rules and orders for bringing in the heirs or representatives of the deceased party, as the court or judge may think proper, for making them parties to the suit and regulating the proceedings accordingly.

Expenses of commissioners to be allowed, and costs to be taxed, as in other cases.

44. The expenses and charge of the commissioners shall be ascertained and allowed by the court, and all the other costs of the proceedings shall be taxed in the usual manner, and the whole shall be paid by the parties in proportion to their respective shares or interests in the premises, except only the cost of a trial of any issue joined in the case, as to which a different provision is before made.

Titles under a judgment of partition, how considered.

45. Every person holding any lands under a partition made by virtue of this chapter shall be considered as holding them under an apparently good title, so that in case of eviction he shall be entitled to compensation for any improvements made thereon.

Orders of a single judge liable to be rescinded or altered.

46. Every order made in pursuance of this chapter by a single judge, not sitting in open court, shall be liable to be rescinded or altered by the court in like manner as other orders.

## CHAPTER 140.

## OF FORCIBLE ENTRY AND DETAINER.

1. In cases of wrongful and forcible entry into lands, and in cases of wrongful detainer, or withholding with force after possession demanded, and also when the lessee or sub-lessee shall illegally hold possession after the determination of the lease and demand of possession, any two justices residing in the town or place wherein the lands lie, on complaint on oath being made, may by warrant cause the person so in possession to be arrested, and detained in custody until he find security for his appearance to answer such complaint, at the next term of the supreme court in the county, and to pay the costs of the proceedings if adjudged against him.

Warrants may issue in case of forcible entry and detainer, and party to be held to bail, &c.

2. No such warrant shall issue where the party complained of or the person under whom he claims has been in quiet possession for three years next before the filing of the complaint, unless in cases of tenancy where the same has terminated.

In what cases a warrant may be issued.

3. Such complaint shall be tried in a summary way, and if proved to the satisfaction of the court, a writ of possession shall issue, and the party complaining be put in possession of the land and premises within ten days thereafter. The court shall have power, at the same time, to award damages for such forcible entry, and, in case of a tenant overholding, treble rent, at the rate previously paid; but the court may, if they think fit, order that the cause may be tried, or the rent or damages assessed by a jury.

Complaint to be summarily tried.

Possession, when to be given.

Damages.

4. When any house or tenement is let by the year, three months notice to quit, and when by the month one month's notice, and when by the week one week's notice, shall be given to the tenant in possession.

Notice to quit, what to be sufficient.

## TITLE XXXVIII.

## OF PROCEEDINGS IN SPECIAL CASES.

## CHAPTER 141.

## OF SUITS AGAINST ABSENT OR ABSCONDING DEBTORS.

1. Writs of summons and attachment for the sum of five pounds and upwards may be sued out against any debtor absconding or absent out of the province.

Writs of summons and attachment may issue for £5 and upwards.

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**Affidavit, its contents, how sworn; declaration, when to be filed; how served.**

2. The party applying for such writ, or his agent, shall make affidavit in the usual form for holding a party to bail, which shall also state that the defendant is an absent or absconding debtor, and that the deponent verily believes that the person, if any, about to be summoned, is the agent or trustee of the defendant, or that he hath goods or credits of such defendant in his possession or under his control; which affidavit shall be made before a judge or commissioner, or in their absence before a justice of the peace, and in declaration cases the declaration shall be filed on or before the first day of the term, and copies of the writ and declaration shall be left at the last place of abode of the defendant, where he has been a resident in the province, and no rule to plead or notice of trial shall be necessary in such cases.

**Writ, how endorsed.**

3. The sum set out in the affidavit shall be endorsed on the writ in words at length; and shall be signed by the person before whom the affidavit is made.

**Levy, for what amount, to include costs.**

4. The sheriff to whom a writ of attachment is directed, shall levy for the amount endorsed on the writ, with thirty pounds for probable costs in declaration causes, and seven pounds in summary suits.

**Goods in agent's hands bound by service of process.**

5. The service of process on the agent shall bind all the goods and credits of the absent or absconding person then in his possession or under his control, to the amount endorsed on the writ, with thirty pounds for probable costs in declaration causes, and seven pounds in summary suits.

**Goods exhibited to be appraised before levy**

6. Where goods are exhibited to the sheriff as the property of the absent or absconding debtor, they shall be valued by two sworn appraisers, and upon an appraisement being made under their hands, the sheriff shall levy upon such part of the goods as shall be sufficient to respond the sum sworn to, and probable costs as above.

**Perishable goods may be sold by order of a judge, &c., unless security for their value be given.**

7. Where the goods consist of stock, or are shewn upon affidavit to be of a perishable nature, and the agent shall not within three days after notice of the appraisement, give security for the value, a judge, or the prothonotary of the county in his absence, may at his discretion cause the same to be sold at public auction, and the proceeds thereof shall be retained by the sheriff, or paid into court to respond the judgment.

**A person interested as subsequent attacher or otherwise, may contest the attachment.**

8. When any person shall have any title or interest in any real estate, goods or credits attached, as a subsequent attacher or otherwise, he may be allowed to dispute the validity and effect of the attachment, on the ground that the sum demanded was not justly due, or that it was not payable when the action commenced.

**Such attachment may be attacked upon affidavit motion and rule.**

9. The party objecting to the attachment may apply to the court to set aside, which application shall be grounded on an affidavit, setting out the facts and circumstances on which the motion is made, and also shewing that his claim is just and legal.



10. Upon hearing the motion the court may direct a trial by jury of any question of fact arising on the inquiry, and if it shall appear that the sum demanded in the prior suit or any part of it is not justly due or was not payable when the action was commenced, the court shall order the attachment therein made to be set aside in whole or in part, as justice shall require, but the order shall have no other effect in the prior suit.

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Court may order a jury to try any disputed facts, and make such order as may seem just.

11. The proceedings between the two adverse claimants shall not be affected by any plea or other act of the defendant in the prior suit, nor by any judgment that shall be rendered therein.

Proceedings not to be affected by act of defendant in prior suit, or judgment thereon.

12. The court may, upon every such inquiry, direct such security to be given for costs, and, upon any decision thereon, may award costs to either party as they shall think just and reasonable, and execution in the common form may be issued therefor.

Court may order security for costs, and award costs as shall be just, and grant execution.

13. In actions against absent or absconding debtors, the defendant may appear at any time during the first term and give notice to the plaintiff, but shall not be at liberty to appear thereafter, without leave of the court or a judge.

Defendant may appear of course at the first term, and afterwards only by leave.

14. In suits against absent or absconding debtors, in case there shall be no appearance, the damages may be assessed before a judge at chambers, or the court at the second term, or in Halifax at the sittings after the second term from the commencement of the suit, or at any time thereafter, unless special matter in bar, abatement, or further continuance, be allowed.

Assessment of damages.

15. When the damages claimed do not exceed twenty pounds, or when a cause is undefended, although the damages claimed be over twenty pounds, it may be tried and damages assessed in the same manner as in summary suits, unless a judge or the court shall otherwise order.

Damages under £20, how assessed.

16. Where a person summoned as agent or trustee shall file a declaration under his hand, that he had not, at the time the summons was served upon him, any goods or credits of the absent or absconding debtor in his possession or under his control, and shall, if required, submit to an examination upon oath satisfactory to the court, such agent or trustee shall be discharged and be entitled to his reasonable costs, to be taxed and allowed; but in summary cases an agent shall not be allowed more than one pound three shillings and four pence for his costs, besides his travelling fees and attendance as in the case of a witness.

Agent to file declarations and submit to examinations; where he has no funds he shall have his costs; agent's costs in summary cases, and how allowed.

17. When an agent or trustee is summoned, he shall appear and file his declaration with the prothonotary of the county where he resides, within four days after the time specified for his appearance in the writ; but such agent shall not be required to appear personally to be examined under oath until the first day of the sittings of the supreme court of the county where he resides; and if the process be

Appearance of agent or trustee, when.

**CHAP. 141.** not returnable before the first day of term, or in Halifax before the first day of the sittings after term, he shall not be obliged to appear till the next term, and he shall in no case be required to appear for personal examination, unless he shall have received notice thereof, either at the time of the service of the writ or after the filing of his declaration.

Proceedings where agent fails to appear,

18. If any person summoned as an agent or trustee shall fail to appear and disclose upon oath, if required, the amount of the goods or credits of the principal in his possession, or under his control, at the service of process, or acknowledge that he hath sufficient in his hands to respond the judgment, the court may proceed against him as for a contempt; and he shall also be liable to pay the plaintiff his costs if the court shall so order.

Special bail may be put in, and the property relieved from attachment.

19. When the absent or absconding debtor, his agent or trustee, shall desire to relieve the property from the attachment, he shall put in and perfect special bail to respond the judgment, and submit to such terms as the court or a judge shall deem right for the attainment of substantial justice.

No trial to be had until property shall have been attached, or the agent shall have admitted goods in his possession.

20. The plaintiff shall not proceed in the trial of his cause against any absent or absconding debtor, unless his real estate or goods shall have been attached, or until the agent or trustee shall have admitted that he had goods or credits of such absent or absconding debtor in his possession or under his control.

Defendant entitled to a re-hearing within three years.

21. Where judgment has been obtained against an absent or absconding debtor, the defendant shall be entitled to a re-hearing at any time within three years.

Execution may issue against the agent by order of the court.

22. After judgment obtained against an absent or absconding debtor, the court or a judge shall grant execution against any agent or trustee who has appeared and acknowledged goods or credits in his hands, for such amount and on such terms as the court or a judge shall think fit, allowing the agent his reasonable costs and commission; such agent or trustee having had notice of the application.

Security to be given before execution shall issue.

23. No execution shall issue against an absent or absconding debtor until the plaintiff shall give security, to the satisfaction of the court or a judge, for the re-payment of all monies levied thereunder, in case the judgment should be reversed.

Agent not liable to principal for the value of goods so taken.

24. The agent of such absent or absconding debtor shall not be held liable for any goods or credits so taken out of his hands by process and judgment of law.

Application of certain sections.

25. Sections fourteen, fifteen, and seventeen shall not apply to causes pending and undetermined on the 18th day of April, 1856.

Companies doing business by agents, how to be sued.

26. Companies or bodies corporate associated or incorporated out of Nova Scotia, doing business by an agent within this province, may be sued for any cause of action arising in whole or in part therein, by the name whereby

they are associated or incorporated, or by the name whereby they may be designated by the agent; and service on the agent of process to appear, shall give the court jurisdiction over the case; and proceedings shall be had as when process to appear has been served on a defendant personally; and any person so served, may during the first term appear and shew that he is not an agent, and upon proof thereof, he shall have judgment against the plaintiff with costs of suit.

27. The court may on sufficient cause shewn, allow time for the agent to communicate with his constituent.

Time for communicating with principal.

28. If judgment shall pass for the plaintiff, the agent, whether the same agent who was served with process or any other, shall be bound to respond the same out of the assets of the company, or body corporate, which then are, or at any time afterwards may come into his hands, or under his control, deducting his costs, and fair and legal commission thereon, to be disclosed by the agent on oath, if there-to required.

Judgment against company; liability of agent.

29. After judgment, the agent may be examined on oath before the court or a judge at chambers, concerning the assets of the company, or corporate body, in his hands or under his control at the time of judgment, or at any time afterwards; and the plaintiff and his proof may be heard in explanation or contradiction; and such order shall be therein made as to justice may appertain, which shall be enforced against the agent personally.

Agent may be examined after judgment.

30. If the plaintiff shall desire security previous to judgment, he may at the commencement of the suit, or during its progress, make oath to the cause of action, and proceed by attachment against the estate and effects of the company, or corporate body, and by summons to disclose, against the agents and debtors of the company, or corporate body, or by either process, and by one or in separate and several writs; and the estate and effects attached, and also the credits and effects in the hands or under the control of the agents or debtors at the time of service, or at any time afterwards, shall be available to respond the judgment to the amount of the sum sworn to and costs, as in cases under the sections relating to absent or absconding debtors; but the plaintiff may nevertheless proceed against the agent after judgment, as before directed.

Plaintiff may proceed by attachment.

31. Nothing in the last five sections contained, shall prevent the judgment from binding the property of the company, or body corporate, or from being levied and enforced by execution or otherwise, in such manner as may be conformable to law in other cases.

Other remedies not affected by this act.

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## CHAPTER 142.

## OF SUITS AGAINST JOINT DEBTORS.

One of several defendants, joint debtors, may be arrested.

1. Where there are several defendants, and it is not intended that all of them shall be arrested, the plaintiff or his attorney may direct the sheriff to arrest one or more only of the defendants and serve a copy of the *capias* on the others, and such service shall be of the same force and effect as the service of a writ of summons.

One or more of such defendants served may be proceeded against if the others are absent.

2. Where any action founded on contract is brought against several defendants, and the writ has been duly served on one or more of them, but no legal service can be made on the others by reason of their absence from the province, the action may nevertheless be prosecuted against those who have been served.

Court may grant a continuance in such case upon cause shewn.

3. If such joint debtor shall make application to the court on affidavit, stating that it is necessary for him to receive instruction respecting such suit from his absent partner or joint debtor, and that he cannot safely proceed to trial of the cause without communication with him, and that he is not seeking for delay only—the court may, if it shall think fit, grant a reasonable imparlance.

An absent joint debtor may apply to defend at any time before final judgment.

4. If any such joint debtor, not having been served with process, shall come into the province previously to the final determination of the suit, and shall apply to the court to be admitted to defend, the court shall admit him accordingly, and shall cause such amendment to be made in the proceedings as may be required to make the same consistent and regular.

Plaintiff shall file his declaration against the defendant served, and enter suggestions as to the others.

5. When some only of the defendants have been served with process, the plaintiff may file his declaration against such as have been so served, suggesting therein the names of those defendants who were absent out of the province when the writ was issued, and who, on that account, could not be served with process.

Plea of abatement to be disallowed unless under special circumstances duly verified.

6. No plea in abatement for the non-joinder of a person as a co-defendant shall be allowed, unless it shall be stated in the plea that he was at the commencement of the suit resident within the jurisdiction of the court, and unless his place of residence shall be stated with convenient certainty in an affidavit verifying the plea.

Replications of bankruptcy or insolvency to pleas in abatement.

7. To any plea in abatement of the non-joinder of another person, the plaintiff may reply that such person has been discharged by bankruptcy and certificate, or as an insolvent debtor.

Plaintiff may have a *scire facias* against a joint debtor re-

8. If a joint debtor absent at the commencement of the suit shall come into the province after final judgment, and before the plaintiff shall have received full satisfaction

thereof, the plaintiff may sue out a writ of *scire facias* against him, requiring him to shew cause why execution should not issue against him to satisfy what may remain due on such judgment; and the defendant may plead either in bar to the original suit or in answer to the *scire facias*. CHAP. 143.

turning after suit commenced.

9. The plaintiff after judgment recovered may take out execution thereon, and cause the same to be extended on the joint or separate property, or on the persons of all the joint debtors; but such execution shall not be extended on the separate property or on the person of any joint debtor not brought into court as a party to the suit.

On what property execution may be levied

## CHAPTER 143.

### OF SUITS AGAINST EXECUTORS, ADMINISTRATORS, AND TRUSTEES.

1. Actions of trespass, or trespass on the case, may be maintained by executors or administrators for any injury to the real estate of the deceased committed within six months previous to his decease, for which the deceased might have maintained such action; provided the action be brought within one year after his death.

Within what time executors, &c., may bring action for injuries to real estate of deceased.

2. Actions of trespass, or trespass on the case, may be maintained against the executors or administrators of a deceased person, for any injury done by him in his lifetime to the real or personal property of another, so as such injury shall have been committed within six months before his death, and so as such action shall be brought within six months after his executors or administrators shall have undertaken the administration of his estate.

Within what time actions of trespass, &c. may be brought against executors, &c., for injuries done by deceased.

3. An action of debt on simple contract may be maintained at common law against any executor or administrator.

Actions of debt may be maintained against executors, &c.

4. Every legatee may recover the amount and value of his legacy, annuity or bequest, at common law, from the administrator with the will annexed, or executor, either by action for money had and received or otherwise.

Legacies, &c., may be recovered by action at common law.

5. Any executor being a residuary legatee may maintain an action at common law for money had and received or otherwise, against the co-executor, and may in like manner sue for and recover his rateable part thereof, and any other residuary legatee shall have the like remedy against an executor.

Residuary legatees may sue their co-executors.

6. When two or more persons are named executors in a will and any of them shall neglect or refuse to act, and probate shall be granted to the other or others of them, it

Executors refusing to act, and to whom probate has not been granted,

## CHAP. 143.

need not be named in any suit &c.

Executors, &c., authorized to make investments in provincial debentures.

Proceedings on resignation of trustees, &c.

Removal of trustees, &c.

Appointment of new trustees.

Costs how paid, &c.

shall not be necessary to name the executor who has so refused or neglected, in any action or suit relating to the estate.

7. Executors, administrators, and trustees, unless where otherwise directed by the will or other instrument creating the trust, are hereby authorized to invest money and funds in their hands, or under their control, in the provincial savings' bank, or in the provincial debentures; and the production of such provincial debentures, or other evidences of money so invested and deposited, shall be held equivalent to the production of the amount of money actually paid by such executor, administrator, or trustee.

8. Upon the petition of any trustee appointed by deed, or of any executor appointed a trustee by any last will, asking his discharge from the trust or executorship, a judge of the supreme court may direct such preliminary enquiry, and with such notices to parties interested as he shall think fit, as to the terms upon which the resignation of such trustee or executor should be accepted; and the supreme court may thereafter pass such order for the discharge of such trustee or executor, as a due regard to his wishes and interest, and to the rights and interest of the person interested in the execution of the trust may require.

9. A petition may be presented, in like manner, by any person interested in the execution of a trust, asking for the removal of the trustee or executor, and a like enquiry may be thereupon had, and such order passed by the supreme court as a due regard to the rights and interests of the trustee or executor, and of the parties interested in the execution of the trust may require.

10. The supreme court shall have full power to appoint a new trustee in place of a trustee or executor so discharged or removed, or of any trustee removed from the jurisdiction of the court, or in case of the death, unfitness or incapacity, of a trustee, and upon such terms as to security for the due execution of the trust as shall be deemed necessary; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers under its direction.

11. The court may direct the costs of any proceedings under the three last sections to be taxed and paid out of the trust funds, or otherwise, as they shall think proper.

## CHAPTER 144.

## OF SUMMARY SUITS.

No action for the recovery of any debt shall be commenced in the supreme court unless the amount thereof shall exceed five pounds.

2. All actions for the recovery of debts, not exceeding twenty pounds, shall be brought in a summary manner, and the presiding judge may determine the same, or order a trial by jury.

3. It shall not be necessary to file common or special bail in any summary suit.

4. No declaration or plea shall be necessary, nor any costs therefor allowed, in any action for the recovery of a debt not exceeding twenty pounds.

5. In summary suits the bail to the sheriff shall continue liable to the same extent as if they were special bail, and shall be at liberty to render the defendant without putting in special bail.

6. In appeal causes the appellant shall cause his appeal to be entered on the docket of summary causes, and in case he shall neglect to enter the same, the original judgment shall be affirmed, at the instance of the opposite party, with costs.

7. In all causes brought up by appeal and contested, the court shall try the same anew.

8. In summary and appeal causes the application for a jury must be by affidavit to the court, and it shall be discretionary with the court to grant the same.

9. In appeal causes where the original judgment is affirmed, the final judgment shall include the debt and costs below, with the further costs; and execution shall issue for such debt and costs, or for costs only, as the case may require. Where the original judgment is reversed after the same has been enforced, the final judgment shall include the amount levied under the original judgment, together with the costs of the reversal.

10. In appeal cases the respondent may take out execution against the appellant, or have recourse to the appeal bond.

11. In future the summary causes, in all the counties except Halifax, shall be brought to trial and heard on the first day of the term, and the jury causes taken up immediately after the disposal of such summary causes.

12. The list of summary causes for trial at Halifax shall be hereafter given in to the prothonotary on the preceding Thursday of each sittings, and the causes shall be set down and tried on the following Tuesday, being the first day of such sittings.

No suit to be commenced in supreme court unless amount exceeds £5.

Debts under £20 to be recovered in a summary manner; judge may order a trial by jury.

No bail need be filed in a summary suit.

Declarations and pleas unnecessary; no costs to be allowed therefor.

Bail to the sheriff to be liable as special bail.

Appellants to enter appeal causes, or judgment may be affirmed for the opposite party.

Appeal causes to be tried anew.

An application for a jury must be to the court upon affidavit.

Judgment upon appeal, how given.

Execution may issue against the appellant, or the appeal bond be put in suit.

Summary causes to be tried on first day of term, except in Halifax.

List of causes when to be given prothonotary in Halifax; when to be tried.

**CHAP. 145.** 13. In all continued summary and appeal causes a notice of trial shall be given as in declaration cases.

Notice of trial to be given in continued causes.

## CHAPTER 145.

### OF DISTRESS FOR RENT AND REMEDY.

Goods distrained to be appraised and sold within five days after notice, if not replevied.

1. Where any goods are distrained for rent reserved and due upon any lease or contract, and the tenant or owner of the goods shall not within five days next after the distress taken, and notice thereof with the cause of taking served upon him, or left at the most conspicuous place on the premises charged with such rent, replevy the same with security to be given to the sheriff, the landlord, with the sheriff or his deputy or a constable, who are required to aid therein, may cause the goods so distrained to be appraised by two sworn appraisers.

Goods to be sold, and after rent paid, surplus, if any, to remain for owner's use.

2. After the appraisement the landlord shall sell the goods distrained for the best price to be gotten therefor, towards payment of the rent due and expenses incurred, leaving the overplus, if any, in the hands of the officer for the owner's use.

Grain in the straw, hay in a barn, &c., how distrained.

3. Sheaves or cocks of grain, grain loose or in the straw, hay in a barn or upon a hovel stack or rick, or upon the land charged with such rent, may be locked up or detained upon the premises by a landlord having rent in arrear, for or in nature of a distress, until the same shall be replevied upon security to be given as above; and in default of being replevied within the time above in that behalf specified, after appraisement made in like manner, be sold; but the same shall not be removed out of the place where found and seized by the distrainer, to the damage of the owner, before such sale.

Remedy in case of pound-breach and rescue of goods distrained.

4. Upon any pound-breach and rescue of goods distrained for rent the person aggrieved thereby may recover his damages against the offender, or against the owner of the goods distrained if the same be afterwards found to have come to his use or possession.

Remedy in case of a distress for rent where none is in arrear.

5. In case any distress and sale be made by any person for rent, where none is in arrear, the owner of the goods distrained, his executors or administrators, by action of trespass, or trespass on the case, may recover against the persons distraining or either of them, his or their executors or administrators, the value of the goods distrained, and such further damages as the jury may award.

Goods not liable to be removed under exe-

6. No goods being upon any messuage or tenement leased shall be liable to be taken by virtue of any execu-



tion, unless the party at whose suit the execution is sued out shall before removal of such goods from off the premises pay the landlord or his bailiff at least one year's rent thereof, if so much is in arrear and due; and if the rent be not actually due then a rateable part thereof up to the levy of the execution. If the arrears exceed one year's rent of the premises, then upon payment to the landlord or his bailiff of one year's rent, the execution creditor may proceed to execute his judgment as in other cases; and the sheriff, his deputy or other officer is required to levy and pay to the execution creditor, as well the money so paid for rent as the execution money.

7. In case any lessee of any messuage, lands or tenements, upon the demise whereof any rents are reserved, shall fraudulently or clandestinely convey from such demised premises his goods, with intent to prevent the landlord distraining the same, such landlord, by himself or his servants, may within twenty-one days then next ensuing such conveying away, seize such goods wherever found as a distress for such arrears of rent, and dispose of the same as if they had been distrained upon the premises, unless such goods shall have been sold in good faith and for a valuable consideration before such seizure, in which case they shall not be liable to a distress.

8. Rent in arrear and due upon a lease for life or lives may be recovered by action in the same way as if reserved upon a lease for years.

9. Rent in arrear and due upon a lease for life or lives, or for years or at will, ended or determined, may be distrained for after such determination, in the same way as if such leases were not determined, if such distress be made within six months after such determination, during the continuance of the landlord's title or interest and during the possession of the tenant from whom such arrears are due.

10. Executors or administrators of a landlord may distrain upon lands demised for a term or at will, for rent due in his lifetime, and such rent may be distrained for after the determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; but the distress in such case must be made within six months next after the determination of such term or lease and during the continuance of the possession of the tenant from whom such rent is due.

11. A landlord or his bailiff may seize as a distress for arrears of rent any cattle or stock of his tenant feeding upon any common belonging to any part of the premises demised, and may also seize all sorts of corn, grain, grass, hops, roots, fruits, pulse or other product growing on any part of the premises demised as a distress for arrears of rent, and may cut, gather, cure, carry and lay them up when ripe in barns or other places on the premises so demised.

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Execution till rent paid, but not to exceed one year's amount, &c.

Goods fraudulently removed to avoid distress may, unless previously sold in good faith, be seized within twenty-one days.

Rent reserved upon a lease for life may be reserved as in other cases.

Rent may be distrained for, within six months after determination of lease in certain cases.

Executors, &c., may distrain for rent due deceased, and in what cases.

Cattle, corn, fruits, &c., which may be taken as a distress for rent.

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Distress in such case how kept where no barn, &c., upon the premises.

12. In case there is no barn or proper place on the premises for receiving the same, then he may cause the same to be placed in any barn or proper place to be procured as near as may be to the premises, and in convenient time shall appraise and dispose of the same towards satisfaction of the rents and the charges of such distress as in other cases. The appraisement to be made after the crop is cut, cured, and gathered, and not before.

Notice of the place of such deposit, when and to whom to be given.

13. Notice of the place where the goods so distrained shall be deposited, shall within one week after their being so deposited, be given to the tenant or left at his last place of abode.

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CHAPTER 146.

OF ARBITRATION.

Power of arbitrators, when irrevocable; judge may enlarge time for award.

1. The power of arbitrators appointed under a rule or submission, containing an agreement that it should be made a rule of the supreme court shall be irrevocable unless the court or a judge shall otherwise order, and the court or a judge may enlarge the time for making an award hereunder.

Attendance of witnesses, how enforced.

2. Where any rule or submission shall have been made, the court or a judge may by rule or order command the attendance of any witnesses, and the production of any documents that may be required on the investigation thereof; and if after the rule or order and a notice containing the time and place where the attendance of the witness is required, signed by one at least of the arbitrators, shall have been served on him, and he shall have been tendered his reasonable fees, he shall neglect to attend, he shall be deemed guilty of a contempt of court.

Production of documents; witness not compelled to attend more than two days consecutively.

3. No person shall be compelled to produce, under any rule or order, any writing or document that he would not be compelled to produce at a trial, nor to attend on more than two consecutive days.

Arbitrators may administer oaths to witnesses.

4. Arbitrators so appointed may administer oaths to the witnesses.

Justices of the peace may administer oaths when arbitrators not appointed under rule of court, &c.

5. When arbitrators are appointed under a submission not containing any agreement that it shall be made a rule of court, any justice of the peace may administer oaths to the witnesses in the presence of one or more of the arbitrators.

Obedience to an award, how enforced.

6. Where a submission has been made a rule of the supreme court, pursuant to the agreement therefor, the court may enforce obedience to any award duly made under such submission by directing a judgment to be entered or execution to issue for the amount thereof with costs.

7. The judge taxing the costs of any cause referred under a rule or order shall allow such fees to the arbitrators making the award as he may think reasonable.

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Fees to arbitrators to be allowed on taxation of costs.

## CHAPTER 147.

### OF PETTY OFFENCES TRESPASSES AND ASSAULTS.

1. A court of general or special sessions in any county or district at which the custos of the county or district and not less than four other justices shall be present, may, in a summary way, hear and try all larcenies when the value of the property stolen shall not exceed ten pounds, and may hear and try trespasses and felonies committed by juvenile offenders under the age of fourteen years, excepting only capital felonies: provided that such trials shall take place at the court-house of such county or district.

Larcenies under £10, and felonies by juvenile offenders, how tried.

Exceptions. Proviso.

2. When any person has been arrested and committed to jail by warrant for any offence triable under the first ten sections of this chapter, the jailor shall forthwith notify the sheriff thereof, who shall give notice of the same to the custos, and such custos shall direct the clerk of the peace to summon a special session to meet at a day to be named by him sufficiently distant to permit notice to the prisoner as hereinafter named, and the clerk of the peace shall forthwith, on receipt of such direction, convene such special jurors, and notify the prisoner of the day named for his trial, at least eight days previous to such special sessions.

Proceedings after arrest of prisoner.

3. The justices in general or special sessions as aforesaid shall have power to punish by fine or imprisonment, or both, with or without hard labor, as they shall see fit, but in no case shall they be allowed to fine beyond ten pounds, or to imprison beyond six months, and that only in the county or district jail.

Punishment.

4. Any party feeling aggrieved by the sentence of such justices in general or special sessions, may appeal to the supreme court, or a judge, who may rehear the case, and make such order therein as justice shall require; but offenders convicted before the justices in general or special sessions shall not be allowed to escape punishment from any mere informality in the proceedings, and no relief shall be allowed unless it shall be made to appear by affidavit that injustice would otherwise be done.

Appeal.

Informality not to affect proceedings.

Affidavit required.

5. The proceedings up to the hearing before the justices in general or special sessions shall be by information and summons or warrant, as in the first section of chapter one hundred and sixty-nine, and the hearing and all subsequent

Proceedings before justices.

**CHAP. 147.** proceedings shall be the same as in civil cases, except that subpoenas and other writs shall be in the name of the queen for the defendant as well as the plaintiff.

**Writs, &c., how executed.** 6. All constables and peace officers shall be compelled to execute writs and process, as in other cases of proceedings at the suit of the crown.

**Conviction.** 7. The justices in general or special sessions shall make their conviction and sentence in writing, and shall furnish a copy thereof to the constable or other officer, who shall deliver the same to the jailor in case of a sentence of imprisonment.

**Fees.** 8. No fees shall be paid or received under the foregoing sections, but officers and witnesses shall be entitled to remuneration as in other criminal cases.

**Incorporated counties and districts.** 9. In the case of incorporated counties or districts, the powers conferred under the foregoing sections, shall be exercised by the monthly municipality courts.

**Extension of act.** 10. The foregoing sections shall not extend to the city of Halifax.

**Sessions to make regulations respecting horses, &c. going at large.** 11. The sessions shall make regulations for preventing trespasses by horses, asses, mules, cattle, sheep, swine, or goats going at large.

**Penalty for violating regulations.** 12. Persons violating the regulations shall forfeit a sum not exceeding forty shillings.

**A justice to have jurisdiction over trespasses by horses, &c., to £3.** 13. Where a trespass has been committed by horses, asses, mules, cattle, sheep, swine or goats, and the damage alleged to have been suffered shall not exceed three pounds, the case may be tried before a justice of the peace in the same manner and with the like costs, and subject to appeal and other proceedings as if it were an ordinary debt.

**Replevin may be granted by justice.** 14. The justice shall grant replevin where required upon security being given for prosecuting the same with effect within seven days.

**Form of writ.** 15. The writ of replevin shall be in the following form:—

You are hereby commanded to replevy to A. B. his cattle, viz.: [*here describe them*] which C. D. unjustly, as is alleged, detains under pretence of having committed a trespass not exceeding three pounds, and also to summon the said C. D. to appear before me at ———, on the — day of ———, at — o'clock, in the — noon, there to answer such things as shall be objected against him by the said A. B.

Witness my hand and seal, this — day of ——— A. D. one thousand eight hundred and ———

F. F., J. P. (seal.)

**Cause to be tried as in other cases.** 16. The justice shall try the cause commenced by such writ, and give judgment with the like costs as in ordinary cases of debt and subject to the same further proceedings thereon.

**Penalty for damaging or destroying a common.** 17. If any person shall cut or carry away the soil or sods of any common whereby the pasturage shall be injured

or the ground defaced, he shall forfeit a sum not exceeding twenty shillings. CHAP. 147.

18. If any person shall cut down or injure any trees planted for ornament or left growing on the side of any public square, street or highway, he shall forfeit for every such tree a sum not exceeding forty shillings; but no penalty shall attach for the removal of any such trees by a commissioner of streets or surveyor of highways. Penalty for injuring ornamental trees on public roads, &c.

19. If any person shall trespass in a cultivated enclosure he shall forfeit a sum not exceeding ten shillings for the use of the occupier of the land. Penalty for trespassing on cultivated enclosures.

20. If any person shall illegally cut down or injure any tree growing on crown or private land, or shall illegally carry away any such tree when cut down, he shall, for every such tree, forfeit a sum not to exceed forty shillings to the commissioner of crown lands for the time being, for the use of the province, or of the owner of the soil, as the case may be. No person imprisoned under execution issued upon any judgment for breach of this section, shall be entitled to jail limits, or to the benefit of chapter one hundred and thirty-seven, relating to insolvent debtors, until he shall have been imprisoned, if, for the first offence, a period of five days, and for the second or subsequent offence, a period of ten days. Penalty for injury to trees.

21. Nothing in the two preceding sections contained shall take away from the party injured any right of action at law for the trespass committed. Imprisonment.

22. The offences enumerated in sections seven, eight, nine and ten, are hereby declared to be under the jurisdiction of one or more justice or justices of the peace according to the amount of penalty sought to be recovered. The above penalties to be cumulative remedies.

23. Two justices of the peace may hear and determine in a summary way, all complaints for common assaults and batteries, and upon conviction the offender shall forfeit a sum not exceeding forty shillings, to be paid over when recovered to the county treasurer, and the justices shall forthwith file the receipt of the county treasurer with the clerk of the peace. Offences in sections 7, 8, 9 and 10, declared under jurisdiction of justices of the peace.

24. If the fine and costs awarded shall not be paid forthwith, or within the time appointed for that purpose by the justices, the same may be levied by execution in the usual form, under which the offender may be imprisoned for a period not exceeding thirty days, unless the fine and costs be sooner paid. Two justices of the peace to have jurisdiction over assaults over forty shillings.

25. If the justices upon the hearing shall deem the offence not proved, or so trifling as not to merit punishment, they may dismiss the complaint, and if required shall give the party acquitted a certificate accordingly. Executions may issue for fines and costs, and imprisonment may be ordered not exceeding thirty days.

26. The justices may give costs either to complainant or defendant, or dismiss the complaint without costs on either side. Justices may dismiss a complaint and give a certificate accordingly.

Justices may give to or withhold costs from either party.

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Where the offence is aggravated the justices may bind over the parties to appear at the supreme court.

Compliance with the justice's judgment shall acquit from all further criminal proceedings.

Penalty for interrupting an authorized surveyor.

Not to prejudice any civil remedy for damage.

Limitation of prosecutions.

Proceedings to be by summons; form given.

Conviction to be endorsed or annexed to the summons; form given.

27. If the offence charged be of an aggravated kind, or if upon the hearing the justices think the offender deserving a higher punishment than above prescribed, they may bind the offender over by recognizance to appear at the next supreme court to answer the charge, and if necessary may also bind over the prosecutor to appear and prosecute, and the witnesses to give evidence.

28. If any person shall have obtained a certificate as above, or, having been convicted, shall have paid the whole amount adjudged, or shall have suffered the punishment awarded for non-payment thereof, he shall be thereby acquitted of all criminal proceedings for the same offence.

29. If any person shall, in any part of this province, interrupt, molest, or hinder, any principal deputy surveyor, or other person duly authorized by the governor, or by order of a judge, as a land surveyor while in the discharge of his duty as such surveyor, such person shall be deemed to have been guilty of a misdemeanor, and, being convicted thereof before any two justices of the peace of the county where the offence shall have been committed, may be punished by fine or imprisonment, or both, in the discretion of such justices, such imprisonment not to exceed two months, and such fine not to exceed five pounds, without any prejudice to any civil remedy for damages which such surveyor or other authorized person may have against such offender by reason of such offence.

30. Every prosecution under this chapter shall be commenced within three months after the offence committed.

31. The justices shall proceed by summons in the form following:

To any of the constables of the county of ——— :

You are hereby commanded to summon A. B., of ———, to appear before us at ——— on the ——— day of ——— next, to answer C. D. for a petty trespass [*or for a petty assault and battery, as the case may be*] committed on or about the ——— day of ———, contrary to the provisions of chapter one hundred and forty-seven.

Witness our hands at ——— the ——— day of ———, A. D. 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

31. The convictions under this chapter shall be endorsed upon or annexed to the original summons in the form following:

The within named C. D., having been duly summoned, was this day convicted of a petty trespass [*or a petty assault and battery, or a petty assault*] upon his own confession [*or upon default, or upon the oath of J. K. as the case may be, stating the manner of the party's conviction and the names of the witnesses examined*] and was thereupon fined the sum

of ———, with costs, amounting in all to the sum of ———, CHAP. 148.  
to be paid forthwith [*or within ——— days next.*]

Witness our hands this ——— day of ———, A. D. 18—.

E. F., J. P.

G. H., J. P.

Which, when signed by the justices, shall be a valid record of such conviction.

## CHAPTER 148.

### OF THE WRIT OF CERTIORARI.

1. Previous to issuing a writ of certiorari the judge or commissioner shall require the person applying therefor to file sufficient bail, in such reasonable amount as the judge or commissioner shall direct, to respond the judgment to be finally given in the cause, and the judge or commissioner shall endorse on the writ the amount for which bail is filed, with the names of the bail, and also the date when the writ was allowed, and shall put his signature thereto.

Bail to be filed before issuing a writ of certiorari; endorsement required on the writ.

2. In all causes and proceedings brought up by certiorari, the court may inquire into the facts anew, if it shall seem to them to be necessary, and may order a trial thereof by jury.

Court above may inquire anew into the facts, and may order a trial by jury.

## CHAPTER 149.

### OF INTERPLEADER.

I. If in any action of assumpsit, debt, detinue or trover, the defendant, after declaration and before plea, shall by affidavit or otherwise shew that he claims no interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party, who has sued or who is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or to dispose of the subject matter of the action in such manner as the court or any judge thereof may order or direct, the court or a judge may make rules or orders calling upon such third party to appear and state the nature and particulars of his claim, and maintain or relinquish the same.

When the defendant alleges the interest in the subject of the suit to be in a third party, he may, before plea, apply for a rule or order upon him to appear and state his claim.

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The court or a judge may hear the case, and in the meantime stay the proceedings.

The court or judge may make such third party defendant in that or another action, or by consent dispose of the matter on the merits.

Rules and orders may be made as to costs, &c., as are just.

Judgment to be final.

If such third party shall not appear he shall be barred from any claim against the defendant, but not against the plaintiff; power of the court as to costs.

Order of a judge liable to be reviewed by the court.

A judge may at any stage refer the proceedings to the court.

Provisions of this chapter made applicable to sheriffs, constables, &c.

2. Upon such rule or order the court or a judge may hear the allegations as well as of such third party as of the plaintiff, and in the meantime may stay the proceedings in the action.

3. The court or a judge may finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on a feigned issue, and may also direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff, or such third party, their counsel or attorneys, may dispose of the merits of their claims and determine the same in a summary manner.

4. The court or a judge may make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

5. The judgment in the issue or action, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming under them.

6. If such third party shall not appear upon being duly served with such rule or order to maintain or relinquish his claim, or shall neglect to comply with any rule or order after appearance, the court or a judge may declare such third party, and all claiming under him, barred for ever from prosecuting his claims against the original defendant or his representatives, saving nevertheless the right or claim of such third party against the plaintiff, and may thereupon make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

7. Any order made in pursuance of this chapter by a single judge not sitting in open court, shall be liable to be rescinded or altered by the court, in like manner as other orders made by a single judge.

8. If upon application to a judge, in any stage of the proceedings, he shall think the matter more fit for the decision of the court, he may refer it to the court, and thereupon the court shall hear and dispose of the same, as if the proceedings had commenced by a rule of court instead of the order of a judge.

9. Where claim shall be made to any goods taken or intended to be taken under any writ of execution or attachment, issuing out of any court, the supreme court, or any judge thereof, upon application of a sheriff, constable or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff, constable or other officer, may call before them by rule of court, as well the party issuing such process as the party making such claim; and thereupon exercise for the adjustment of such claims, and the relief and protection of the sheriff, constable or other officer, all or any of the



powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the court. CHAP. 150.

10. All rules, orders, matters and decisions, in pursuance of this chapter, excepting only the affidavit to be filed, may, together with the declaration in the cause, if any, be entered of record, with a note in the margin, or an endorsement thereon by the prothonotary, expressing the date of entry, and which shall be evidence thereof. Every rule or order so entered shall have the effect of a judgment, except as to becoming a charge upon lands; and such rules or orders may be enforced by execution as in other cases.

Rules, orders, &c., to be entered of record, and have the effect of judgments.

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## CHAPTER 150.

### OF THE PROTECTION OF JUSTICES OF THE PEACE.

1. Every action against a justice of the peace for any act done in the execution of his office with respect to a matter within his jurisdiction shall be an action on the case, and it shall be expressly alleged in the declaration that the act was done maliciously and without reasonable and probable cause, and if upon the trial the plaintiff fail to prove such allegation, judgment shall be given for the defendant.

Actions against justices to be actions on the case; allegations of malice, &c., necessary in the declaration.

2. If the action be brought for an act done in a matter where he has no jurisdiction, or where he has exceeded his jurisdiction, the party injured thereby or by any act done under a conviction, or order or warrant issued by the justice, need not allege malice or want of reasonable and probable cause in his declaration. But no action in such case shall be brought until such conviction shall have been quashed, nor shall any action be brought for any thing done under any warrant issued by such justice to procure the appearance of a party, which shall have been followed by a conviction or order, until the same shall have been quashed.

Malice, &c., when need not be alleged; action in such case when only to be brought.

3. If a warrant shall not have been followed by a conviction or order, or if it be a warrant upon an information for an alleged indictable offence, and a summons had been previously issued and served, and the party did not appear in obedience to the summons, in any such case no action shall be maintained against the justice for any thing done under the warrant.

Cases in which no action shall lie against the justice for any thing done under his warrant.

4. Where a conviction or order shall be made by a justice, and a warrant of distress or commitment by some other justice in good faith and without collusion, no action

Justice issuing a warrant not liable to an action where another justice

## CHAP. 150.

shall be brought against the justice who granted the warrant for any defect in the conviction or order, or for want of jurisdiction in the justice who made it, but the action, if any, shall be brought against the justice who made such conviction or order.

Justice granting a warrant of distress for a rate not liable for any deficiency in the rate.

Supreme court may compel a justice by rule to do an act relating to his office; proceedings in such case, how taken.

No action shall be brought against a justice for granting a warrant upon a defective conviction, &c., confirmed by appeal.

Actions brought when forbidden may be set aside.

Month's notice to be given a justice before action brought; contents of notice; limitation of action.

Justice may tender amends or pay money

shall be brought against the justice who granted the warrant for any defect in the conviction or order, or for want of jurisdiction in the justice who made it, but the action, if any, shall be brought against the justice who made such conviction or order.

5. Where a poor or county rate shall be made, and a warrant of distress shall issue against a person rated therein, no action shall be brought against the justice who granted the warrant for any irregularity or defect in the rate, or by reason of any such person not being liable to be rated.

6. Where a justice shall refuse to do any act relating to the duties of his office, the party requiring such act to be done may apply to the supreme court, upon affidavit of the facts, for a rule calling upon the justice, and also upon the party to be affected by such act, to shew cause why such act should not be done; and if after service of such rule good cause be not shewn against it, the court may make the rule absolute, with or without costs as they may see meet, and the justice, upon being served with the rule absolute, shall obey the same and do the act required. No action or proceeding shall be commenced or prosecuted against such justice for having obeyed such rule.

7. Where a warrant of distress or of commitment shall be granted by a justice upon conviction or order, which either before or after the granting the warrant shall have been confirmed upon appeal, no action shall be brought against the justice granting the warrant for anything done thereunder, by reason of any defect in such conviction or order.

8. If any action shall be brought in a case where by this chapter it is forbidden, a judge of the court where it is brought, upon application of the defendant upon affidavit, may set aside the proceedings with or without costs as he shall see fit.

9. No action shall be commenced against a justice for any thing done in the execution of his office, until one month at least after notice in writing of such intended action shall have been delivered to him or left at his usual place of abode, by the party intending to commence the action, his attorney or agent, in which notice the cause of action and the court in which it is intended to be brought shall be explicitly stated, and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and the name and place of abode or of business of the attorney or agent, if the notice has been served by an attorney or agent; and the venue in every such action shall be laid in the county where the act complained of was committed, and such action shall be brought within six months next after the cause of action shall have accrued.

10. After notice so given and before action commenced, such justice may tender to the party complaining, his attor-

ney or agent, such sum of money as he may think fit as amends for the injury complained of in the notice; and after action commenced, and before issue joined, the defendant, if he have not made a tender, or in addition to the tender, may pay money into court; and the tender and payment into court or either of them may be given in evidence on the trial. If the jury shall be of opinion that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, then they shall find a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be non-suit; and the sum so paid into court, or so much thereof as shall be sufficient to satisfy the defendant's costs, shall thereupon be paid out of court to him, and the residue, if any, be paid to the plaintiff; or if the plaintiff shall elect to accept the money so paid into court in satisfaction of damages in the action, he may obtain a judge's order for the money, and that the defendant shall pay him his costs to be taxed, and thereupon the action shall be determined, and the order shall be a bar to any other action for the same cause.

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into court; proceedings in such case.

11. If at trial the plaintiff shall not prove the action brought within the time limited in that behalf, or that the notice was not given a month before action commenced, or if he shall not prove the cause of action stated in such notice, or that it arose in the county laid as venue in the margin of the declaration, the plaintiff shall be non-suit or the jury shall give a verdict for the defendant.

Proof required on the part of the plaintiff.

12. In all cases where the plaintiff shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as part of his damages, or if he prove an imprisonment thereunder, he shall not be entitled to recover the amount of the penalty or sum levied or paid, or any damages beyond two pence for such imprisonment, or any costs of suit, if it shall be proved that he was actually guilty of the offence of which he was convicted, or that he was liable to pay the sum he was so ordered to pay, and with respect to the imprisonment that he had undergone no greater punishment than that assigned by law for the offence of which he was convicted or for the non-payment of the sum he was so ordered to pay.

If plaintiff on trial is proved guilty of the offence of which he was convicted, and has suffered no undue punishment, he shall recover nominal damages only.

13. If the plaintiff recover a verdict or the defendant allow judgment to pass by default, the plaintiff shall recover costs as if this chapter had not passed. If it be stated in the declaration that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass by default, shall be entitled to full costs.

Cases where plaintiff on recovery of damages shall have full costs.

CHAP. 151.**CHAPTER 151.**

## OF THE PROTECTION OF CONSTABLES.

Demand of perusal and copy of warrant to be served upon constable, &c. before action brought.

1. Before any action shall be brought against a constable, or other officer, or any person acting in his aid, and for anything in obedience to a warrant under the hand and seal of a justice, a demand in writing of the perusal and copy of such warrant, signed by the person making the same shall be served upon him personally or left at his usual place of abode for the space of six days.

If justice not made a party when notice complied with defendant shall have judgment; proceedings where action against justice and constable.

2. If after such demand and a compliance therewith, an action be brought against such constable or other officer, or person acting in his aid, without making the justice a party thereto, on the proof of such warrant upon the trial, judgment shall be given for the defendant, notwithstanding any want of jurisdiction in the justice. If the action be brought against the constable or other officer, or person acting in his aid jointly with the justice, then on proof of such warrant, judgment shall be given for the constable, other officer or person acting in his aid; and if a verdict pass against the justice the plaintiff shall recover costs to be taxed so as to include the costs he may be liable to pay to the other defendant.

Limitation of action

3. No action shall be brought against a constable, or other officer or person acting in his aid, unless the same be commenced within six months next after the cause of action shall have accrued.

**CHAPTER 152.**

## OF THE CUSTODY AND ESTATES OF LUNATICS.

Guardians, how appointed for insane persons.

1. When the relations or friends of any insane person, or the overseers of the poor of the township of which he is an inhabitant, shall apply to the supreme court or a judge thereof to have a guardian appointed for him, notice shall be given to such insane person of the time and place appointed for hearing the case not less than fourteen days before the time so appointed; and if after a full hearing it shall appear to the court or judge that the person in question is incapable of taking care of himself, such court or judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified. Every guardian so appointed shall have the care and custody of

the person of the ward and the management of his estate until legally discharged. CHAP. 152.

2. When a guardian shall be appointed for an insane person the court or judge shall make an allowance to be paid by the guardian out of the estate of the insane person for all reasonable expenses incurred by the ward in defending himself against the complaint. Allowance for expenses incurred by ward.

3. Every guardian of an insane person shall pay all just debts due from the ward out of his personal estate, if sufficient; and if not, out of his real estate, upon obtaining a license for the sale thereof from the supreme court or any judge thereof. He shall also settle all accounts of the ward, and sue for and receive all debts due to him, or may compound for the same, and give discharge to the debtors; and he shall appear for and represent the insane person in all legal suits and proceedings. Debts and expenses, how provided for; powers of guardian.

4. The guardian shall also manage the estate frugally and without waste, and apply the profits thereof, as far as may be necessary, to such insane person's comfortable and suitable maintenance, and that of his family; and if such profits be insufficient, the guardian may sell or mortgage the real estate upon obtaining a license therefor, and shall apply the proceeds, so far as may be necessary, for the maintenance and support of such insane person and his family. Duty of guardian as to the ward, his family, &c.

5. On a sale taking place under a license to sell the real estate of an insane person, the guardian shall execute in the name of the insane person a deed thereof, which shall convey the same to the purchaser either absolutely or by way of mortgage as therein specified, in the same way as if executed by himself when of sound mind. Deeds of real estate to be made by guardian.

6. When any guardian so appointed shall remove from the province, or become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the supreme court or a judge thereof, after notice to such guardian, if resident in the province, and to all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the court or a judge proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the court or a judge may appoint another in his stead. Guardians, how removed; new guardians, how appointed.

7. Every guardian shall give bond with sureties to her majesty, with the following conditions: Guardians to give bonds to her majesty; conditions set forth.

First.—To make a true inventory of all the real estate, and all the goods, chattels, rights and credits of the insane person that shall come to his knowledge, and to return the same into the supreme court at such time as the judge shall order.

Secondly.—To dispose of and manage all such estate and effects, according to law, and for the best interests of

CHAP. 152. the insane person, and faithfully to discharge his trust in relation thereto.

Thirdly.—To render an account on oath of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge shall direct; and—

Fourthly.—At the expiration of his trust to settle his accounts with the court or a judge, or with the insane person in case of his restoration to reason, or in case of his death with his legal representatives, and to pay over and deliver all the estates and effects remaining in his hands or due from him on such settlement to the person lawfully entitled thereto.

Finding of jury on trial of insane persons.

8. In all cases where it shall be given in evidence, upon the trial of any person charged with treason, murder, or felony, or any misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity, and if they shall find that such person was insane at the time of the committing such offence, the court, before whom such trial shall be had, shall order such person to be kept in strict custody, in such place, and in such manner, as to the court shall seem fit, until the pleasure of the governor in council shall be known; and it shall thereupon be lawful for the governor in council to give such order, for the safe custody of such person, during his pleasure, in such place, and in such manner, as to the governor in council shall seem fit; and in all cases where any person has been acquitted of any such offences, on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person, by order of the court before whom such person has been tried, and still remains in custody, it shall be lawful for the governor in council to give the like order for the safe custody of such person, during his pleasure, as he is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

Custody of such persons.

Proceedings on arraignment of insane persons.

9. If any person indicted for any offence shall be insane, and shall, upon arraignment, be found so to be, by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment, to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until the pleasure of the gover-

nor in council shall be known; and if any person charged with any offence shall be brought before any court, to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be empannelled to try the sanity of such person, and if the jury so empannelled shall find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until the pleasure of the governor in council shall be known; and in all cases of insanity so found, it shall be lawful for the governor in council to give such order for the safe custody of such person so found to be insane during his pleasure, in such place, and in such manner, as to him shall seem fit.

10. And for the better prevention of crime being committed by persons insane, if any person shall be discovered and apprehended under circumstances denoting a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, it shall be lawful for any two justices of the peace of the county, before whom such person may be brought, to call to their assistance any legally qualified physician or surgeon, and if, upon order and examination of the said person so apprehended, or from other proof, the said justices shall be satisfied that such person is insane, or a dangerous idiot, it shall be lawful for the said justices, by warrant under their hands and seals, to commit such person to the jail of the county, there to be kept in strict custody, until such person shall be discharged by the order of two justices of the peace, one whereof shall be one of the justices who has signed such warrant, or by one of the judges of the supreme court, or until such person shall be removed, by order of the governor in council, to a proper lunatic asylum, or to the custody of guardians appointed under this chapter.

Apprehension,  
committal, &c  
of insane per-  
sons.

11. Any two justices may enquire into, and ascertain, by the best legal evidence that can be procured, under the circumstances of the personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person, or of any other person now or hereafter tried and acquitted on the ground of insanity, or of any person so found insane, under any of the provisions of this chapter; and it shall be lawful for the said two justices to make an order, under their hands and seals, upon the overseers of the poor of such township or place where they adjudge him to be legally settled, to pay all reasonable charges of examining such person and conveying him to such county jail, and to pay such weekly sum for his maintenance in such place of custody as they, or any two justices, shall, by writing under their hands, from time to time direct; and where such place of settlement cannot be

Assessment for  
the mainten-  
ance, &c., of  
such insane  
persons.

CHAP. 152. ascertained, such order shall be made upon the treasurer of the county where such person shall have been in custody or apprehended: provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation, guardian, or friend from taking such insane person or dangerous idiot under his own care and protection, if he shall enter into sufficient recognizance for his peaceable behaviour or safe custody, before two justices of the peace, or the court of sessions, or one of the judges of the supreme court: provided also, that the overseers of the poor of the township or place in which the justices shall adjudge any insane person or dangerous idiot to be settled, may appeal against any such order, to the next general or special sessions to be holden for the county where such order shall be made, in like manner, and under the like regulations and restrictions as against any order of removal, giving reasonable notice thereof to the clerk of the peace of the county upon whose rates the burthen of maintaining such insane person or dangerous idiot might fall if such order should be invalid; and such clerk of the peace shall be respondent in such appeal, which appeal the justices of the peace assembled at the said general or special sessions are hereby authorized and empowered to hear and determine in the same manner as appeals against orders of removal are now heard and determined.

Appeal.

Expenses incurred, &c. to be paid out of the estate of the insane person.

12. All charges hereinbefore mentioned, that may be incurred by any overseers of the poor of any township or place, or by any county, under this chapter, the same being first proved, on oath, before two justices, shall be re-paid to the said overseers, or to the treasurer of the county, respectively, as the same may have been incurred out of the proceeds of the personal property, or the rents of the real estate, or, if necessary, the real estate itself, of such insane person or dangerous idiot, (if any he have over what will maintain his family) which may, for that purpose, be seized and sold by the said overseers or county treasurer, under a warrant from two justices.

Physician, when qualified to act.

13. Any person shall be deemed a legally qualified physician or surgeon, for the purposes of this chapter who would not be disqualified from recovering a fee or reward for his professional services, by chapter fifty-seven.

#### LUNATIC ASYLUM.

Title, object.

14. The title of the above institution shall be the "provincial hospital for the insane," and its object shall be the most humane and enlightened curative treatment of the insane of this province.

Management, how vested.

15. The management of the hospital shall be vested in a board of nine commissioners, to be appointed by the governor in council, who are hereby created a body corporate, by the name of "the commissioners of the provincial



hospital for the insane." The term of office of three of the nine commissioners shall expire on the thirtieth day of June, in the year one thousand eight hundred and sixty, and of three others bi-ennially thereafter, on the same day of the year. The vacancies shall be filled on the same day, or as soon thereafter, as can be conveniently done, and retiring commissioners may be re-appointed. The order in which the term of office of the first nine commissioners shall expire shall be determined by lot, and should any vacancy occur by death, resignation, or otherwise, such vacancy shall be filled by appointment for the unexpired term of such commissioner.

Term of office of commissioners; appointment of.

16. The commissioners at their first meeting, to be called by the senior commissioner, shall elect a treasurer, who shall give bonds for the faithful discharge of his duties, in such sum and with such securities as may be required by the governor in council, and shall receive such salary as the commissioners may appoint, subject to the approval of the governor in council.

First meeting how called, proceedings at; treasurer, appointment of; salary of.

17. The governor in council shall appoint a medical superintendent, whose salary shall be three hundred pounds per annum, with the boarding and lodging of himself and family—and also shall appoint on the nomination of the medical superintendent, a steward and matron, whose salaries the governor and council shall determine.

Medical superintendent, steward, matron—appointment and salaries of.

18. The commissioners shall make all needful bye-laws for the government of themselves and the hospital, not inconsistent with this act nor with the laws of this province. But before such bye-laws shall have effect they shall be submitted to and approved by the governor in council.

Bye-laws.

19. The commissioners shall visit the hospital at stated periods, and shall exercise a careful supervision over its expenditures and general operations. They shall make annually to the governor, for the information of the legislature, a full account of their receipts and expenditures, and a detailed report of the progress, the condition, and wants of the institution, accompanied by a complete statement and report from the medical superintendent of the subjects under his immediate supervision and control. The commissioners shall have the general control and management of all the property and concerns of the hospital, not otherwise provided for by law.

Proviso.

Commissioners; powers of, duties of, &c.

20. The commissioners may take and hold in trust for the hospital any grant, devise of land, or any donation or bequest of money, or other personal property, to be applied to the maintenance of insane persons, or to the general use of the hospital, or in such manner as shall have been or may hereafter be devised.

May hold grant or donation.

21. No commissioner shall receive any compensation for his services as commissioner, nor shall he hold any office or employment connected with the hospital, from which any

Not to receive compensation, hold office, or be security, &c.

## CHAP. 152.

emolument can be derived, nor shall he be interested, as security or otherwise, in any contract for or on account of the hospital.

Medical superintendent to reside on premises.

22. The medical superintendent shall be the chief executive officer of the hospital. He shall be a well educated physician, and shall with his family, reside on the premises, and devote his whole time to the welfare of the institution.

Duties of.

23. He shall, subject to the approval of the commissioners, engage and discharge all needful attendants and assistants for the care of the insane, and all servants connected with the establishment, and all laborers on the farm, and shall determine their wages and duties, subject to the judgment and control of the commissioners.

Admission of patients.

24. The admission of insane patients from the several counties of the province shall be in the ratio of their insane population.

Insane paupers how admitted; maintenance of, &c.

25. The several constituted authorities having care and charge of the poor in the respective counties, poor districts, and townships, shall have authority to send to the hospital when vacancies occur therein, and when they shall be entitled under this chapter, such insane paupers under their charge as are most likely to be benefitted by hospital treatment; that is to say, cases of recent occurrence in preference to those whose insanity has been of longer duration; and those counties, poor districts, or townships, shall be severally chargeable with the expenses of the care and maintenance, and removal to and from the hospital, of such paupers as have obtained a settlement in their respective counties, poor districts and townships. The overseers of the poor, or other constituted authorities, having care or charge of the poor of such counties, poor districts, or townships, as well those then in office as those thereafter coming into office, while the said expenses are accruing, and until the same are fully paid, shall be answerable to the commissioners for the amount from time to time due, as the representatives of the counties, poor districts, and townships, from which such pauper insane shall have been sent to the hospital. And it shall be the duty of the overseers of the poor, or other constituted authorities, to cause provision, from time to time, to be made for raising the necessary funds by assessment, as in the case of other charges for the support of the poor, so that the amounts due to the commissioners for the care of such insane paupers may be punctually paid as the same become due.

In case patients are not paid or.

26. If the guardians, overseers of the poor, or other parties to whom the expense of any patient who shall be in the hospital is chargeable, shall neglect, or upon demand made shall refuse to pay to the commissioners the expense of the care, maintenance and removal of such patient, and also in the event of death, the funeral expenses of such patient, the commissioners are hereby authorized and

empowered to collect the same as debts of a like nature CHAP. 152.  
are now collected.

27. If application be made to any two justices of the peace for the commitment to the hospital of any insane person within the county in which such justices have jurisdiction, it shall be the duty of such justices to enquire into the fact of the insanity of such person, in the manner provided by section ten, and if satisfied that such person is, by reason of insanity, unsafe to be at large, or is suffering any unnecessary duress or hardship, the justices shall, on such application and proof, commit such insane person to the hospital, provided there be at the time a vacancy for such patient therein, and shall, if necessary, make an order for payment of the expense of the care, maintenance, and removal of such insane person.

Power of justices of the peace to send insane persons.

28. Whenever there are vacancies in the hospital, the board of commissioners may admit, under special agreement, cases for which admission is sought—a preference being given to those of most recent occurrence, and hence most likely to be benefitted by hospital treatment.

In case of vacancies board may admit patients.

29. When an insane person in indigent circumstances, whose insanity shall have commenced within a year prior to his or her admission, shall have been sent to the hospital by friends who have paid their bills therein for six months, upon an application under oath in his or her behalf, stating the inability to pay of the parties legally liable for his or her support, the application being endorsed by one of the commissioners of the hospital, the overseers of the poor, or other constituted authorities of the place of legal settlement of such insane person, are authorized and required to raise a sum of money sufficient to defray the expenses of such insane person for one year, and to pay the same to the treasurer of the hospital, and they shall repeat the same for two succeeding years, upon like application, duly verified.

In case of indigent patients whose friends cannot continue to pay.

30. Indigent persons and paupers shall be charged for medical attendance, board, and nursing, while residents of the hospital, no more than the actual cost; and patients who are not chargeable upon townships, districts, or counties, shall pay according to the terms directed by the commissioners, having relation to the accommodation desired and afforded.

Charges against patients.

31. The commissioners, (upon the medical superintendent's certificate of recovery, amendment, harmlessness, or unsuitableness), may discharge any patient, except those under a criminal charge, and the parties liable for the maintenance of such patients shall be duly notified of such discharge, and the terms thereof. Provided that patients under a criminal charge shall be discharged only by an order from the governor in council.

Discharge of patients.

Prov. so.

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Bond for expenses.

32. Parties committing insane patients to the hospital shall execute a bond, with sufficient security, for payment of expenses, which bond may be sued as often as shall be necessary, and recovery had agreeably to chapter one hundred and forty-four, "Of summary suits."

Medical certificate previous to admission.

33. Before admission of a patient, there shall be produced a certificate, signed by two legally qualified medical men engaged in actual practice, dated within one month previously, stating that within that time they have personally and separately examined such patient, and believe him or her to be insane.

Medical man not responsible for certificate.

34. No medical man shall be held responsible to any patient or their representatives for any certificate thus granted.

Resident officers, exemptions of.

35. Resident officers and other employees of the hospital, while actually engaged as such, shall be exempt from militia duty, from serving on juries, from county and township offices, and from performance of statute labour.

Commissioners to erect water tanks, &c.

36. The commissioners are authorized to take all proper and necessary steps to ensure to the hospital an ample supply of water, and to cause all such reservoirs, tanks, fountains, leaders, pipes, and tubes, as shall be requisite for that purpose, to be laid and placed at proper and convenient distances below the surface of any of the roads, streets, and highways of the township of Dartmouth, and it shall be lawful for the commissioners, after ten days notice given to the commissioners of streets for the township of Dartmouth, to break up and open such of those roads, streets, and highways, as may be necessary, and to keep the same open for a reasonable time; provided that such commissioners of the hospital shall faithfully and carefully close up, repair, and make good such roads, streets, and highways, or otherwise they shall be liable to defray all expenses that may be incurred by the commissioners of streets in closing up, repairing, and making good the same.

May break up streets.

Proceedings in case commissioners require land, &c., for the purpose of obtaining a supply of water, and cannot agree with the proprietors for it.

37. Whenever there shall be a necessity for the commissioners to enter upon and take possession of any lands, or lands covered with water, for the purpose of obtaining such supply of water, and they cannot agree with the proprietors of such lands, and lands covered with water, for the sale or lease thereof, as may be required, they may apply to the supreme court in term time, or to any two judges in vacation, by petition, stating the nature and position of the land, with the names of the owners or occupiers, so far as the same can be ascertained, and praying for the appointment of appraisers to value the land, and land covered with water, and the interest and estate therein required by the commissioners, and praying also the transfer, conveyance, and use thereof to such commissioners; whereupon the court or judges shall appoint a time and place for considering such petition, after proper notice in

writing given to all parties interested, to attend at such time and place to be so appointed for that purpose; and at such time and place such court or judges shall require the commissioners to nominate one appraiser, and the parties interested in such lands, and lands covered with water, to appoint one appraiser, and such court or judge shall appoint a third appraiser, and such appraisers shall be severally sworn to the faithful discharge of their duties, before such court or judges; and shall thereupon proceed to make a just and equitable valuation and appraisement of the fair and reasonable value of such lands, or lands covered with water, or of the fair annual rent thereof; and such appraisers, or any two of them, shall make a return in writing to the prothonotary of the supreme court at Halifax, to be by him filed in his office; and if such court or judges shall, on application of the commissioners, be of opinion that the appraisement or valuation has been fairly and impartially made, they shall by rule or order confirm the same; and thereupon the persons entitled to receive the amount of such valuation or appraisement shall be paid the same by the commissioners, together with such reasonable costs and expenses as such court or judges may direct.

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## TITLE XXXIX.

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### CHAPTER 153.

#### OF THE LIMITATION OF ACTIONS.

1. No action of assumpsit, trespass *quare clausum fregit*, detinue, trover, replevin, debt grounded upon any lending or contract without specialty or for rent, account, or upon the case, shall be brought but within six years next after the cause of action.

Actions which require to be brought within six years.

2. In actions grounded upon any simple contract, no acknowledgment or promise, by words only, shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the preceding section, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be in some writing signed by the party chargeable thereby; and where there shall be two or more joint contractors or executors or administrators of any such contractor, no such joint contractor, executor or administrator, shall lose the benefit of the preceding section by reason only of any written acknowledgment or promise made or signed by any

A promise to take a case out of the statute must be in writing; joint contractors, co-executors, &c., how affected by promise of several contractor, co-executor, &c.

**CHAP. 153.** other of them. But nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whomsoever; and in any action to be commenced against two or more joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff though barred by this provision as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other of the defendants, by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant against whom he shall recover, and for the other defendants against the plaintiff.

Issue on plea in abatement for non-joinder under this chapter, how found.

3. If any defendant in any action on any simple contract, shall plead any matter in abatement, to the effect that any other person ought to be jointly sued, and issue be joined on that plea, and it shall appear at the trial, that the action could not by reason of this chapter be maintained against the other person named in such plea, the issue joined in such plea shall be found against the party pleading the same.

Endorsements by payee not evidence.

4. No endorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation thereof.

Set-off due on simple contract within the statute.

5. This chapter shall apply to the case of any debt on simple contract, alleged by way of set off on the part of any defendant, either by plea, notice or otherwise.

A promise after full age to pay a debt contracted while a minor must be in writing.

6. No action shall be maintained whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Provisions of the last five sections limited to actions commenced after 1st April, 1853.

7. The provisions of the last five sections shall not apply as against either the plaintiff or defendant in any action commenced before the first day of April, one thousand eight hundred and fifty-three.

In case of mutual accounts accruing of the cause, how computed.

8. In an action to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed hereafter to accrue from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

Actions which require to be brought within one year.

9. No action of trespass for assault, battery, wounding or imprisonment, and no action on the case for words, and no action or prosecution for taking illegal interest, shall be commenced but within one year next after the cause of action, or after the offence was committed.

10. Actions by or against minors, married women, persons insane, imprisoned or out of the province, may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases.

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Actions against minors, &c. within what time to be brought.

11. If in any action judgment be given for the plaintiff, and the same be reversed by error, or if judgment be arrested after verdict, then the plaintiff may commence a new action within one year after such judgment reversed or arrested.

When judgment reversed or arrested, when new action may be brought.

12. No entry into any lands shall be made, or action therefor brought, but within twenty years after the right descended, or cause of action accrued.

Entry upon and action for lands to be within twenty years.

13. Minors, married women, persons insane imprisoned or out of the province, being and continuing under such disability, may make such entry or bring such action within ten years after the removal thereof. But no such action shall be brought or entry made but within forty years after the right or action shall have descended or accrued.

Minors and persons under disabilities, within what time allowed to bring actions.

14. No claim for lands or rent shall be made by her majesty, but within sixty years after the right of action to recover such lands or rent shall have accrued.

Actions and claims of her majesty limited to sixty years.

## TITLE XL.

### CHAPTER 154.

#### OF COSTS AND FEES.

1. Fees for the services mentioned in the schedule to this chapter shall be as therein prescribed.

Fees to be as in this chapter prescribed.

2. Any person taking greater fees shall, for each offence, forfeit to the party aggrieved ten pounds; which sum, with such excessive fees, may be recovered by him in an action for debt.

Penalty for taking excessive fees.

3. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence.

Actions for penalties, where to be brought, their limitation.

#### SCHEDULE.

*Fees to be taken at the provincial secretary's office, and paid into the treasury.*

Each certificate, under the hand of the governor and the great seal of the province, one pound.

Each certificate, under the hand of the governor and the seal at arms, ten shillings.

CHAP. 154. Each certificate, under the hand and seal of the provincial secretary, five shillings.

Every search, one shilling.

Copies of grants, proceedings in council, or other papers, per folio, six pence.

*Sheriff's fees.*

Serving summons and making return thereof,	£0	3	6
Serving every other writ of mesne process or <i>scire facias</i> , and making return thereof,	0	5	0
Serving every execution and making return thereof,	0	5	0
Returning every execution where the same has not been served,	0	1	6
Serving every writ of possession and making return thereof,	0	15	0
Travel per mile from the place of residence of the sheriff to the place where he shall serve a writ,	0	0	6
One penny per mile from the place of residence of the sheriff to the court-house where the writ is returnable, provided the same be out of the county and also provided the writ be actually served.			
Every bail bond,	0	3	0
Summoning a jury in each cause,	0	2	6
Executing writ of inquiry, summoning jury, and making return,	0	10	0
Returning every special jury,	0	15	0
On execution or attachment where a sale shall take place extended on personal property, sale and payment of the money to the party or his attorney, as follows:			
For any sum not exceeding £50, one shilling in the pound.			
From £50 to £100, nine pence in the pound.			
For all above £100, six pence in the pound.			
In cases where there shall be no sale, one half the above fees on payment of the money.			
For making inventory of goods attached, such reasonable fees as shall be taxed by the court out of which the writ shall have issued.			
For certifying copy of attachment levied on real estate and making and delivering to the registrar of deeds copy of the appraisement of the real estate,	0	5	0
On the sale of all real estate, whether by virtue of an execution or attachment, or by virtue of any rule or order, and payment of the proceeds to the party or his attorney, six pence in the pound.			
Every deed,	0	10	0



Bringing up prisoner by <i>habeas corpus</i> ,	£0	5	0	CHAP. 154.
Attending prisoner before judge on any special occasion,	0	3	6	
For every member returned duly elected to serve in general assembly, to be paid out of the treasury in lieu of all other expenses chargeable upon the treasury,	1	10	0	
For summoning the grand and petit juries, a sum not exceeding £5 if allowed by the grand jury and approved by the sessions.				

*Appraiser's fees.*

For appraising goods or real estate taken under attachment, each appraiser,	0	2	6
When property is extensive and complicated, for each day actually employed, each appraiser,	0	3	6

*Juror's fees.*

Petit and special jurors, per day,	0	2	6
Travel per mile from place of residence to court house,	0	0	6

*Witness' fees.*

For attendance, per day,	0	2	6
Travel per mile, coming and going,	0	0	3
To be the same in every court.			

*Crier's fees.*

For every default on non-suit,	0	0	4
“ calling jury in each cause,	0	0	6
“ every verdict,	0	0	4
“ swearing every witness,	0	0	3
“ discharging a party by proclamation,	0	0	6
On every bill of costs taxed in the country,	0	0	6
“ “ “ in Halifax,	0	1	0

*Constable's fees in supreme court.*

Attending jury in each cause,	0	1	0
Serving every warrant or summons,	0	1	0
Summoning a jury by warrant from coroner, and attendance per day,	0	2	6
Travel per mile the same as sheriff.			

*Coroner's fees.*

For every inquisition, including 12s. for fees of jury and 2s. 6d. for fee of constable, to be paid by the province,	2	10	0
Any extraordinary and necessary expense attending the inquest or burial of a deceased person, if approved of by the grand jury and court of sessions, to be a county charge.			

CHAP. 154. The same fees as a sheriff in cases where he discharges the duty of a sheriff.

*Arbitrator's fees under a rule of court.*

Reasonable fees to be taxed.

COURT OF MARRIAGE AND DIVORCE.

For the governor, vice president and judges, for each day they shall actually attend, each, £1 0 0

*Advocate and proctor's fees.*

Retaining fee for counsel,	1	3	4
Proxy,	0	6	8
Draft of libel or other pleading, per folio,	0	1	0
Engrossing same, per folio,	0	0	6
Entering appearance,	0	3	4
Every subpoena, citation or other writ,	0	5	0
Copies for service, each,	0	1	6
Drawing affidavit of service of subpoena, citation, or other process or proceeding,	0	2	0
Every petition necessary in conducting a cause,	0	3	4
Every order,	0	3	4
Counsel fee on making or defending every special motion, not to exceed	1	3	4
Drawing brief in every cause, per folio,	0	1	0
Counsel fee for examining and signing each pleading,	0	11	8
Draft of interrogatories, per folio,	0	1	0
Engrossing ditto,	0	0	6
Counsel fee on hearing or argument, not to exceed	3	10	0
Making up bill of costs,	0	3	4
Serving every subpoena, or other writ or order,	0	3	6
Travel per mile from the residence of the party making service to the place of service,	0	0	3
Every necessary attendance on the registrar,	0	6	8
Draft of decree, per folio,	0	0	6
Engrossing ditto,	0	0	6

*Registrar's fees.*

Entering and filing every bill,	0	2	6
Entering and filing every other pleading,	0	1	6
Filing all other papers, each,	0	0	6
Signing and sealing every writ, and certifying copies,	0	2	6
Every search,	0	1	0
Copies of all papers, per folio,	0	0	6
Drawing and signing every rule or order,	0	1	0
Every necessary attendance on the vice-president,	0	5	0
Every court day,	0	5	0
On procuring signature of final decree,	0	6	8

*Commissioners on examination of witnesses.*

CHAP. 154.

For taking the examination of every witness, each commissioner per day,	£1 3 4
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## PROBATE COURT.

*Judge's fees.*

Where the estate does not exceed £100 and there is no contest, in full of all fees,	1 0 0
Where the estate does not exceed £200 and there is no contest, in full of all fees,	1 10 0
Every citation, including order for the same,	0 2 0
Every order not herein specially provided for,	0 2 0
For the probate of a will or letters of administra- tion where the estate does not exceed £200, and order for the same,	0 16 8
Ditto, ditto, when above £200 and not exceeding £1000, and order,	1 0 0
Ditto, ditto, when above £1000, and order,	2 6 8
For warrant of appraisement and order for the same,	0 2 6
For every subpoena, attachment, execution, or other process not otherwise provided for, in- cluding order for the same,	0 1 0
Letters <i>ad colligendum</i> ,	0 10 0
Sentence or decree in ordinary cases of granting licenses to sell, mortgage or lease real estate, passing accounts of distribution, &c.,	0 10 0
Sentence or decree for probate of a will or codi- cil, letters of administration, or granting license to sell, mortgage or lease real estate, passing accounts of distribution, &c., where there is a contest,	1 10 0
Transmitting appeal with statement of decision,	1 3 4
Taking testimony in writing where there is a con- test, per folio,	0 1 0
Warrant for appraisers to divide real estate, on petition of parties,	0 5 0
<i>Dedimus potestatem</i> to take deposition of wit- nesses and order therefor,	0 5 0
Appointing and allowing guardians to minors, and order therefor,	0 15 0
Every oath administered by him,	0 1 0
Examining and taxing costs,	0 2 6

*Registrar's fees.*

Where the estate does not exceed £100 and there is no contest, in full of all fees,	1 0 0
Where the estate does not exceed £200 and there is no contest, in full of all fees,	1 10 0

<u>CHAP. 154.</u> For filing every paper,	£0	0	4
Probate of will and letters of administration and entry or order therefor, where the estate is under £200,		0	16 8
Where estate is above £200 and does not exceed £1000, and entry of order,		1	0 0
Where estate is above £1000, and entry of order therefor,		2	6 8
Letters of guardianship or <i>ad colligendum</i> , and entry of order,		0	10 0
Copy of will and probate, per folio,		0	0 6
For preparing bond in all necessary cases,		0	4 0
Preparing citation and seal,		0	2 0
Each copy thereof,		0	1 0
Preparing necessary affidavits, each,		0	1 0
Filing every warrant and seal,		0	2 6
“ every certificate of licence to sell real estate,		0	5 0
For all copies of papers, per folio,		0	0 6
For every certificate and <i>dedimus potestatem</i> ,		0	5 0
For entry of every decree in registry book, and of every order not specially provided for, per folio,		0	0 6
Every search or inspection of documents,		0	1 0
Preparing subpoena and seal,		0	2 0
Filing each ticket for the same,		0	0 6
Filing every caveat or appeal,		0	2 0
Preparing every execution, attachment, or other process not specially provided for, and entry of order therefor,		0	2 0
Filing every decree,		0	10 0
Every oath administered by him,		0	1 0
Taxing costs,		0	2 6

*Proctor and advocate's fees.*

Taking instructions for client to commence or defend proceedings in probate court,		0	10 0
Preparing every petition,		0	3 4
Preparing every allegation or other paper necessary to be prepared by him, per folio,		0	1 0
Every additional copy thereof, per folio,		0	0 6
Every necessary attendance on judge,		0	6 8
Every hearing or argument before the judge, not less than half a guinea nor more than two guineas, at the discretion of the judge.			
Serving every notice or other paper, on each person,		0	1 0

*Sheriff or other ministerial officer's fees.*

Serving citation or other process, (subpoena excepted), on each person,		0	2 6
Posting up same in three public places directed by the judge,		0	5 0

Serving subpoena on each person,	£0	1	0	CHAP. 154.
Travelling fees same as in supreme court.				

*Appraiser's fees.*

For appraising the estate of a deceased person not to exceed, for each day they shall be actu- ally employed,	0	10	0
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## MAGISTRATE'S COURT.

*Justice's fees.*

Each summons or capias, and copies thereof,	0	2	0
Affidavit for a capias and swearing,	0	0	6
Subpoena and tickets,	0	1	0
Trials and judgment in all causes,	0	1	0
<i>Venire,</i>	0	1	0
Returning papers on appeal to supreme court,	0	1	0
Each execution,	0	1	0
Affidavit of service of summons when required and swearing,	0	0	6
Affidavit on appeal and swearing,	0	0	6
Appeal bond,	0	2	6

All fees taken in any suit wherein the services and presence of two justices are required as well as for the execution therein, except for returning the papers on appeal, to be divided between the two justices acting therein as follows, two-thirds to the justice first applied to, and the remaining third to the other.

*Constable's fees.*

Serving summons and making return,	0	1	0
Serving capias and making return,	0	1	0
Bail bond,	0	1	0
Summoning a jury,	0	1	0
Summoning each additional juror where there are not sufficient bye-standers,	0	0	3
Serving subpoena, each witness,	0	0	6
Serving execution,	0	1	0
Poundage on execution on sale of goods,	0	0	6
Poundage on execution where the amount is paid in money, for each pound,	0	0	3
All travelling to be computed from residence of justice to residence of defendant. on summons, capias or execution; and from residence of officer to residence of witness, on subpoena, each mile when necessarily done,	0	0	3
In cases of execution levied on the body, travel- ling to be computed from residence of officer to that of defendant and thence to place of con- finement, each mile,	0	0	3

CHAP. 154. Where subpoenas are served by a constable, travel shall not be charged for serving each witness, but only so much travel as may be actually and necessarily performed by the constable in serving all the subpoenas.

*Witness' fees.*

Each day in actual attendance,	£0	2	6
All travelling, to be computed from the residence of the witness to the place of trial, per mile,	0	0	4

NOTE.—If the witness at the time of being served with the subpoena demands his fees, he shall not be bound to attend unless fees equal to one day's attendance and his travel as above, be tendered to him at the time, or at such other reasonable time before the day of trial, as to admit of his attendance with certainty.

*Juror's fees.*

Each juror on every trial,	0	1	0
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*Fees of jailer or keeper of lock-up house.*

For every person committed to jail,	0	2	6
For every person discharged therefrom, except insolvents,	0	2	6

BASTARDY CASES.

*Justice's fees.*

The examination of the woman in writing,	0	1	0
Warrant to apprehend the reputed father before birth of the child,	0	2	0
Bond to indemnify the township or district,	0	3	0
Warrant to bring the reputed father and mother before the justices,	0	3	0
All commitments, each,	0	1	0
Bond to perform order of filiation, whether on appeal or otherwise,	0	3	0
Warrant to apprehend the reputed father when he shall not have appeared at the time of making order of filiation,	0	2	0
Order of filiation, per folio,	0	0	6

*Constable's fees.*

The same as in other cases before justices.

REGISTRAR'S OF DEEDS FEES.

For the attestation of a subscribing witness,	0	1	0
For entering and registering every deed or conveyance, every 100 words,	0	0	6

For entering every docket of judgment or attachment with appraisement,	£0	2	6	<u>CHAP. 154.</u>
For entering and filing a discharge of judgment or attachment,	0	1	0	
For every certificate of registry written on any deed or conveyance, (not to be charged in case of judgment or attachment, or discharge thereof, or of the release of a mortgage,)	0	1	0	
For every office copy from the books of registry delivered out, 100 words,	0	0	6	
For every certificate upon such office copy where such shall be required,	0	1	0	
For every search, whether for a single deed or conveyance, or for a single title, made on one and the same day,	0	1	0	

## FEES ON DISTRESS FOR RENT.

Warrant to bailiff,	0	2	6
Appraisement,	0	1	0
Notice and each necessary copy,	0	0	6
Appraisers, each,	0	1	3
On a sale, the same fees as to a sheriff.			
No custody money to be allowed.			

## PART IV.

### OF THE CRIMINAL LAW AND THE ADMINISTRATION OF OF CRIMINAL JUSTICE.

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#### TITLE XLI.

##### OF OFFENCES AGAINST THE GOVERNMENT.

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#### CHAPTER 155.

##### OF TREASON.

Treason defined; punishment.

1. Whoever shall compass or imagine the death of the queen, or of her eldest son and heir, or shall levy war against her, or adhere to her enemies giving to them aid or comfort, and shall thereof be duly convicted, shall be declared and adjudged to be a traitor, and shall suffer death and forfeiture as in cases of high treason.

Proceedings and evidence to be as in England.

2. All acts of the imperial parliament, directing the proceedings and evidence on trials for high treason in England, shall have their full force and effect, and be observed as the rule on trials for high treason in this province.

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#### CHAPTER 156.

##### OF OFFENCES RELATING TO THE ARMY AND NAVY.

Penalty for assisting deserters, or procuring desertion.

1. Whosoever shall procure or solicit any soldier, seaman, or marine, to desert her majesty's service, or shall assist any deserter from her majesty's service in deserting, or concealing himself from such service, knowing him to be a deserter, shall forfeit not less than twenty pounds, nor more than fifty pounds; and in default of payment shall be committed to jail for a term not exceeding twelve months.

Penalty for receiving regimental necessaries, &c.

2. Whosoever shall buy, exchange, or detain, or otherwise receive from any soldier or deserter, any arms, clothing, or furniture, belonging to her majesty, or any such articles belonging to any soldier or deserter, as are generally deem-



ed regimental necessaries, according to the custom of the army, or shall cause the colour of such clothing or articles to be changed, or shall exchange, buy, or receive from any soldier, any provisions without leave, in writing, from the officer commanding the regiment, or detachment to which such soldier shall belong, shall forfeit not less than five pounds, nor more than ten pounds, and in default of payment shall be committed to jail for a term not exceeding nine months. CHAP. 156.

3. Whosoever shall buy, exchange, or detain, or otherwise receive from any seaman or marine, upon any account whatever, or shall have in his possession any arms or clothing, or any such articles belonging to any seaman, marine, or deserter, as are generally deemed necessaries, according to the custom of the navy, shall forfeit not less than fifteen pounds nor more than thirty pounds, and in default of payment shall be committed to jail for a term not exceeding nine months. Penalty for receiving necessaries from marines or seamen.

4. All forfeitures incurred under the preceding sections may be recovered, without any reference to the amount of such forfeitures, by summary process before any two justices of the peace, except in the city of Halifax, where the same may be recovered before the mayor and one alderman, or the recorder and one alderman; and one half of such forfeitures shall in each case be paid to the party on whose information or through whose means the person accused shall have been convicted. Recovery of penalties.  
In city of Halifax.

5. An appeal from the decision of such justices or city authorities to the supreme court shall be allowed, on a bond to respond the judgment on such appeal being entered into by the appellant, with two sufficient securities in double the amount of the forfeiture appealed against; and in case of such prosecutions or of such appeals the examination of any soldier, seaman, or marine, liable to be ordered from the province, or of any witnesses, sick, infirm, or about to leave the province, may be taken *de bene esse* before any commissioner, in like manner as depositions in civil cases are now taken. Appeal.  
Examination of witnesses about to leave province.

6. Any person reasonably suspected of being a deserter from her majesty's service, may be apprehended and brought for examination before any justice of the peace; and if it shall appear that he is a deserter, he shall be confined in jail until claimed by the military or naval authorities, or proceeded against according to law. Apprehension of suspected deserters.

7. No person shall break open any building to search for a deserter, unless he shall have obtained a warrant for that purpose from a justice of the peace, such warrant to be founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused; and any person Warrant required to enter a building in search of deserters.  
Penalty for resisting warrant.

**CHAP. 157.** resisting the execution of any such warrant shall forfeit twenty pounds.

Justice of the peace may issue warrants.

8. Any justice of the peace, upon information on oath, may issue a warrant against persons charged with any of the offences mentioned in this chapter as in the case of other criminal offences.

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## CHAPTER 157.

### OF OFFENCES AGAINST RELIGION.

Penalty for disturbing persons assembled for public worship.

1. Whosoever shall maliciously disturb any congregation of persons assembled for religious worship, or shall molest any preacher or person officiating at such congregation, or any persons there assembled, upon conviction before a justice of the peace shall forfeit not less than ten nor more than forty shillings, and in default of payment shall be committed to jail for a term not less than twenty-four hours nor more than ten days.

Fine for desecration of the Lord's day.

2. Any person who shall be convicted before a justice of the peace of shooting, gambling, or sporting, of frequenting tippling houses, or of servile labor, works of necessity and mercy excepted, on the Lord's day, shall for every offence, forfeit not less than five nor more than forty shillings, and in default of payment shall be committed to jail for a term not less than twelve hours nor more than four days.

Disturbing religious, and other meetings or congregations.

3. If any person shall, by riotous or disorderly conduct or language, or by discharging firearms, or by fire-works, or by cries or other noises, wantonly or maliciously disturb the peace and quiet of any assemblage of persons lawfully convened for any religious, moral, social or benevolent purpose, he shall, for every offence, forfeit a sum not less than ten shillings nor more than forty shillings.

Loosing or injuring horses, &c., in vicinity of such meetings.

4. If any person shall wilfully or wantonly untie, remove, or let loose, disfigure, or injure any horse; or remove or meddle with, injure or destroy any vehicle; or cut, injure, or destroy any harness connected with such horse or vehicle, while the same are in the vicinity of any place where such meeting may be in the act of being held, he shall, for every offence, forfeit a sum not less than ten shillings nor more than forty shillings.

Arrest and punishment of offenders.

5. Any person offending against the provisions of the third and fourth clauses of this chapter, may be arrested on view by any peace officer present at such meeting, or by any other person thereto verbally authorized by any justice

of the peace present thereat, and such offender shall there-  
 upon be committed to the county gaol until he shall find  
 security, to the satisfaction of a justice, for his good  
 behaviour, and to pay any fine or penalty that may be im-  
 posed upon him on any prosecution for such offence.

CHAP. 158

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## CHAPTER 158.

### OF OFFENCES AGAINST PUBLIC MORALS.

1. Any person who shall be convicted of drunkenness  
 either on view or upon oath before a justice of the peace,  
 shall, for every offence, forfeit not less than five nor more  
 than twenty shillings, and in default of payment shall be  
 committed to jail for a term not less than twelve hours nor  
 more than four days.

Fine for drunk-  
ness.

2. Any person who shall be convicted of incest shall  
 be guilty of a misdemeanour, and shall be imprisoned for a  
 term not exceeding two years.

Punishment for  
incest.

3. Any person who shall be convicted of keeping a com-  
 mon gambling house, bawdy house or other disorderly  
 house, room or place, shall be imprisoned for a term not  
 exceeding two years.

Punishment for  
keeping a gam-  
bling, bawdy,  
or disorderly  
house.

4. Any person who shall appear or act as master or  
 mistress, or as having the care or management of any  
 gambling house, bawdy house or other disorderly house,  
 shall be deemed to be the keeper thereof, and shall be pro-  
 secuted and punished as such, notwithstanding he or she  
 shall not in fact be the real owner or keeper thereof.

Who may be  
deemed keeper  
of such house.

5. Any person who shall keep a common gambling  
 house, or disorderly house, shop, room, or place, may be  
 summarily tried and convicted before two justices of the  
 peace, or, if in the city of Halifax, before the police court;  
 and, on conviction, shall be punished by a fine, not to  
 exceed five pounds, or by imprisonment in jail or bridewell,  
 with or without hard labour, for a term not exceeding one  
 month, or be both fined and imprisoned as the said justices  
 or police court may direct.

Trial and pun-  
ishment of of-  
fenders.

6. Any justice of the peace, or, if in the city of Halifax,  
 the mayor or any alderman, may, at any time of the night  
 or day, enter any house, shop, room, or place, suspected of  
 being a gambling or bawdy house, shop, room, or place,  
 and it shall be their duty, upon reasonable suspicion, or on  
 evidence tendered them under oath, so to do.

Any justice, &c.  
may enter gam-  
bling houses,  
&c.

7. Any person profanely cursing or swearing in the  
 hearing of a justice of the peace, or who shall be convicted

Fine for profan  
swearing.

CHAP. 159. thereof, shall forfeit two shillings for the first offence, and for a second offence double, and for a third offence treble that sum, and in default of payment shall be committed to jail for a term not less than two nor more than twelve hours.

Fine for getting up or participating in lotteries or raffles.

8. Whoever shall undertake or set up, or shall by writing or printing, publish the undertaking or setting up, of any lottery or raffle for money or goods, with intent to have such lottery or raffle drawn or thrown, or to induce persons to purchase tickets or to give money or other valuables for any such lottery or raffle, or shall play, throw or draw at such lottery or raffle, or shall purchase any lot or ticket for any such lottery, or shall take part in any such raffle, shall forfeit a sum not exceeding ten pounds, and in default of payment shall be committed to jail for a period not exceeding thirty days.

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## CHAPTER 159.

### OF OFFENCES AGAINST THE LAW OF MARRIAGE.

Punishment for bigamy, &c.

1. Whosoever being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in the province or elsewhere, shall be guilty of felony, and shall be imprisoned for a term not exceeding two years, and fined at the discretion of the court.

Cases excepted from the operation of previous section.

2. Provided that nothing in the last preceding section shall extend to any second marriage contracted out of this province by any other than a subject of her majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Penalty and punishment for illegally officiating at the solemnization of matrimony.

3. Whosoever not being thereto duly authorised shall presume to solemnize or celebrate marriage, or shall officiate or assist in solemnizing or celebrating any marriage, shall, for every such offence, forfeit, to the use of her majesty, a sum not exceeding one hundred pounds, nor less than twenty-five pounds, and suffer twelve months imprisonment notwithstanding such marriage shall be invalid by law.

## CHAPTER 160.

## OF OFFENCES AGAINST THE PUBLIC PEACE.

1. If any persons to the number of twelve or more, being unlawfully assembled together to the disturbance of the public peace, and being required by the sheriff, or a justice of the peace of the county, or of any city where such assembly shall be, by proclamation, to be made in the form hereinafter directed, to disperse themselves, shall, to the number of twelve or more, unlawfully, riotously and tumultuously continue together by the space of one hour after such proclamation made, such offenders shall be imprisoned for any term not exceeding four years.

Punishment for twelve or more persons remaining riotously assembled after proclamation.

2. The order and form of such proclamation shall be as follows, that is to say, the person authorized to make such proclamation shall, among the rioters, or as near as he can safely come, with a loud voice command silence, and make proclamation in the words following or to the like effect:—"Our sovereign lady the queen charges and commands all persons being here assembled immediately to disperse themselves, and peacefully depart to their habitations or to their lawful business, or they will incur the penalty of the law against unlawful assemblies. God save the queen.

Form of proclamation.

3. Whosoever shall forcibly oppose or in any manner obstruct any person lawfully making or endeavoring to make such proclamation, shall be imprisoned for a term not exceeding two years.

Punishment for opposing a party making proclamation.

4. If any persons to the number of twelve or more, being unlawfully assembled together, to whom proclamation should or ought to have been made if the same had not been obstructed, shall, knowing of such obstruction, continue together and not disperse themselves within one hour after such obstruction made, such offenders shall be imprisoned for a term not exceeding two years.

Punishment for remaining assembled where proclamation is obstructed.

5. If three or more persons shall assemble, or having assembled shall continue together, with intent without lawful authority, to execute any common purpose with force and violence, or in so violent and tumultuous a manner, or under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be imprisoned for a term not exceeding two years.

Punishment where three or more persons unlawfully assemble or continue assembled.

6. If any persons unlawfully assembled together to the disturbance of the public peace, shall damage or destroy any church, chapel, or meeting house for the exercise of religious worship, or any building or erection, or any machinery whether fixed or moveable, prepared for or employed in any manufacture, such offenders shall be imprisoned for any term not exceeding two years.

Punishment for unlawfully assembling together to the disturbance of the public peace, shall damage or destroy any church, chapel, or meeting house for the exercise of religious worship, or any building or erection, or any machinery whether fixed or moveable, prepared for or employed in any manufacture, such offenders shall be imprisoned for any term not exceeding two years.

**CHAP. 161.** 7. If two or more persons shall fight together in a public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be committed to jail for a term not exceeding three months.

**Punishment for public fighting.** 8. If two or more persons shall openly carry dangerous and unusual weapons in any public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be committed to jail for a term not exceeding twelve months.

**Punishment for carrying dangerous weapons.** 9. If any person shall, by discharging fire-arms, or by riotous or disorderly conduct in any street or highway, wantonly or maliciously disturb the peace and quiet of the inmates of any dwelling house near such street or highway, he shall, for every offence, forfeit a sum not less than ten shillings nor more than forty shillings.

**Riotous or disorderly conduct in streets or highways.**

## CHAPTER 161.

### OF OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

**Punishment for assaulting a peace or revenue officer.** 1. Whosoever shall assault a peace or revenue officer in the execution of his duty, or any person acting in aid of such officer, shall be committed to jail for a term not exceeding two years and fined at the discretion of the court.

**Punishment for aiding to resist the apprehension of the person so assaulting.** 2. Whosoever shall assault any person with intent to resist the lawful apprehension or detainer of the party so assaulting, or of any other person for any offence for which he may be liable to be apprehended or detained, shall be committed to jail for a term not exceeding two years and fined at the discretion of the court.

**Punishment for shooting at or stabbing, &c. to resist the apprehension of a party accused.** 3. Whosoever shall maliciously shoot at any person, or shall attempt to discharge any kind of loaded arms at any person, or shall maliciously stab, cut or wound any person, with intent to resist the lawful apprehension or detainer of a party accused of any offence for which he may be liable to be apprehended, shall be imprisoned for a term not exceeding seven years.

**Punishment for perjury or subornation of perjury.** 4. Whosoever shall be convicted of perjury or subornation of perjury, shall be imprisoned for a term not exceeding seven years.

**Punishment for rescue or breach of prison.** 5. Whosoever shall be convicted of any rescue or breach of prison, shall be imprisoned for a term not exceeding two years.

**Punishment for false orders, certificates, &c. of public records.** 6. Whosoever having the custody of any public records, shall certify an order as true, knowing the same to be false,

or make any false copy or certificate of any indictment or conviction, or shall utter any such copy or certificate with a false or forged signature thereto, or make any false certificate of registry, knowing the same to be false or forged, shall be imprisoned for a term not exceeding three years. CHAP. 162.

7. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall maliciously obliterate, injure or destroy any document connected with the administration of justice shall be imprisoned for a term not exceeding two years and fined at the discretion of the court. Punishment for stealing or injuring documents connected with the administration of justice.

8. Whosoever shall corruptly take any money or other reward under pretence of helping any person to any chattel, valuable security or moveable thing, which shall have been stolen, taken, detained or converted, shall, unless the person so taking such money or reward shall cause the offender to be apprehended and brought to trial for the same, be guilty of felony, and shall be imprisoned for a term not exceeding seven years. Punishment for corruptly taking rewards for helping persons to stolen chattels, securities, &c.

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## CHAPTER 162.

### OF OFFENCES AGAINST THE PERSON.

1. Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be imprisoned for a term not exceeding fourteen years, and fined at the discretion of the court. Punishment for murder, &c., being accessories.

2. Every offence which before the year one thousand eight hundred and forty-one would have amounted to petit treason, shall be deemed to be murder only; and all persons guilty in respect thereof, whether as principals or accessories, shall be punished as principals and accessories to murder. Petit treason to be deemed and punished as murder.

3. Any person convicted of manslaughter shall be committed to jail or imprisoned in the penitentiary, as the court shall direct, for a term not exceeding fourteen years, or shall be fined at the discretion of the court. Punishment for manslaughter.

4. Provided that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony. Killing by misfortune or in self-defence, &c. not punishable.

5. Whosoever shall administer to, or cause to be taken by any person, any poison or other destructive thing, or shall cause bodily harm to any person with intent to com- Punishment for poisoning

**CHAP. 162.** mit murder, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to commit murder otherwise than by poisoning where no harm issues.

6. Whosoever shall by any means, other than the actually administering or causing to be taken poison or other destructive thing, attempt to commit murder, shall, although no bodily harm be caused, be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for causing grievous bodily harm.

7. Whosoever shall maliciously cut, stab, or wound, or shall maliciously maim, disfigure or disable any person, or shall maliciously cause to any person any other grievous bodily harm, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to cause grievous bodily harm.

8. Whosoever shall maliciously attempt to cause grievous bodily harm to any person, shall, whether any bodily harm be caused to such person or not, be imprisoned for a term not exceeding four years.

Punishment for setting fire to or casting away a vessel with intent to murder, &c.

9. Whosoever shall unlawfully set fire to, cast away, or in any wise destroy any ship or vessel either with intent to murder any person or whereby the life of any person shall be put in danger, shall be guilty of felony, and be imprisoned for the term of his natural life or for any term not less than seven years.

Punishment for impeding escape from a wreck.

10. Whosoever shall maliciously impede any person being on board of, or having quitted any ship or vessel which shall be in distress or wrecked, in his endeavor to save his life, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to procure abortion.

11. Every woman being with child, who, with intent to procure her own miscarriage, shall maliciously administer to herself any poison or other noxious thing, or use any instrument or other means whatever, and every person who, with intent to procure the miscarriage of any woman, shall maliciously administer to, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatsoever, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for endeavoring to conceal the birth of a child.

12. Where a woman shall have been delivered of a child, any person who shall by any secret disposition of the dead body of such child, whether such child died before, at, or after its birth, endeavor to conceal the birth of such child, shall be imprisoned for a term not exceeding two years.

Punishment for rape.

13. Whosoever shall unlawfully and carnally know any woman against her will and by force, or whilst she is insensible, shall be guilty of rape, and shall be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for abusing a female under ten years.

14. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years, shall be guilty of felony, and be imprisoned for the term of his natural life.



15. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years, and under the age of twelve years, shall be imprisoned for a term not exceeding seven years. **CHAP. 163.**  
Punishment for abusing a female between ten and twelve years.
16. Whosoever shall commit the crime of buggery, either with mankind or with any animal, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years. Punishment for buggery.
17. Any the least degree of penetration, though there be no emission of seed, shall be sufficient to constitute carnal knowledge as regards the crimes mentioned in sections thirteen, fourteen fifteen and sixteen of this chapter. Carnal knowledge what shall constitute.
18. Whosoever shall unlawfully take, or cause to be taken, any unmarried girl under the age of sixteen years, out of the possession or against the will of her father or mother, or any other person having the lawful charge of her, shall suffer such punishment by fine or imprisonment, or both, as the court shall award. Punishment for abduction of girls under sixteen.
19. Whosoever shall assault any person with intent to commit a felony, shall be imprisoned for a term not exceeding two years, and fined at the discretion of the court. Punishment for assault with intent to commit a felony.
20. Whosoever on trial for any felony whatever, and which shall include an assault, shall be convicted of assault, shall be committed to jail or imprisoned in the penitentiary as the court shall direct, for a term not exceeding five years, and shall be fined at the discretion of the court. Punishment for assault on a trial for a felony.

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## CHAPTER 163.

### OF OFFENCES AGAINST THE HABITATION.

1. Whosoever shall commit burglary shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years. Punishment for burglary.
2. If any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house shall commit a felony, and shall in either case break out of the house in the night time, such person shall be deemed guilty of burglary. Breaking out of a house in the night, having entered with intent to commit felony, &c., to be burglary.
3. Provided always, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of burglary, unless there shall be a communication between such building and dwelling house, either immediately or by means of a covered and enclosed passage leading from one to the other. Same subject.

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Punishment for burglariously entering a house and assaulting a person with intent to commit murder.

4. Whosoever shall burglariously break and enter into any dwelling house, or any inner part thereof, and shall assault with intent to murder any person being therein, or shall cause any bodily harm, or do any personal violence to such person, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for entering other buildings by night for the purpose of burglary.

5. If any person shall in the night time break and enter any building, being within the curtilage of a dwelling house and occupied therewith, but not being part thereof, according to the provision in the third section of this chapter, or any public office, public building, or other building, not being a dwelling house for the purpose of burglary, with intent to commit a felony, every such offender shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

Night defined for settling questions of burglary.

6. So far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine o'clock of the evening of each day, and to conclude at six o'clock in the morning of the next succeeding day.

Penalty for unlawfully breaking and entering a dwelling house, office, church, &c., with intent to commit a felony.

7. Whosoever shall in the day time unlawfully break and enter any dwelling house, or building within the curtilage of a dwelling house, or any public office or other public building, or any building used for carrying on any business, or any stable, barn, or store house, or any church, chapel, or meeting house for the exercise of any mode or form of religious worship whatever, with intent to commit a felony, shall be committed to jail or imprisoned in the penitentiary as the court may direct, for a term not exceeding five years, and shall be fined at the discretion of the court.

Punishment where the burglary charged is not clearly proven, but the breaking, &c., is proven.

8. Whosoever shall be indicted for any burglary, where the breaking and entering shall be proved at the trial to have been made in the day time, and no breaking out shall appear to have been made in the night time, or where it shall be left doubtful whether such breaking and entering or breaking out, took place in the day or night time, shall be acquitted of the felony, but may be convicted of the offence specified in section seven of this chapter.

When proof of a burglary committed shall not be a defence to a charge of breaking, &c., with intent only, and when offender may be again indicted for burglary.

9. It shall not be available, by way of defence, to a person charged with the offence specified in section seven of this chapter, that the breaking and entering were such as to amount in law to burglary—provided that the offender shall not be afterwards prosecuted for burglary upon the same facts; but it shall be open to the court before whom the trial for such offence shall take place, upon the application of the officer conducting the prosecution, to allow an acquittal for the misdemeanour, on the ground that such offence, as proved, amounts to burglary; and if an acquittal takes place on such ground, and be so returned by the jury in delivering their verdict, the same shall be recorded to-

gether with their verdict, and such acquittal shall not then **CHAP. 164.**  
 avail as a bar or defence upon any indictment for such bur-  
 glary.

10. Whosoever shall maliciously set fire to any dwelling Punishment for  
maliciously fir-  
ing a dwelling  
house, a person  
being therein.  
 house, any person being therein, shall be guilty of felony,  
 and be imprisoned for the term of his natural life, or for  
 any term not less than ten years.

11. Whosoever shall maliciously, by the explosion of Punishment for  
damaging a  
dwelling house  
with powder, a  
person being  
therein.  
 gunpowder or other explosive substance, destroy or damage  
 the whole or any part of a dwelling house, any person being  
 therein, shall be guilty of felony, and shall be imprisoned  
 for a term not exceeding fourteen years.

## CHAPTER 164.

### OF FRAUDULENT APPROPRIATIONS.

1. Whosoever shall rob any person shall be guilty of Punish- ment for  
robbin- 'the  
person.  
 felony, and shall be imprisoned for a term not exceeding  
 fourteen years.

2. Whosoever shall assault any person with intent to Punishment for  
an assault with  
intent to rob.  
 rob, shall be guilty of felony, and shall be imprisoned for a  
 term not exceeding three years.

3. Whosoever shall rob any person, and at the time of, Punishment for  
robbing the  
person and  
causing griev-  
ous bodily  
harm.  
 or immediately before, or immediately after such robbery,  
 shall cause any grievous bodily harm to any person, shall be  
 guilty of felony, and be imprisoned for the term of his  
 natural life, or for any term not less than seven years.

4. Whosoever shall, being armed with any offensive Punishment for  
an assault by  
one or more  
persons and  
with intent to  
rob and causing  
bodily harm.  
 weapon or instrument, or shall, together with one or more  
 person or persons, assault any person with intent to rob,  
 and at the time of, or immediately before, or immediately  
 after such assault, shall cause any bodily harm, or do any  
 violence to the person of another, shall be guilty of felony,  
 and shall be imprisoned for a term not exceeding fourteen  
 years.

5. Whosoever shall with menaces, or by force, demand Punishment for  
demanding prop-  
erty with me-  
nace or force,  
with intent to  
steal.  
 any property of any person, with intent to steal the same,  
 shall be guilty of felony, and shall be imprisoned for a term  
 not exceeding three years.

6. Whosoever shall plunder or steal any part of a ship Punishment for  
stealing from or  
plundering a  
wreck.  
 or vessel wrecked or cast on shore, or any goods or articles  
 of any kind belonging to or on board of such ship or vessel,  
 shall be guilty of felony, and shall be imprisoned for a term  
 not exceeding fourteen years.

7. Whosoever shall accuse or threaten to accuse any Punishment for  
accusing or  
threatening to  
 person of the crime of buggery, committed either with

**CHAP. 164.** mankind or with any animal, or any assault with intent to commit the said abominable crime, or of any attempt to commit the same, or of using any solicitation or threat to any person whereby to induce such person to commit or permit the said abominable crime, with intent to extort, and shall thereby extort, from such person any property, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

**Punishment for a theft committed by accusing or threatening to accuse a person of felony, &c.**  
 8. Whosoever shall commit any theft, where the means by which possession is obtained of the thing stolen are either the accusing or threatening to accuse, or the knowingly sending, delivering or uttering of any letter or writing, accusing or threatening to accuse any person of treason or felony, or of any assault with intent to commit, or of any attempt to commit a rape, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

**Punishment for attempting to commit a theft by sending threatening letters, &c.**  
 9. Whosoever shall, by any of the means specified in section eight of this chapter, attempt to commit a theft, or shall knowingly send, deliver or utter any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any thing being the subject of theft, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

**What shall be held sending threatening letters.**  
 10. Every species of parting with, placing or disposing of any such letter or writing as is mentioned in the two last preceding sections, to the end that the same may be carried to or otherwise reach or come into the possession of the person for whom it is intended, shall be deemed to be a sending of such letter within the meaning of those sections.

**Punishment for larceny.**  
 11. Whosoever shall be convicted of larceny, shall be imprisoned for a term not exceeding seven years.

**Punishment for destroying or concealing wills, &c.**  
 12. Whosoever shall steal, or for any fraudulent purpose destroy or conceal any testamentary instrument, shall suffer such punishment by fine or imprisonment, or both, as the court shall direct.

**Punishment for stealing muniments of title.**  
 13. Whosoever shall steal any muniment of title shall suffer such punishment by fine or imprisonment, or both, as the court shall direct.

**Punishment for stealing valuable securities.**  
 14. Whosoever shall steal any valuable security, shall be imprisoned for a term not exceeding seven years.

**Punishment for stealing or killing cattle with intent to steal, &c.**  
 15. Whosoever shall steal any cattle, or shall wilfully kill any cattle with intent to steal the carcase or skin or any part of the cattle so killed, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

**Civil remedies not affected by the last four sections.**  
 16. Nothing in the four last preceding sections contained shall in any wise affect any civil remedy of any parties.

**Punishment for a clerk or servant stealing from his master.**  
 17. Whosoever being a clerk or servant shall steal anything belonging to or in the possession or under the power of his master, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

18. Whosoever with intent to defraud any person of any thing which is the subject of theft, shall obtain such thing from any person by any false pretence, by which the owner or other person authorized is induced to part with the entire property in such thing, shall be imprisoned for a term not exceeding two years.

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Punishment for obtaining articles by false pretences.

19. A false pretence within the meaning of the last preceding section is a false representation of some state of things past or present.

What shall be held "a false pretence."

20. Any fraud or ill practice in playing at any game or in bearing a part in the stakes, or on betting or wagering on the event, shall be deemed to be a false pretence within the meaning of section eighteen of this chapter.

Fraud in games, bets, or wagers to be held a false pretence.

21. It shall not be available by way of defence to a person charged with the offence specified in section eighteen of this chapter that the property in question was so obtained as to amount in law to larceny, provided that the offender shall not be afterwards prosecuted for larceny upon the same facts.

When the offence proved is a larceny, in what case it shall be a defence on a charge of false pretence.

22. Whosoever being a clerk or servant, or person employed for the purpose in the capacity of clerk or servant shall embezzle any thing being the property of his employer received or taken into possession by him by virtue of such employment, shall be deemed to have stolen the same from his employer, and shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for clerk or servant embezzling his master's property.

23. Whosoever shall unlawfully receive or have in his possession any thing which shall have been stolen or obtained by any false pretence, or which shall have been embezzled, knowing the same to have been so stolen, detained or embezzled, shall, in case the stealing, obtaining or embezzling of such thing shall amount to felony, be imprisoned for a term not exceeding seven years, and in all other cases shall be imprisoned for a term not exceeding two years.

Punishment for receiving goods knowing them to be stolen and obtained by false pretences, or embezzled.

24. Every person dealing in the purchase of old marine stores of every description, including anchors, cables, sails, junk, iron, copper, brass, lead, and other marine stores, shall conform to the following regulations:

Regulations be conformed to by all dealers.

First,—He shall not by himself or his agent purchase any old marine stores from any person under the age of sixteen years, under a penalty of twenty shillings for the first offence, and of thirty shillings for every subsequent offence.

Secondly,—He shall not purchase or receive into his stores, premises, or places of deposit, any old marine stores, except in the day time between sunrise and sunset, under a penalty of twenty-five shillings for the first offence, and of thirty-five shillings for every subsequent one.

25. If any old marine stores which had been stolen are found secreted in the premises of any person purporting to be a dealer in such stores, such person shall be guilty of a

Punishment for secreting stolen marine stores.

CHAP. 165. misdemeanor, and shall be punishable therefor in manner now by law prescribed for such offence.

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## CHAPTER 165.

### OF FORGERY AND OFFENCES RELATING TO THE COIN.

Punishment for forging public seals, &c.

1. Whosoever shall forge or counterfeit, or shall utter knowing the same to be forged or counterfeit, the great seal of the united kingdom, her majesty's privy seal, and privy signet of her majesty, her majesty's royal signmanual, her majesty's great seal of the province of Nova Scotia, or the privy seal, or the seal at arms of the said province, or of the lieutenant-governor thereof, shall be guilty of felony, and shall be imprisoned for a term not exceeding five years.

Punishment for forging or altering a writing.

2. Whosoever shall forge or alter, or shall offer, utter, or put off, knowing the same to be forged or altered, any writing, with intent to defraud any person, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Definition of the word "writing" in last section

3. The term "writing," as used in the last preceding section, shall be deemed to apply, whether the words or figures of the forged instrument, or any of them, are expressed at length or abridged, and whether they be so expressed by means of writing, printing or otherwise.

Definition of the word "person" in section two.

4. The term person in section two of this chapter, shall be deemed to include her majesty, any body corporate, company or society of persons not incorporated, or any person or number of persons who may be intended to be defrauded, whether such body corporate, company, society, person or number of persons, shall reside or carry on business in this province or elsewhere, in any place or country, whether under the dominion of her majesty or not.

Punishment for forging a muniment of title.

5. Whosoever with intent to defraud any person shall forge any muniment of title, or testamentary instrument, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for counterfeiting coin, &c.

6. Whosoever shall be convicted of the false making, impairing or counterfeiting of any coin, or of uttering any counterfeit coin, knowing the same to be counterfeit, shall be imprisoned for a term not exceeding four years.

## CHAPTER 166.

## OF MALICIOUS INJURIES TO PROPERTY.

1. Whosoever shall maliciously set fire to any building, to whatsoever purpose the same may be devoted, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years. Punishment for maliciously firing a building.

2. Whosoever shall maliciously set fire to, cast away, or in anywise damage or destroy, any ship or vessel, whether the same be completed or in an unfinished state, with intent thereby to prejudice any owner or part owner thereof, or of any goods on board thereof, or any underwriter thereon, or on the freight thereof, or upon any goods on board thereof, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years. Punishment for setting fire to or casting away a vessel.

3. Whosoever shall exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall maliciously do anything tending to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and be imprisoned for a term not exceeding seven years. Punishment for exhibiting false lights.

4. Whosoever shall maliciously destroy any part of any ship or vessel which shall be in distress or wrecked, or any goods or articles of any kind belonging thereto, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years. Punishment for destroying any part of a vessel wrecked or in distress, or goods belonging thereto.

5. Whosoever shall maliciously set fire to any mine of coal or cannel coal, shall be guilty of felony and be imprisoned for a term not exceeding seven years. Punishment for setting fire to coal mines, &c.

6. Whosoever shall maliciously set fire to any stack of grain, hay, straw, coals, charcoal, or pile of cordwood, shall be guilty of felony, and be imprisoned for a term not exceeding seven years. Punishment for setting fire to stacks, coals, or cordwood.

7. Whosoever shall maliciously place or throw into, upon, against or near any building or vessel, any gunpowder or other explosive substance, with intent to destroy or damage the same, or any machinery or fixtures, or chattels personal, shall, whether or not any explosion takes place, and whether or not any damage is effected, be guilty of felony, and be imprisoned for a term not exceeding three years. Punishment for placing gunpowder near buildings, vessels, &c.

8. Whosoever shall maliciously break or cut down any sea bank or sea wall, or any dike or aboiteau, whereby any lands shall be overflowed or damaged, or shall be in danger of being so, or shall maliciously cut down, break, or otherwise destroy any mill dam, or shall maliciously pull down, or in anywise damage or destroy any public bridge, shall Punishment for breaking down saw mills, dikes mill-dams, or bridges.

**CHAP. 166.** be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for damaging trees in gardens, fields, or streets.

9. Whosoever shall maliciously destroy or damage any tree or plant growing in any garden, field, or street, shall be committed to jail for a term not exceeding one year, or fined in a sum not exceeding ten pounds.

Punishment for cutting and carrying away corn, robbing gardens, &c., breaking down hedges, or removing vehicles, &c.

10. Whosoever shall unlawfully cut and take away any corn, or grain of any kind whatsoever growing, or shall rob any orchard, garden, or other plantation, of any fruit, vegetables, or other things therein growing, or wilfully break down, cut, or remove any part of any hedge, fence or other enclosure, or shall remove from the premises, or injure any vehicle, sleigh or article belonging to any person, and on his premises, shall be committed to jail for a term not exceeding six months, or fined in a sum not exceeding five pounds.

Punishment for damaging glass, wood, metal work, &c. in any public street or square.

11. Whosoever shall maliciously destroy or damage any glass or wood work, or any metal, or any utensil or fixture, whether made of metal or other material fixed in any square, street, or other place dedicated to public use or ornament, shall be committed to jail for a term not exceeding one year, or fined in a sum not exceeding ten pounds.

Punishment for killing or maiming cattle.

12. Whosoever shall maliciously kill any cattle, or cause any harm to any cattle, with intent to kill such cattle, or render the same useless to the owner, either permanently, or for a time, shall be committed to jail for a term not exceeding one year, or fined in a sum not exceeding ten pounds.

Punishment for wantonly and cruelly beating cattle.

13. Whosoever shall wantonly and cruelly beat, abuse, or ill-treat any cattle, shall be punished by fine or imprisonment in jail, at the discretion of the court.

Punishment for setting fire to corn, grain, or hay.

14. Whosoever shall maliciously set fire to any crop of corn, grain, or hay, whether standing or cut down, wheresoever the same may be growing, shall be imprisoned in the penitentiary or committed to jail for a term not exceeding three years.

Punishment for damaging articles in a museum, &c.

15. Whosoever shall maliciously destroy or damage any thing kept for the purposes of art, science or literature, or as an object of curiosity in any museum or other repository, which museum or other repository is either at all times, or from time to time, open for the admission of the public, or of any considerable number of persons to view the same, either by permission of the proprietor thereof, or by payment of money before entering the same, shall be committed to jail for a term not exceeding six months, or fined in a sum not exceeding one hundred pounds.

Punishment for damaging mines.

16. Whosoever shall maliciously cause any water to be conveyed into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall, with the like intent, maliciously pull down,



fill up or obstruct, any air way, water way, drain, pit, level or shaft of or belonging to any mine, shall be imprisoned for a term not exceeding two years. CHAP. 166.

17. The provision contained in the last preceding section shall not extend to any damage committed under ground by any owner of an adjoining mine in working the same, or by any person duly employed in such working. Provisions of last section qualified.

18. Whosoever shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, shall on such subsequent conviction, be imprisoned for a term not exceeding four years. Punishment upon a second conviction of felony.

19. In the case of any felony punishable under and by virtue of this title, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is punishable; and every accessory after the fact, to any felony punishable by this title, except only a receiver of stolen property, shall be imprisoned for a term not exceeding two years. Principals in the second degree and accessories in cases of felony, how punished.

20. Whosoever shall maliciously take away, destroy or damage any buoys, beacons, or sea marks, placed by order of the governor, or other person having authority in any harbor, creek or bay, shall forfeit a sum not exceeding one hundred pounds, and on failure in payment, shall be committed to jail for a term not exceeding one year. Punishment for destroying buoys, beacons, &c.

21. Whosoever shall make fast any vessel or boat to any such buoy, beacon or sea mark, shall forfeit a sum not exceeding twenty pounds; and on failure of payment, shall be committed to jail for a term not exceeding six months. Penalty for making vessels fast to buoys, beacons, &c.

22. Whosoever shall maliciously damage or destroy any real or personal property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, shall be committed to jail for a term not exceeding two years, or fined in a sum not exceeding twenty pounds. Punishment for damaging real or personal property where no specific remedy provided.

23. Every person who shall abet or procure the commission of any offence punishable under the preceding section, shall be indicted and punished as a principal offender. Aiders and abettors punishable as principals.

24. Nothing in the twenty-second section shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious. Twenty-second section restricted.

25. All fines levied and received under the twenty-second section, shall, in case of the destruction of private property, or of injury thereto, be respectively paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in such case, or where any public right or property is concerned, such fines shall be paid into the county treasury. Appropriation of fines under twenty-second section.

## CHAP. 167.

## CHAPTER 167.

## OF THE DEFINITION OF TERMS IN THIS TITLE.

- Terms in this title defined. 1. The terms following, wheresoever occurring throughout this title, shall be understood as hereinafter defined, unless it be otherwise specially provided, or there be something in the subject or context repugnant thereto.
- Officer. 2. The term "officer" shall be deemed to signify any person invested with authority to execute and legally bound to execute any public duties.
- Woman. 3. The term "woman" shall be deemed to signify any female.
- Grievous bodily harm. 3. The term "grievous bodily harm" shall be deemed to signify any bodily harm from which danger to life may reasonably be apprehended, or whereby any limb, member, organ of sense or mental faculty is permanently disabled, weakened or impaired—the mutilation of any part of the body, whereby permanent disfigurement is caused, the fracture or dislocation of any bone, or any bodily harm whereby the person to whom it is caused is, during the space of twenty days at the least, in bodily pain, diseased, or unable to follow his ordinary calling or pursuits.
- Writing. 5. The term "writing" shall be deemed to include any material on which any words or figures, at length or abridged, are written, printed or otherwise expressed, or any map or plan is described.
- Testamentary. 6. The term "testamentary instrument" shall be deemed to include any will, codicil, or other testamentary writing or appointment, as well during the life of the testator whose testamentary disposition it purports to be as after his death, whether the same shall relate to real or personal estate, or to both.
- Moveable thing. 7. The term "moveable thing" as used in defining theft and other offences concerning property, shall be deemed to include money, valuable securities, muniments of title, written instruments of justice, testamentary instruments, and all domestic animals; also the bodies, and all parts of the bodies of dead animals, and all other chattels personal.
- Valuable security. 8. The term "valuable security" shall be deemed to include any unsatisfied debenture and bond, bill, note, warrant, order, or other security for money, or for the payment of money of this or any other country—any instrument for the delivery or transfer of any chattel personal—any tally, order or other security entitling or evidencing title to any share or interest in any public stock or fund of any state or country, or in any fund of any body corporate, company or society, or to any deposit in any savings' bank, and any

other writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument evidencing payment of money, or the delivery of any chattel personal; and every such valuable security shall, where value is material, be deemed to be of value equal to that of such unsatisfied money, chattel personal, share, interest or deposit for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling to or evidencing title to which such valuable security shall be applicable, or to that of such money or chattel personal, the payment or delivery of which shall be evidenced by such valuable security. CHAP. 167.

9. The term "muniment of title" shall be deemed to include any writing as before defined in section five of this chapter, which is or shall be evidence of the title, or of any part of the title to any real estate, or to any interest therein; and any entry of the acknowledgement or registry of any such writing, or of any judgment or recognizance of or concerning any real estate, or any interest therein under the provisions of any act of the assembly of this province. Muniment of title.

10. The term "cattle" shall be deemed to include any horse, mule, ass, sheep, pig or goat, whatsoever be the age or sex of the animal; and also every bull, cow, heifer, calf or ox. Cattle.

11. When the term "cattle" is used, or any particular animal is mentioned by name, the term shall, unless it be otherwise provided, be deemed to signify living cattle, or a living animal so named. Same subject.

12. When the term "night time" is used, that time shall be deemed to commence at nine o'clock in the evening of each day, and to conclude at six o'clock in the morning of the next succeeding day; and when the term "day time" is used, that time shall be deemed to commence at six o'clock in the morning and to conclude at nine o'clock in the evening of each day. Night time and day time.

13. The terms "imprisoned" and "imprisonment," where-soever they occur in this title, shall be respectively deemed and taken to mean and include imprisonment in the provincial penitentiary. Imprisoned and imprisonment.

14. When the having any matter or thing in the custody or possession of any person is in any chapter of this title expressed to be an offence, if any person shall have any such matter or thing in his personal custody or possession, or shall knowingly or wilfully have any such matter or thing in any dwelling house or other building, lodging, apartment, field, or other place open or enclosed, whether belonging to, or occupied by himself or not, and whether such matter or thing shall be so had for his own use or benefit, or for that of another, any such person shall be deemed and taken to have such matter or thing in his custody or possession within the meaning of such chapter, and where What shall be deemed custody or possession under this title

**CHAP. 168.** there are two or more persons, any one or more shall, with the knowledge and consent of the rest, have any such matter or thing in his or their custody or possession, it shall be deemed and taken to be in the custody or possession of all such persons.

Terms to mean as defined, unless where otherwise particularly provided.

15. All terms defined in any part of this title shall, when they occur in any other part thereof, be understood in their defined sense, unless it be otherwise provided, or the chapter, for the purposes of which any such term or terms is or are defined, be particularly specified.

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## TITLE XLII.

### OF THE ADMINISTRATION OF CRIMINAL JUSTICE.

#### CHAPTER 168.

##### OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE SUPREME COURT.

Arrest how made for offences under this title; proceedings thereunder.

1. Any person found committing any offence against property punishable by virtue of this title, may be immediately apprehended without a warrant, by a peace officer, or by the owner of the property, or by his servant, or by any person authorized by him, and forthwith taken before some neighboring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a justice of the peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, with respect to which any such offence shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods, and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to carry before a justice of the peace, the party offering the same, together with such property, to be dealt with according to law.

Imprisonment in cases of a misdemeanor to be disallowed, except on special cause shown.

2. When any person shall be prosecuted for a misdemeanor either by information or indictment, and shall appear in person or by attorney in term time to answer thereunto, such defendant on being charged therewith shall not be permitted to imparl to a following term, but shall plead or

demur thereto; and the trial, where a trial shall be required, may thereupon proceed in the same term in the time and in manner in such behalf respectively as may be directed or required by the order, rules or practice of the court; and in default of any such plea or demurrer, judgment for want of a plea may be entered against the defendant in default; but the court on sufficient cause shewn, may allow further time for such defendant to plead or demur to such indictment or information, or to go to trial thereon. CHAP. 168.

3. If any person being arraigned upon an indictment for treason or felony shall plead thereto a plea of "not guilty," he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court shall in the usual manner order a jury for the trial of such person accordingly. "Not guilty" pleaded in treason or felony, its effect.

4. If any person being arraigned upon, or charged with any indictment or information for treason, felony or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case the court, if it shall so think fit, may order the proper officer to enter the plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same. Proceedings where a party arraigned shall stand mute.

5. If any person indicted for treason or felony shall challenge peremptorily a greater number of men returned to be of the jury than thirty-five in cases of treason and twenty in cases of felony, every peremptory challenge beyond the number so allowed in the said cases respectively shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made. Challenges in cases of treason and felony, to what extent allowed, and when void.

6. No plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment. Plea of attainder, when not allowed.

7. No indictment or information shall be abated by reason of any dilatory plea of misnomer, or want of addition, or of wrong addition of the party offering such plea, if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended, according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no dilatory plea had been pleaded. Indictment, &c. not to abate by reason of pleas of misnomer, want of addition, &c., proceedings in such case.

8. Where any person shall be indicted for treason or felony, the jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony. On indictments for treason or felony the jury shall not be charged to inquire respecting lands, &c.

9. All persons tried for felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel. Counsel to be allowed prisoners in trials for felony.

10. All persons who shall be held to bail, or committed to prison, for any offence, shall be entitled to require and Prisoners, &c., when entitled to copies of

**CHAP. 168.** have on demand from the persons who shall have the lawful custody thereof, and who are hereby required to deliver the same, copies of the examination of the witnesses respectively, upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three half-pence for each folio; but if such demand shall not be made before the day appointed for the commencement of the term or sitting of the court, at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the court shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; and it shall be competent for the court, if it shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

Persons under trial entitled to inspect all depositions, &c.

11. All persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward, all depositions, or copies thereof, which have been taken against them, and returned in the court before which such trial shall be had.

Benefit of clergy abolished; counts may be joined as heretofore.

12. Benefit of clergy, with respect of persons convicted of felony, shall be abolished; but nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this chapter.

Accessories before the fact, who shall be deemed; how, when and where they may be tried.

13. If any person shall counsel, procure or command any other person to commit any felony, the person so counselling, procuring or commanding, shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be inquired of, tried, determined and punished in the same manner as if such offence had been committed at the same place as the principal felony; and in case the principal felony shall have been committed within the body of any county, and the offence of counselling, procuring or commanding shall have been committed within the body of any other county, the last mentioned offence may be inquired of, tried and punished in either of such counties; but no person who shall be once duly tried for any such offence, whether as an accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

14. If any person shall become an accessory after the fact to any felony, the offence of such person may be inquired of, tried, determined and punished, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony; and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory, shall have been committed within the body of any other county, the offence of such accessory may be inquired of, tried, determined and punished, in either of such counties; but no person who shall be once duly tried for any offence of being an accessory, shall be again indicted or tried for the same offence.

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Accessories after the fact: how, when, and where tried.

15. If any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof notwithstanding such principal felon shall die or be pardoned, or otherwise delivered before the attainder; and every such accessory shall suffer the same punishment, if he be in anywise convicted, as he should have suffered if the principal had been attainted.

Accessories may be convicted and punished although the principals have not been attainted.

16. If any person shall become an accessory before the fact to any felony, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon.

Accessories before the fact in cases of felony may be tried and punished as a principal.

17. In any indictment for any felony not punishable with death, committed after a previous conviction for a felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony.

Charge how set out on a second indictment for felony, not punishable with death.

18. In every case of bigamy the offence may be dealt with, inquired of, tried and punished in the county where the offender shall be apprehended or be in custody as if the offence had been actually committed in that county.

Bigamy, in what county it may be tried, and punishment therefor inflicted.

19. In every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen: and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or receiving it knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving it

Indictment for feloniously stealing or receiving property; how drawn; proceedings thereunder.

## CHAP. 168.

knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen.

Felonies and misdemeanors committed near the boundaries of counties, or began in one and completed in another county, where tried and punished.

20. When any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of one mile from any such boundary or boundaries, or in any place or places with respect to which it may be uncertain within which of two or more counties such place or places may be situate, or when any felony or misdemeanor shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein.

Felonies, &c., when committed in a coach, &c., passing through more than one county or upon a highway, &c., dividing counties, where may be tried and punished.

21. When any felony or misdemeanor shall be committed on any person, or on or in respect of any property, or in or upon any coach, waggon, cart, sleigh, sled or other carriage whatever employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel or boat whatsoever employed on any voyage or journey upon any navigable river, canal, or inland navigation, or on or in respect of any property in, upon, or forming part of any raft whatever passing in or upon any such navigable river, canal or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any county through any part whereof such coach, waggon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre or other part of any such river, canal or navigation shall constitute the boundary of any two counties, such felony or misdemeanor may be dealt with, inquired of, tried and punished in either of the said counties through, or adjoining to, or by the boundary of any part whereof such coach, waggon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county.

Forgery, altering deeds, &c., where tried and punished.

22. If any person shall commit any offence of forging, or altering any deed, writing, instrument, or other matter whatsoever, or of offering, uttering, disposing of, or putting off, any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged or altered, with intent to defraud any person whomsoever, the offence of every such offender may be dealt with, indicted, tried and punished, and laid and charged to have been committed in any county



or place in which he shall be apprehended or in custody, as if his offence had been actually committed in that county or place; and every principal in the second degree, and every accessory, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried. CHAP. 168.

23. In all informations or indictments for forgery, or in any manner altering any deed, writing, instrument, or other matter whatever, it shall not be necessary to set forth any copy or facsimile thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same. Forged or altered instruments, how described in indictments.

24. In any indictment or information for any felony or misdemeanor, whenever it shall be necessary to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever in any indictment or information for any felony or misdemeanor, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid, and this provision shall be construed to extend to all joint stock companies and trustees. Ownership of joint property how described

25. In any indictment or information for any felony or misdemeanor committed in, upon, or with respect to any bridge, court house, jail, house of correction, infirmary, asylum, or other building erected or maintained, in whole or in part, at the public expense, in any county, or on or with respect to any goods or chattels whatsoever, provided for at the public expense in any county, to be used for building, altering, or repairing any such bridge, court-house, or other building, or to be used in or with any such bridge, court-house, or other building, it shall be sufficient to state any such property, real or personal, to belong to the inhabitants of such county, and it shall not be necessary to specify the names of any such inhabitants. Ownership of public property, how described.

26. In any indictment or information for any felony or misdemeanor committed on or with respect to any buildings, or any goods or chattels, or any other property, real or personal, in the occupation, or under the superintendance, charge or management of any public officer or commissioner, or any county or township officer or commissioner, it shall be sufficient to state any such property to belong to the officer or commissioner in whose occupation, or under whose superintendance, charge or management such property shall be, and it shall not be necessary to specify the names of any such officers or commissioners. Ownership of property in possession of public officers, how described

## CHAP. 168.

Embezzlements how may be laid, charged, and provide.

27. In prosecutions for embezzlement it shall be lawful to charge in the indictment, and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master, within the space of six months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Injuries feloniously inflicted within the province, and a party shall die thereof out of the province, or vice versa, where tried and punished.

28. Where any person has been feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this province, shall die of such stroke, poisoning or hurt, in this province, or being feloniously stricken, poisoned or otherwise hurt, in any place in this province, shall die of such stroke, poisoning or hurt, upon the sea, or at any place out of this province, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, and punished, in the county or place in this province in which such death, stroke, poisoning or hurt, shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place.

Indictment for robbery, where person is guilty of assault.

29. If, upon the trial of any person upon an indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery but that he did commit an assault with intent to rob, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment, for assaulting, with intent to rob; and no person so tried shall be liable to be afterwards prosecuted for the robbery, or for an assault with intent to commit the robbery for which he was so tried.

30. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor, shall be liable to be afterwards prosecuted for felony on the same facts unless the court before which such trial may be had, shall think fit in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony; in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

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Persons tried for misdemeanor or and found guilty of felony not to be acquitted.

31. If upon the trial of any person indicted for the embezzlement as a clerk, servant or person employed for the purpose or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or larceny as a clerk, servant or person employed for the purpose, or in the capacity of a clerk or servant, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if, upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Persons on trial for embezzlement not to be acquitted if guilty of larceny.

32. If upon the trial of two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the persons as shall be proved to have received any part of such property.

Indictment for receiving stolen goods.

33. Any number of accessories or receivers may be charged with substantive felonies in the same indictment notwithstanding the principal felon shall not be included in such indictment, or shall not be in custody or amenable to justice.

Indictment against accessories.

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Several counts of distinct acts of stealing in an indictment.

34. It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them.

Proceedings on trial where property stolen at different times.

35. If upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than six months elapsed between the first and the last of such takings; and in either of such last mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings.

Description of money, bank notes, &c., in indictments.

36. In every indictment, in which it shall be necessary to make any averment as to any money, or any treasury or bank note, it shall be sufficient to describe such money or note simply as money, without specifying any particular coin or note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any treasury or bank note, although the particular species of coin of which such amount was composed, or the particular nature of the note shall not be proved; and in cases of embezzlement, and obtaining money or treasury or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any note, or any portion of the value thereof, although such piece of coin or note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly.

Punishment for an assault with intent to commit a felony.

37. When any person shall be convicted of an assault with intent to commit a felony, the court may sentence the offender to be committed to jail or imprisoned in the penitentiary for a term not exceeding two years, as it shall direct; and may also, if it shall so think fit, require him to find sureties for keeping the peace.

No allegation of property necessary in prosecutions for offences under sec. 12, chap. 164.

38. In an indictment for any offence within the meaning of the twelfth section of chapter one hundred and sixty-four, it shall not be necessary to allege that the article in respect of which the offence is committed is the property of any person, or that the same is of any value.

What allegations sufficient for prosecution of offences under chap. 164.

39. In an indictment for any offence within the meaning of the thirteenth section of chapter one hundred and sixty-four, it shall be sufficient to allege the thing stolen to be evidence of the title or part of the title of the persons or

some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value. CHAP. 168.

40. If any person shall receive any chattel, money, valuable security or other property, the stealing, taking, obtaining or converting whereof is an indictable misdemeanor, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall be punished in the manner provided for the person guilty of the principal misdemeanor.

Receivers of stolen goods, &c., how indicted, convicted, and punished.

41. If any person shall receive any chattel, money, valuable security or other property, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county or place where he actually received such property.

Receivers of stolen goods, &c., where may be indicted, convicted, and punished.

42. If any person guilty of any felony or misdemeanor, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security or other property, shall be indicted for any such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner, or his representative; and the court before whom any such person shall be convicted, shall have power to order the restitution thereof, and the court may in like manner, if it shall see fit, order the restitution of property in cases where the party so indicted as aforesaid may not be convicted, if the jury shall declare that the property is in the prosecutor, and had been stolen, or taken or obtained from him by felony or misdemeanor aforesaid,—provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide* paid or discharged by some person, or body corporate, liable to the payment thereof, or being a negotiable instrument, shall have been *bona fide* taken, or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without

Stolen goods, when and to whom to be restored.

CHAP. 168. any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted as aforesaid, in such case the court shall not award or order the restitution of such security.

Certificate of conviction for previous felony how given and proved: punishment for false certificates.

43. In any indictment for a felony, not punishable with death, committed after a previous conviction of felony, a certificate containing the substance and effect, omitting the formal part of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer or deputy, shall utter a false certificate of any indictment and conviction for a previous felony, or if any person other than such clerk, officer or deputy, shall sign any such certificate as such clerk, officer or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony.

Quaker or Moravian may make solemn affirmation; form given.

44. Any quaker or moravian who shall be required to give evidence in any criminal case, shall instead of taking an oath in the usual form, be permitted to take his solemn affirmation or declaration in the words following, that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm;" which said affirmation or declaration shall be of the same force and effect in all courts of justice and other places, where by law an oath is required, as if such quaker or moravian had taken an oath in the usual form.

Judgments not to be stayed or reversed for want of formal averments unnecessary to be proved, or other slight imperfections.

45. No judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record" or of the words with force and arms, or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of the words "against the form of the statutes," or vice versa, nor for that any person or persons mentioned in the indictment or information is or are designated by name of office or other descriptive appellation instead of his, her, or their proper name or names, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an

impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence. CHAP. 168.

46. No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer, and that where the offence charged has been created by any statute or subjected to a greater degree of punishment by any statute, the indictment or information shall, after verdict, be held sufficient to warrant the punishment prescribed by the statute, if it describe the offence in the words of the statute. Same subject.

47. Wherever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the court may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which punishments could be otherwise awarded. Sentence for felony where partly imprisoned or already sentenced for another crime.

48. Judgment or sentence shall not be given and awarded against any person convicted of any offence, that such person do suffer the punishment of being set in the pillory, or of having his ears nailed thereto or cut off, or do suffer the punishment of being whipped. Punishment of the pillory and whipping abolished.

49. Every person convicted of murder shall, after judgment, be confined in some place within the prison apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the jailer or his servants, and the chaplain and surgeon of the prison, shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy: provided always, that in case the court or judge shall think fit to respite the execution of such convict, such court or judge may, by a license in writing, relax during the period of the respite, all or any of the Persons convicted of murder, how to be kept and fed after judgment.

CHAP. 168. restraints or regulations hereinbefore directed to be observed.

Pardons to felons and their effect as to subsequent convictions

50. Where the queen's majesty shall be pleased to extend her royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under her royal sign manual countersigned by one of her principal secretaries of state, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall be so granted: provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction, for any felony committed after the granting of such pardon.

Punishment endured for felonies not punishable with death to have the effect of pardons.

51. Where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted, provided always that nothing herein contained nor the enduring of such punishment shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

Judges may direct prosecutions against persons appearing to be guilty of perjury in evidence, &c, given before them.

52. It shall and may be lawful for the judge or judges of any of the superior courts of common law or equity, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person, so directed to be prosecuted, until the next term of the supreme court for the county within which such perjury was committed, unless such person shall enter into a recognizance with one or more surety or sureties conditioned for the appearance of such person, at such next term of the supreme court, and that he will then surrender and take his trial, and not depart the court without leave, and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted.



53. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly, taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, was taken, made, signed, or subscribed, without setting forth the bill; answer, information, indictment, declaration or any part of any proceeding either in law or in equity, and without setting forth the commission or authority of the court or person before whom such offence was committed.

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In indictments for perjury, the substance of the offence may be set forth.

54. In every indictment for subornation of perjury, or for corrupt bargaining or contracting, with any person to commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient whenever such perjury or other offence shall have been actually committed, to allege the offence of the person who actually committed such perjury, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person, the said offence, in manner and form aforesaid to do and commit; and wherever such perjury or other offence shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

Indictments for subornation of perjury.

55. On any prosecution by indictment or information against any person for doing any deed, writing, instrument or other matter, or for uttering or disposing of any deed, writing, instrument or other matter knowing the same to be forged; or for being accessory to any such offence if the same be a felony, or for aiding, abetting or counselling the commission of any such offence if the same be a misdemeanor, no person shall be deemed to be an incompetent witness in support of any such prosecution by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter.

Competency of witnesses on trial for forgery, &c.

56. It shall be lawful for the court, if it shall see fit, to cause the indictment or information for any offence when any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting

Amendment of indictments, informations, &c.

CHAP. 168. forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars by some officer of the court, and after such amendment the trial shall proceed in the same manner in all respects both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no variance had appeared.

On an indictment for child-murder the jury may find the mother guilty of endeavoring to conceal the birth.

57. If on the trial of any woman for murder of her child she shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find in case it shall so appear in evidence, that she was delivered of a child, and that she did by secret burying or otherwise disposing of the dead body of such child endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

Proceedings where sentence of death is commuted by exercise of the prerogative.

58. Whenever the governor shall exercise the prerogative of the crown, by extending mercy to any offender convicted of any crime punishable with death, upon condition of imprisonment with hard labor in the provincial penitentiary either for the term of life or for any number of years, and shall make the same known to the court before which such offender hath been or shall be convicted, such court shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment of such offender under and upon the terms and conditions therein expressed; and in case such intencion of mercy shall be made known to any judge of the supreme court, such judge shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment, with hard labor, of such offender in the provincial penitentiary, in the same manner as if such intencion of mercy had been signified to any such court as aforesaid; and such allowance and order shall be considered an allowance and order made by the court before which such offender was convicted, and shall be entered on the records of the same court by the proper officer thereof, and shall be as effectual to all intents and purposes and have the same consequences as if such allowance and order had been made by the same court during the continuance thereof; and every such order, whether made by the court or any judge of the supreme court as aforesaid, shall subject the offender to be conveyed to the provincial penitentiary and there kept to hard labor during the term of imprisonment mentioned therein, in like manner as if such imprisonment had been imposed as a punishment by the sentence of any court by authority of law.

Charges of conveying prisoners to jail to be defrayed by themselves when of ability;

59. Any person that shall hereafter be committed to jail for any offence or misdemeanor, having means or ability thereunto, shall bear his own reasonable charges for conveying or sending him to jail, and the charges also of such

as shall be appointed to guard him and shall so guard him thither; and if any person shall refuse to defray such charges, then a justice of the peace, by writing under his hand and seal, shall give warrant to any constable to sell so much of the goods and chattels of the said person so to be committed as by the discretion of the said justice shall satisfy and pay the charge of his conveying and sending to the jail, the appraisement to be made by two inhabitants of the town or place where such goods or chattels shall be, and the overplus of the money which shall be made thereof to be delivered to the party to whom such goods shall belong.

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proceedings to recover the same.

60. If the person so to be committed shall not have or be known to have any goods or chattels which may be sold for such purpose, then the said justice, on application by any constable or other officer who so conveyed such person to jail, shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee, by warrant under his hand and seal order the treasurer of the county to pay the same, which the treasurer is hereby required to do as soon as he receives such warrant, and any sum so paid shall be allowed in his accounts.

Constable's expenses, how allowed and paid.

61. When any poor person shall appear on recognizance in any court, to give evidence against another accused of any felony or misdemeanor, it shall be in the power of the court, if it shall think fit, at the prayer and on the oath of such person, and on consideration of his circumstances, in open court to order the treasurer of the county in which the offence shall have been committed, to pay unto such person such sum of money as to the court shall seem reasonable for his time, trouble and expense; which order the proper officer shall make out and deliver unto such person upon being paid for the same the sum of six-pence and no more; and such treasurer is hereby required, upon delivery of such order, forthwith to pay to such person or other person authorized to receive the same, such sum of money as aforesaid, and shall be allowed the same in his accounts.

Poor witnesses, how may be paid their expenses.

62. In case such treasurer shall not have any money in his hands to pay the sum so ordered for conveying poor prisoners to jail, or for the attendance of witnesses, the same shall be paid out of the public treasury of the province.

Where county treasurers have no funds the expenses mentioned in the two last sections to be paid out of the public treasury.

63. All witnesses on criminal trials attending on the part of the prosecution, shall be entitled, under the sanction of the court or a judge, to receive from the county treasurer the same fees for their travel and actual attendance as witnesses in civil suits are now entitled to receive; such fees to be paid on the certificate of the attorney or solicitor general, queen's counsel, or officer appointed by a judge to conduct such prosecution, that such witnesses

Fees on criminal trials for witnesses on the part of the prosecution.

CHAP. 168. duly attended under subpoena and gave evidence at such trials, and are entitled to receive therefor the amount therein stated, and such subpoenas shall be produced on taxation.

County treasurer to pay the amount.

64. The county treasurer is required, upon the delivery of the prothonotary's certificate, to pay the amount of the fees mentioned therein.

In the absence of the attorney and solicitor general the court shall appoint officers to prosecute on behalf of the crown; costs, how taxed.

65. Whenever, in the absence of the attorney general and solicitor general, it shall appear to the court expedient and necessary to appoint any one counsel, to conduct and manage on behalf of her majesty, the proceedings and trial of any criminal prosecutions depending before the court, it shall be lawful for the court to direct any queen's counsel present therein, or, in his absence, to appoint from among the barristers attending thereat, some one competent person to conduct and manage such proceedings, and to tax and allow to him for his services such reasonable fees as he would have been entitled to for the like services as the attorney of any party in a civil action, together with such reasonable counsel fees, not exceeding for any one prosecution the sum of five pounds, as the court shall deem adequate to the services performed on such prosecution. But the costs to be taxed shall in no case exceed seven pounds and ten shillings for all writings and papers and for all counsel fees therein; and on the allowance and taxation the court shall not allow for any but necessary services and expenses, and notice of the time of taxation shall be given to the clerk of the crown or his deputy.

Costs taxed, how paid.

66. Upon the production of a certificate under the seal of the court of the amount so taxed and allowed, it shall be lawful for the governor to grant his warrant therefor upon the receiver general, who shall pay the amount.

Party convicted, if of ability, may be adjudged to pay the expenses of prosecution.

67. In all cases where the party prosecuted shall be convicted and be found by the court of ability to pay the expenses of prosecution, to be taxed under this chapter, the court shall adjudge such defendant to pay the expenses of prosecution, and shall issue execution accordingly, and the amount shall be paid to the receiver general.

Certificate of clerk of crown sufficient for indictment for perjury.

68. A certificate containing the substance and effect only, omitting the formal part of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where such indictment was tried, or by the deputy of such clerk or other officer, for which certificate no fee shall be demanded or paid, shall upon the trial of any indictment for perjury or subornation of perjury be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

69. It shall not be necessary to state any venue in the body of any indictment, but the county named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment, provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment.

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No venue to be stated.

70. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or vice versa, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name—nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly—nor for stating the offence to have been committed on a day subsequent to the finding of the indictment—nor on an impossible day or on a day that never happened—nor for want of a proper or perfect venue—nor for want of a proper or formal conclusion—nor for want of or imperfection in the addition of any defendant—nor for want of the statement of the value or price of any matter or thing—or the amount of damage, injury, or spoil, in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

When indictment not to be held insufficient

71. Every objection to any indictment for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objections shall be taken, for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Objections to indictment when to be taken.

72. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him: provided, that if the court, upon the application of the person so indicted, or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms, as to bail or otherwise, as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend, to prosecute and give evidence at such subsequent session, without entering into any fresh recognizance for that purpose.

No person prosecuted shall postpone the trial of indictment against him.

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Pleas of autre-  
fois convict.

Definition of  
the word "in-  
dictment."

Criminals may  
be sentenced  
during sittings  
at Halifax.

Amendment of  
indictments.

73. In any plea of autre-fois convict, or autre-fois acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.

74. In the construction of this chapter the word "indictment" shall be understood to include information, inquisition, and presentment, as well as indictment, and also any plea, replication, or other pleading, and any record; and the terms "finding of the indictment," shall be understood to include the taking of an inquisition, the exhibiting of an information, and the making a presentment; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

75. A judge of the supreme court may sentence convicted criminals, on any day of the sittings at Halifax, as well as in term time.

76. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof, in the name of any county, division, city, borough, town corporate, parish, township or place mentioned or described in any such indictment, or in the name or description of any person stated or alleged to be the owner of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person therein stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both, or in the other description whatsoever of any person therein named or described, or in the name or description of any thing therein named or described, or in the ownership of any property therein named or described, it shall be lawful for the court before which such trial shall be had, if it shall consider such variance not material to the merits of the case and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury or otherwise as such court shall think reasonable; and after any such amendment the trial shall proceed whenever the same shall be proceeded with in the same manner in all respects and with the same consequences with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had occurred; and in all such cases the order for the amendment shall either be endorsed on the indictment or en-

grossed and filed with the indictment and records of the court; provided that in all such cases where the trial shall be so postponed, it shall be lawful for the court to respite the recognizances of the prosecutor and witnesses, and of the defendant and his sureties, if any, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively; and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in the same manner as if they had been originally bound by their recognizances to appear and prosecute, or give evidence at the time and place to which such trial shall have been so postponed;—provided also, that where any such trial shall be to be had before another jury, the crown and the defendant shall respectively be entitled to the same challenges as they were entitled to before the first jury was sworn.

77. Every verdict and judgment which shall be given after the making of any amendment under the provisions of the last section, shall be of the same force and effect in all respects, as if the indictment had originally been in the same form in which it was after such amendment was made.

Verdicts where amendments made.

78. If it shall become necessary at any time, for any purpose, to draw up a formal record in any case where any amendment shall have been made under the provisions of section seventy-six, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

Records in cases of amendment.

79. In any indictment for murder or manslaughter it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused; but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased.

Indictment for murder and manslaughter.

80. In any indictment for forging, uttering, stealing, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof, or otherwise describing the same or the value thereof.

Indictment for forgery, &c.

81. In any indictment for engraving or making the whole or any part of any instrument or thing, or for using or having the unlawful possession of any plate or other material, upon which the whole or any part of any instrument or thing shall have been engraved or made, or for

Indictment for engraving, &c.

**CHAP. 168.** having the unlawful possession of any paper upon which the whole or any part of any instrument or thing shall have been made or printed, it shall be sufficient to describe such instrument or thing by any name or designation by which the same may be usually known, without setting out any copy or *fac simile* of the whole or any part of such instrument or thing.

Description of instrument in indictment.

82. In all other cases, wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out a copy or *fac simile* of the whole or any part thereof.

Allegations necessary in the indictment.

83. It shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to defraud any particular person, and on the trial of any of the offences in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

Verdict of jury in cases where offences are not completed.

84. If on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is not guilty of the felony or misdemeanor charged but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in such indictment; and no person tried as lastly mentioned shall be liable to be afterwards prosecuted for committing or attempting to commit the felony or misdemeanor for which he was so tried.

Governor may order special sittings for trial of felonies.

85. The governor in council may order a special sitting of the supreme court in any of the counties of this province, for the trial of prisoners charged with felonies.

Particular day to be appointed—notice of

86. Such order shall appoint a particular day when the court shall be held, and shall be published in the royal gazette for at least three weeks before the day appointed for opening the court—immediately upon the order being made, the clerk of the executive council shall transmit copies thereof to the chief justice, and to the prothonotary and sheriff of the county wherein the special sitting of the court is to be held.



87. Upon the receipt of the order by the prothonotary, he shall issue venires for the grand and petit jury to meet at the time specified therein, and the sheriff shall immediately summon such juries, with constables and other officers whose attendance is required at such sitting, who shall be liable to the same penalties for non-attendance as when summoned to attend the ordinary terms or sittings of the court.

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Summoning jurors and necessary officers.

88. Any judge of the supreme court may preside at such special sitting, and all trials, judgments, and proceedings thereat shall have the same force and effect as if such trials, judgments, and proceedings had taken place at one of the ordinary terms or sittings of the court.

Presiding judge — proceedings to have same force as if had at ordinary terms or sittings.

89. The presiding judge may adjourn the sittings from day to day as occasion may require.

Judge may adjourn sittings.

90. The provisions of the last five sections may be extended to the trial of criminals charged with misdemeanor.

Extended to trials for misdemeanors.

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## CHAPTER 169.

### OF THE DUTIES OF JUSTICES OF THE PEACE IN CRIMINAL MATTERS.

1. In all cases where a charge or complaint (A.) shall be made before a justice that a person has committed or is suspected of having committed any indictable offence within the limits of the jurisdiction of such justice, or that a person has committed or is suspected to have committed an indictable offence out of the jurisdiction of such justice and is residing or is suspected to be within the limits of the jurisdiction of such justice, if the person so charged or complained against shall not then be in custody, such justice shall issue his warrant (B.) to apprehend such person, to be dealt with as therein and thereby directed; but instead of a warrant in the first instance, the justice, if he think fit, may issue his summons (C.) requiring such person to appear at a certain time and place therein mentioned to answer to the charge preferred. If after being served with such summons in manner hereinafter prescribed, such person shall fail to appear in obedience thereto, such justice, or any other justice of the county, may issue his warrant (D.) to apprehend such person to be dealt with as in such last mentioned warrant directed. But nothing in this section contained shall prevent a justice from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in the summons for the appearance of the accused party.

Persons guilty or suspected of an indictable offence, how apprehended.

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When the offence is committed on the high seas or on land beyond the seas.

2. In all cases of indictable offences committed on the high seas, or in any creek, harbor, haven or other place in which the admiralty of England have or claim to have jurisdiction, and in all cases of offences committed on land beyond the seas for which an indictment may be preferred within this province, a justice for any county in which any person charged with having committed or being suspected to have committed any such offence shall be or be suspected to be, may issue his warrant (E.) to apprehend such person, to be dealt with as therein and thereby directed.

When an indictment is found and the party hath not appeared, manner of proceeding.

3. Where an indictment shall be found by the grand jury against a person then at large, whether such person shall have been bound by recognizance to appear to answer the same or not, the person acting as clerk of the court where the indictment shall be found shall at any time afterwards after the end of the same term or sittings, upon application of the prosecutor or any person on his behalf, and on payment of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.), which being produced to a justice of the county where the offence shall in such indictment be alleged to have been committed or in which the person indicted shall be suspected to be, such justice shall issue his warrant (G.) to apprehend the party so indicted; upon the party being apprehended and being proved to be on oath the same person charged in the indictment, the justice before whom he is brought shall without further inquiry or examination, by warrant (H.) commit him for trial or admit him to bail as hereinafter mentioned. If the person indicted shall then be confined in jail for any other offence, then the justice, upon it being proved before him upon oath that the person indicted and the person so confined are the same person, shall issue his warrant (I.) directed to the keeper of such jail, commanding him to detain such person in custody until discharged therefrom by due course of law.

Warrants may issue on a Sunday.

4. A justice of the peace may grant or issue any such warrant or any search warrant on a Sunday as well as on any other day.

When a warrant shall issue for an indictable offence, information must be in writing under oath; otherwise when a summons shall issue, variances objectionable.

5. Whenever a charge or complaint for any indictable offence shall be made before a justice, if it be intended to issue a warrant in the first instance against the party charged, an information and complaint thereof (A.) in writing on the oath of the informant or of some witness in that behalf shall be laid before the justice; but where it is intended to issue a summons in the first instance, the information and complaint need not be in writing, nor upon oath, but may be by parol, and no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part

of the prosecution before the justice who shall take the examination of the witnesses in that behalf. CHAP. 169.

6. Upon such information and complaint being so laid, the justice receiving the same may, if he shall think fit, issue his summons or warrant respectively, as hereinbefore directed, to cause the party charged to appear as therein and thereby directed; and every such summons (C.) shall be directed to the party so charged in and by such information and shall shortly state the matter of such information, and shall require the party to whom directed, to appear at a certain time and place therein mentioned, to answer to such charge; and such summons shall be served by a constable or other peace officer upon the person to whom directed by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or usual place of abode; and the person who shall have served the same, shall attend at the time and place and before the justice in the summons mentioned, if necessary, to verify such service upon oath; and if the party summoned shall not appear as required, the justice shall issue his warrant (D.) to compel his attendance as therein and thereby prescribed. If any variance or alleged defect in substance or in form between the summons or warrant, and the evidence adduced in support thereof shall appear to the justice to be such that the party charged has been deceived or misled thereby, such justice, at the request of the party charged, may adjourn the hearing of the case to a future day, and remand such party or admit him to bail as herein-after mentioned.

Proceedings by summons and warrant; variances may be cause for adjournment.

7. It shall not be necessary to make a warrant (B.) returnable at any particular time, but it may remain in force until it shall be executed. It may be executed by apprehending the offender at any place within which the justice issuing it hath jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place and within seven miles of the border of such first mentioned county, without having such warrant backed as hereinafter mentioned. No objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice who shall take the examination of the witnesses in that behalf as hereinafter mentioned; but if it appear to the justice that the party charged has been deceived or misled by any such variance, at his request the justice may adjourn the hearing of the case to a future day, and in the meantime remand the party charged or admit him to bail as hereinafter mentioned.

Warrant need not be returnable at any particular time, how and where executed on fresh pursuit; of variances.

8. If the person against whom any such warrant shall be issued shall not be found within the jurisdiction of the justice issuing the same, or if he shall be or be suspected

Warrants how endorsed; proceedings thereon when the prosecutor or

CHAP. 169. to be in any place within this province, a justice of the county or place where such person shall be or be suspected to be, upon proof made upon oath of the handwriting of the justice issuing the warrant, may make an endorsement (K.) upon such warrant, signed with his name, authorizing the execution thereof as thereon endorsed, and the carrying of the person therein named, when apprehended, before the justice who first issued the warrant or some other justice of that county or place where the offence mentioned in the warrant appears therein to have been committed; but if the prosecutor or any of the witnesses for the prosecution shall then be in the county or place where the person shall have been so apprehended, the party apprehending him, if so directed by the justice backing the warrant, shall convey him before such last mentioned justice or some other justice of the same county or place, and thereupon such justice may take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice with an offence alleged to have been committed in another county or place than that in which such person has been apprehended.

Evidence for the prosecution, how secured.

9. If it shall be made to appear to any justice by oath that any person within his jurisdiction is likely to give material evidence for the prosecution and will not voluntarily appear for the purpose of being examined, such justice shall issue his summons (L. 1) to such person, requiring him to appear at the time and place therein mentioned to testify as therein directed. If without sufficient excuse he neglect to appear at such time and place after proof upon oath of such summons having been served upon such person either personally or by leaving the same with some person for him at his last or usual place of abode, the justice before whom such person should have appeared may issue a warrant, (L. 2) which warrant, if necessary, may be backed as other warrants. If such justice shall be satisfied by evidence upon oath that it is probable that such person will not attend to give evidence unless compelled, then, instead of a summons, he may issue a warrant (L. 3) in the first instance, which, if necessary, may be backed as above. If on the appearance of such person, either in obedience to the summons or under the warrant, he shall refuse to be examined upon oath concerning the premises, or shall refuse to take such oath, or having taken such oath shall refuse to answer questions concerning the premises without just excuse for such refusal, the justice by warrant (L. 4) may commit such party so refusing to jail, for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer.

Proceedings before a justice where a party

10. Whenever any person shall appear or be brought before a justice charged with an indictable offence, whether

committed within the province or upon the high seas, or on land beyond the sea, whether such person appear voluntarily or be in custody for the same or another offence, the justice, before he commit the accused person for trial or admit him to bail, shall in the presence of the accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall also be signed by the justices taking the same. Before any such witness shall be examined the justice shall administer the usual oath, and if upon the trial of the person accused it shall be proved upon oath that any person whose deposition shall have been so taken is dead, or so ill as to be unable to travel, and also that such deposition was taken in the presence of the person accused, and that he, or his counsel or attorney, had full opportunity of cross examining the witness, then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it may be read in evidence on such prosecution without further proof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

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is charged with an indictable offence; depositions how taken and when to be used on trial.

11. After the examination of all the witnesses on the part of the prosecution shall have been completed, the justice shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or to the like effect:

Depositions to be read; party to be cautioned and questioned; his answers, if any to be reduced to writing, and may be used on trial

“Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence against you upon your trial.”

And whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.) and read over to him, and shall be signed by the justice and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned, and upon the trial of the accused party the same may if necessary be given in evidence against him without further proof thereof, unless it shall be proved that the justice purporting to sign the same did not in fact sign the same; but before such accused person shall make any statement, the justice shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favor and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evi-

CHAP. 169. dence against him upon his trial. The prosecutor may, however, give in evidence any admission or confession or other statement of the person accused or charged, made at any time which by law would be admissable evidence against such person.

Room where examinations are taken not necessarily an open court.

12. The room or building in which the justice shall take such examinations or statements as above shall not be deemed an open court for that purpose, and the justice at his discretion may order that no person shall have access to, or be or remain in such room or building without the consent of such justice, if it appear to him that the ends of justice will be best answered by so doing.

Recognizance of prosecutor and witness how taken; papers how and where returned.

13. The justice before whom any witness shall be examined may bind by recognizance (O. 1) the prosecutor and every such witness to appear at the next term or sitting of the court in which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which recognizance shall specify the profession, mystery, art, or trade of every such person recognized, together with his christian and surname, and the place of his residence, and being duly acknowledged it shall be subscribed by the justice before whom taken, and a notice (O. 2) thereof shall at the same time be given to the person bound thereby: and the several recognizances so taken, together with the written information, if any, the depositions, the statement of the accused, and the recognoizance of bail, if any in such case, shall be delivered by the justice to the proper officer of the court in which the trial is to be had, before or at the opening of the court on the first day of term, or at such other time as the presiding judge thereof shall order. If such witness shall refuse to enter into such recognizance the justice by his warrant (P. 1) may commit him to jail in the county where the trial is to be had until after the trial of the accused party, unless in the meantime he shall enter into such recognizance before some justice of the county where such jail is situate. If afterwards for want of sufficient evidence in that behalf, or other cause, the justice before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he shall have been charged, the same or any other justice of the county by his order (P. 2) may direct the keeper of such jail to discharge him from further custody, and such keeper shall forthwith discharge him accordingly.

Party may be remanded for further examinations: orders therefor; recognizance for his appearance, and how forfeited.

14. If from the absence of witnesses, or for any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of any witnesses for any time, the justice before whom the accused party shall appear or be brought may by his warrant (Q. 1) from time to time remand the party accused for

such time as to him shall seem reasonable, not to exceed eight clear days, to jail or other place of security in the county. If the remand be for a period not exceeding three clear days the order therefor may be made verbally to a constable or person to be named by the justice in that behalf, with directions to bring up the accused party again at a time and place appointed for continuing the examination. But any justice may order the accused party to be brought before him or any other justice for the same county or place before the expiration of the time for which the accused shall be so remanded, and the jailer or officer in charge shall obey such order, and any justice before whom the accused shall so appear or be brought, may discharge him upon his entering into a recognizance (Q. 2, 3) with or without a security or securities, at the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of such examination. If he shall not appear, then such justice or any other justice present, upon certifying (Q. 4) upon the back of the recognizance, may transmit such recognizance to the prothonotary of the court of the county within which such recognizance shall have been taken, to be proceeded upon as other recognizances, and such certificate shall be *prima facie* evidence of the non-appearance of such accused party.

15. Whenever a person shall appear or be brought before a justice charged with an offence alleged to have been committed within a county or place wherein such justice shall not have jurisdiction, he shall examine such witnesses and receive such proof of the charge as shall be brought before him, and if in the opinion of such justice the evidence adduced shall be sufficient proof of the charge made against the accused party, the justice shall thereupon commit him to jail, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor if he have appeared before him, and the witnesses by recognizance accordingly as hereinbefore mentioned. But if the evidence shall not in the opinion of such justice be sufficient to put the accused party upon his trial for the offence with which he is charged the justice shall bind over such witnesses as he shall have examined by recognizance to give evidence as hereinbefore mentioned, and he shall issue his warrant (R. 1) in that behalf, and at the same time deliver the information and complaint, and the depositions and recognizances so taken by him, to the constable having the execution of the last named warrant, to be by him delivered to the justice before whom he shall take the accused, and the depositions and recognizances shall have the same validity and effect as if taken before such last mentioned justice; and they, with such depositions and recognizances as the last mentioned justice shall take in the matter, shall be

Proceedings when the offence charged has been committed in a county where the justice has not jurisdiction.

CHAP. 169. transmitted to the court where the accused party is to be tried, if he shall be committed for trial or admitted to bail.

Proceedings before the justice having jurisdiction in the place where the offence was committed; expenses of officer, how taxed and defrayed.

16. If the accused party shall be taken before the justice last mentioned by virtue of such last named warrant, the person so conveying him shall be entitled to be paid his costs and expenses for that service, and upon his producing the accused party before such justice, and delivering him into custody as such justice shall direct, and delivering his warrant, the information, if any, depositions and recognizances, and proving by oath the hand-writing of the justice subscribing the same, such justice to whom the accused party is produced shall forthwith ascertain the sum which ought to be paid for such service, and for his reasonable costs and expenses of returning, and shall thereupon make an order (R. 2) in favor of such person upon the county treasurer for payment thereof, and the treasurer upon production of the order shall pay the same in the usual course. If the justice last named shall not think the evidence against such accused party sufficient to put him upon trial he shall discharge him without bail, and the recognizances taken by such first named justice shall be void.

Justices may take bail for all offences, treason and felony punishable with death excepted.

17. Where a person shall appear or be brought before a justice, charged with any offence other than treason, or a felony punishable with death, he may in his discretion admit such person to bail upon such surety or sureties as he shall think sufficient to ensure the appearance of the person accused at the time and place for the trial of such offence, and he shall take the recognizance (S. 1), and notice thereof (S. 2) shall be given.

Parties, how admitted to bail after commitment.

18. In all cases where a person charged with an indictable offence shall be committed for trial, the justice who shall have signed the warrant for his commitment, may at any time before trial, at his discretion, admit such accused party to bail as above, if he shall be of opinion that such accused party ought to be admitted to bail, he shall in such case certify (S. 3) on the back of the warrant of commitment his consent to such party being bailed, stating the amount of bail which ought to be required, and thereupon any justice attending, or being at the jail where such accused party shall be in custody, on production of such certificate shall admit him to bail in manner above mentioned, or if it shall be inconvenient for the surety or sureties in such case to attend at such jail to join with the accused person in the recognizance the committing justice may make a duplicate of such certificate (S. 4), and upon the same being produced to any justice for the same county or place he may take the recognizance of the surety or sureties in conformity therewith.

Same subject.

19. Upon such recognizances being transmitted to the keeper of such jail, and produced, together with the cer-



tificate on the warrant of commitment, to a justice attending or being at the jail, he may thereupon take the recognizance of the accused party and order him to be discharged out of custody as to that commitment as hereinafter mentioned.

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Recognizance how transmitted to the proper officer; treason and felonies punishable with death hailable only by the supreme court or a judge.

20. In all cases where an accused party in custody shall be admitted to bail by a justice other than the committing justice, such justice so admitting him to bail shall forthwith transmit the recognizance of bail to the proper officer or to the committing justice, to be transmitted by him, with the examinations, to such officer. But no justice of the peace shall admit any person to bail for treason, or a felony punishable with death, nor shall such person be admitted to bail except by the supreme court or by one of the justices thereof.

21. In all cases where a justice shall admit to bail a person who shall then be in prison charged with the offence for which he shall be so admitted to bail, such justice shall send to or cause to be lodged with the jailer a warrant of deliverance (S. 5), and thereupon such jailer shall obey the same.

Warrants of deliverance to issue where a party bailed from prison.

22. When all the evidence offered upon the part of the prosecution shall have been heard, if the justice shall be of opinion that it is insufficient to put the accused party upon his trial for any indictable offence, he shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if he shall think the evidence sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of the accused party, then the justice shall by his warrant (T 1.) commit him to jail until he shall be delivered by due course of law, or admit him to bail as hereinbefore mentioned.

If the evidence is insufficient the party shall be discharged, otherwise he shall be committed or admitted to bail.

23. The constable or person to whom the warrant of commitment shall be directed shall convey the person accused to jail as therein directed, and there deliver him together with such warrant to the jailer, who shall thereupon give a receipt (T 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was so delivered into custody.

Jailer to give the constable a receipt for the prisoner, setting forth his state and condition.

24. The several forms in the schedule to this chapter contained, or forms to the same effect, shall be valid.

Forms furnished in the schedule annexed.

#### SCHEDULE.

(A.)

#### *Information and complaint for an indictable offence.*

County of \_\_\_\_\_, }  
to wit: }

The information and complaint of C. D., of \_\_\_\_\_, [yeoman,] taken this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, before the undersigned, who saith that [ &c., stating the offence.]

CHAP. 169. Sworn before me, the day and year first above mentioned, at \_\_\_\_\_.

J. S., J. P.

(B.)

*Warrant to apprehend a person charged with an indictable offence.*

To any constable or peace officer of the county of \_\_\_\_\_:

Whereas A. B., of \_\_\_\_\_, [*laborer,*] hath this day been charged upon oath before the undersigned, for that he on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, did [*&c. stating shortly the offence:*] These are therefore to command you forthwith to apprehend the said A. B., and to bring him before me or some other of her majesty's justices of the peace in and for the said county, to answer such charge, and to be further dealt with according to law.

Given under my hand and seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, A. D. 18—.

J. S., J. P. (seal.)

(C.)

*Summons to a person charged with an indictable offence.*

To A. B., of \_\_\_\_\_, [*laborer:*]

Whereas you have this day been charged before the undersigned for that you on the \_\_\_\_\_ day of \_\_\_\_\_, [*&c. stating the nature of the offence:*] These are therefore to command you to appear before me on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_, or before some other justice or justices of the peace as may then be there, to answer such charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

J. S. J. P. (seal.)

(D.)

*Warrant where the summons is disobeyed.*

To any constable or other peace officer of the county of \_\_\_\_\_:

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, last past, A. B., of \_\_\_\_\_, [*laborer,*] was charged before the undersigned for that [*&c. as in summons:*] and whereas I then issued my summons to the said A. B., commanding him to appear before me on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_, or before such other justice or justices of the peace as might then be there, to answer such a charge,

and to be further dealt with according to law ; and whereas CHAP. 169.  
 the said A. B. hath neglected to appear at the time and  
 place appointed by such summons, although it hath now  
 been proved to me upon oath that such summons has  
 been duly served upon the said A. B. : These are therefore  
 to command you forthwith to apprehend the said A. B. and  
 bring him before me or some other justice of the peace, to  
 answer such charge, and to be further dealt with according  
 to law. Herein fail not.

Given under my hand and seal, at ———, this ———  
 day of ———, A. D. 18—.

J. S., J. P. (seal.)

(E.)

*Warrant to apprehend a person charged with an indictable  
 offence committed on the high seas or abroad.*

*For offences committed on the high seas the warrant may  
 be the same as in ordinary cases, but describing the offence to  
 have been committed "on the high seas, out of the body of  
 any county of this province, and within the jurisdiction of  
 the admiralty of England."*

*For offences committed abroad for which the parties may  
 be indicted in this province, the warrant also may be the same  
 as in ordinary cases, but describing the offence to have been  
 committed "on land out of the province, to wit: at———,  
 in the kingdom of———, or "at———, in the island of  
 ——, in the West Indies," or "at———, in the East In-  
 dies," or as the case may be.*

(F.)

*Certificate of indictment being found.*

I hereby certify that at a court of oyer and terminer and  
 general jail delivery, [or a court of general sessions of the  
 peace,] holden in and for the county of———, at———,  
 in———, a bill of indictment was found by the grand jury  
 against A. B. therein described as A. B. late of———,  
 [laborer,] for that he [ &c., stating shortly the offence,] and  
 that the said A. B. hath not appeared and pleaded to the said  
 indictment.

Dated this ——— day of———, 18—.

J. D.

Clerk [or deputy clerk] of the  
 crown, [or clerk of the peace.]

(G.)

*Warrant to apprehend a person indicted.*

To any constable or peace officer of the county of———:  
 Whereas it hath been duly certified by J. D., clerk [or

CHAP. 169. *deputy clerk*] of the crown [*or clerk of the peace*] that [*&c. stating the certificate.*] These are therefore to command you forthwith to apprehend the said A. B. and to bring him before me or some other justice or justices of the peace, to be dealt with according to law.

Given under my hand and seal, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

J. S. J. P. (seal.)

(H.)

*Warrant of commitment of a person indicted.*

To any constable of \_\_\_\_\_, and to the keeper of the jail of the county of \_\_\_\_\_:

Whereas, by warrant under my hand and seal, dated the \_\_\_\_\_ day of \_\_\_\_\_, after reciting that it had been certified by J. D. [*&c. as in the certificate.*] I commanded the constables and all other peace officers of the said county, forthwith to apprehend the said A. B. and bring him before me the undersigned, or before some other justice or justices of the peace, to be dealt with according to law: and whereas the said A. B. has been apprehended under such warrant, and being now brought before me, it is proved upon oath that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you the said constable, forthwith to take and safely convey the said A. B. to the jail at \_\_\_\_\_, in the said county, and there to deliver him to the keeper thereof, together with this warrant; and I hereby command you the said keeper to receive the said A. B. into your custody in the said jail, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

J. S., J. P. (seal.)

(I.)

*Warrant to detain a person indicted who is already in custody for another offence.*

To the keeper of the jail at \_\_\_\_\_, in the county of \_\_\_\_\_:

Whereas it hath been duly certified by J. D., clerk [*or deputy clerk*] of the crown [*or clerk of peace*] for the county of \_\_\_\_\_, [*&c. stating the certificate.*] And whereas I am informed that the said A. B. is in your custody in the said jail at \_\_\_\_\_, aforesaid, charged with some offence or other matter; and it being now proved upon oath before me that the said A. B. so indicted and the said A. B. so in your custody, are one and the same person: these are therefore to command you to detain the said A. B. in your custody in the jail aforesaid, until by writ of habeas corpus he

shall be removed therefrom for the purpose of being tried CHAP. 169.  
upon the said indictment, or until he shall be otherwise removed or discharged out of your custody by due course of law.

Given under my hand and seal, at ———, this ——— day  
of ———, A. D. 18—.

J. S., J. P. (seal.)

(K.)

*Endorsement in backing a warrant.*

County of ———, }  
to wit:            }

Whereas proof upon oath hath this day been made before me, a justice of the peace for the said county of ———, that the name of J. S. to the within warrant subscribed, is the handwriting of the justice of the peace within mentioned, I do therefore hereby authorize W. T., who bringeth to me this warrant and all other persons to whom the same was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said county to execute the same within the last mentioned county\*, and to bring the said A. B., if apprehended within the same county, before me, or before some other justice or justices of the peace of the same county, to be dealt with according to law.

Given under my hand this ——— day of ———, 18.—

J. S., J. P.

\* The words following the asterisk are to be used only where the justice backing the warrant shall think fit.

(L. 1.)

*Summons to a witness.*

To E. F. of ———, [laborer :]

Whereas information hath been laid before the undersigned that A. B. [*&c. as in the summons or warrant against the accused*] and it hath been made to appear to me upon oath that you are likely to give material evidence for the prosecution, these are therefore to require you to appear before me on the ——— day of ——— next at ——— o'clock in the ——— noon, at ———, or before such other justice or justices of the peace as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, at ——— this ——— day  
of ———, A. D. 18—.

J. S., J. P. (seal.)

## (L. 2.)

*Warrant where a witness has not obeyed a summons.*

To any constable or other peace officer of the county of \_\_\_\_\_:

Whereas information having been laid before the undersigned that A. B. [*&c. as in summons*] and it having been made to appear to me upon oath that E. F. of \_\_\_\_\_, [*laborer*] was likely to give material evidence for the prosecution, I did issue my summons to the said E. F., requiring him to appear before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, or before such other justice or justices of the peace as might then be there, to testify what he should know respecting the said charge against the said A. B.; and whereas proof hath this day been made before me, upon oath, of such summons having been served upon the said E. F., and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: these are therefore to command you to bring the said E. F. before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, or before such other justice or justices of the peace as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

J. S., J. P. (seal.)

## (L. 3.)

*Warrant for a witness in the first instance.*

To any constable or other peace officer of the county of \_\_\_\_\_

Whereas information hath been laid before the undersigned that [*&c. as in summons*], and it having been made to appear to me upon oath that E. F. of \_\_\_\_\_ [*laborer*] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do; these are therefore to command you to bring the said E. F. before me at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, or before such other justice or justices of the peace as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

J. S., J. P. (seal.)

(L. 4.)

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*Warrant of commitment of a witness for refusing to be sworn  
or to give evidence.*

To any constable of ———, and to the keeper of the jail  
at ———, in the county of ———:

Whereas A. B. was lately charged before the undersigned for that [*&c. as in the summons*] and it having been made to appear to me upon oath that E. F. of ——— was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F. requiring him to appear before me at ——— on the ——— day of ———, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge; and the said E. F. now appearing before me [*or being brought before me by virtue of a warrant in that behalf to testify as aforesaid*] and being required to make oath or affirmation as a witness in that behalf hath now refused so to do [*or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him*] without offering any just excuse for such his refusal: these are therefore to command you the said constable to take the said E. F. and him safely convey to the jail at ———, in the county aforesaid, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you the said keeper of the said jail to receive the said E. F. into your custody in the said jail, and him there safely keep for the space of ——— days, for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, at ———, this ——— day  
of ——— A. D. 18—.

J. S., J. P. (seal.)

(M.)

*Depositions of witnesses.*

County of ———, }  
to wit: }

The examination of C. D. of ——— [*farmer,*] and E. F. of ———, [*laborer,*] taken on oath this ——— day of ———, A. D. 18—, at ———, in the county aforesaid, before the undersigned, in the presence and hearing of A. B., who is charged this day before me, for that he the said A. B. at ———, on the ——— day of ———, [*&c. describing the offence as in a warrant of commitment.*]

This deponent, C. D. on his oath saith as follows: [*&c. stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it.*]

CHAP. 169. And this deponent, E. F. upon his oath, saith as follows:  
[&c.]

The above depositions of C. D. and E. F. were taken and sworn before me at ———, on the day and year first above mentioned.

J. S., J. P.

(N.)

*Statement of the accused.*

A. B. stands charged before the undersigned, one of her majesty's justices of the peace for the county of ———, this ——— day of ——— A. D. 18—, for that he the said A. B. at ———, on the ——— day of ———, [*&c. as in the caption of the depositions*;] and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F. being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to say any thing unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial," whereupon the said A. B. saith as follows:

[*Here state whatever the prisoner may say, and in his very words, as nearly as possible,—get him to sign it if he will.*]

A. B.

Taken before me at ———, on the day and year first above mentioned.

J. S., J. P.

(O. 1.)

*Recognizance to prosecute or give evidence.*

County of ———, }  
to wit: }

Be it remembered that on the ——— day of ———, A. D. 18—, C. D. of ———. in the said county, [*farmer*] personally came before me, a justice of the peace for the said county, and acknowledged himself to owe to our sovereign lady the queen, the sum of ——— pounds, to be levied of his goods and lands, to the use of our said lady the queen, her heirs and successors, if he the said C. D. shall fail in the condition hereof.

Taken and acknowledged the day and year first above mentioned, at ———, before me.

J. S., J. P.

*Condition to prosecute.*

The condition of this recognizance is such, that whereas one A. B. was this day charged before me, J. S., a justice of



the peace for that [*&c., as in the caption of the depositions.*] CHAP. 169.  
 If, therefore, he the said C. D. shall appear at the next court of oyer and terminer or general jail delivery, [*or at the next court of general sessions of the peace,*] to be holden in and for the county of ———, \* and there prefer, or cause to be preferred, a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void.

*Condition to prosecute and give evidence.*

*Same as in the last form to the asterisk (\*), and then thus:* “and there prefer, or cause to be preferred, a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment and give evidence thereon, as well to the jurors who shall then inquire of the said offence as also to those who shall pass upon the trial of the said A. B., then the said recognizance to be void.”

*Condition to give evidence.*

*Same as in the last form but one to the asterisk (\*), and then thus:* “and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said A. B., then the said recognizance to be void.”

(O. 2.)

*Notice of the recognizance to be given to the prosecutor and his witnesses.*

County of ——— }  
 to wit: }

Take notice that you, C. D. of ———, are bound to appear at the next court [*where the offence is to be tried*] to be holden at ———, in the said county, and then and there [*prosecute and*] give evidence against A. B.; and unless you then appear there and [*prosecute and*] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you. Dated this — day of ———, A. D. 18—.

J. S., J. P.

(P. 1)

*Commitment of a witness for refusing to enter into the recognizance.*

To any constable of ———, and to the keeper of the jail at ———, in the county of ———:

Whereas A. B. was lately charged before the undersigned for that [*&c., as in the summons to the witness,*] and it having

CHAP. 169. been made to appear to me upon oath that E. F. of —— was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F., requiring him to appear before me at ——, on the —— day of ——, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge made against the said A. B.; and the said E. F. now appearing before me [*or being brought before me by virtue of a warrant in that behalf*] to testify as aforesaid, hath been now examined by me touching the premises, but being required by me to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: these are therefore to command you, the said constable, to take the said E. F., and him safely convey to the said jail at ——, in the county aforesaid, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the keeper of the said jail, to receive the said E. F. into your custody in the said jail, and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he shall duly enter into such recognizance as aforesaid in the sum of —— pounds, before some justice of the peace for the said county, conditioned in the usual form to appear at the next court of (*oyer and terminer or general jail delivery, or general sessions of the peace*) to be holden in and for the county of ——, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal at ——, this —— day of ——, A. D. 18—.

J. S., J. P. (seal.)

P. 2.)

*Subsequent order to discharge the witness.*

To the keeper of the jail at ——, in the county of ——:

Whereas by my order dated the —— day of ——, A. D. 18—, reciting that A. B. was lately charged before me for a certain offence therein mentioned, and that E. F. having appeared before me and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore committed the said E. F. to your custody, and required you to safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B. he has not been committed or holden to bail for the said offence, but on the

contrary thereof has since been discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody as to the said commitment, and suffer him to go at large. CHAP. 169.

Given under my hand and seal, at ———, this ——— day  
of ———, A. D. 18—.

J. S., J. P. (seal.)

(Q. 1.)

*Warrant remanding a prisoner.*

To any constable of ——— and to the keeper of the jail at  
———, in the county of ———:

Whereas A. B. was this day charged before the undersigned for that [*&c. as in the warrant to apprehend,*] and it appears to me to be necessary to remand the said A. B.: These are therefore to command you the said constable forthwith to convey the said A. B. to the jail at ———, in the said county, and there to deliver him to the keeper thereof, together with this warrant; and I hereby command you the said keeper to receive the said A. B. into your custody in the said jail, and there safely keep him until the ——— day of ———, instant, when I hereby command you to have him at ———, at ——— o'clock in the ———noon of the same day before me or before such other justice or justices of the peace as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, at ———, this ——— day  
of ———, A. D. 18—

J. S., J. P. (seal.)

(Q. 2.)

*Recognizance of bail instead of remand on an adjournment of examination.*

County of ———, }  
to wit: }

Be it remembered that on the ——— day of ———, A. D. 18—, A. B. of ———, [*laborer,*] L. M. of ———, [*grocer,*] and N. O. of ———, [*butcher,*] personally came before me and severally acknowledged themselves to owe to our lady the queen the several sums following, that is to say: the said A. B. the sum of ———, and the said L. M. and N. O. the sum of ——— each, to be levied of their several goods and lands respectively to the use of our said lady the queen, her heirs and successors, if he the said A. B. fail in the condition hereof.

CHAP. 169. Taken and acknowledged the day and year first above mentioned, at ———, before me.

J. S., J. P.

*Condition.*

The condition of this recognizance is such, that whereas the said A. B. was this day, [*or on the — day of — last past,*] charged before me for that [*&c. as in the warrant;*] and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the — day of — A. D. 18—, if therefore the said A. B. shall appear before me on the said — day of —, at — o'clock in the — noon, or before such other justice or justices of the peace as may then be there, to answer further to the said charge, and to be further dealt with according to law, then the said recognizance to be void.

(Q. 3.)

*Notice of recognizance to be given to the accused and his sureties.*

Take notice that you A. B., of ———, are bound in the sum of ———, and your sureties L. M. and N. O., in the sum of ——— each, that you A. B. appear before me J. S., at ———, on ——— the — day of ——— A. D., 18—, at ——— o'clock in the — noon, or before such other justice or justices of the peace as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizances entered into by yourself and sureties, will be forthwith levied on you and them. Dated this — day of ———, A. D. 18—.

J. S., J. P.

(Q. 4.)

*Certificate of non-appearance to be endorsed on the recognizance.*

I hereby certify that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default by reason whereof the within written recognizance is forfeited.

J. S., J. P.

(R. 1.)

*Warrant to convey the accused before a justice of the county, &c. in which the offence was committed.*

To any constable or peace officer of the county of ———:  
Whereas A. B. of ———, [*laborer,*] hath this day been charged before the undersigned, for that [*&c. as in the war-*

*warrant to apprehend:]* and whereas I have taken the deposition of C. D., a witness examined by me in this behalf; but inasmuch as I am informed that the principal witnesses to prove the said offence against the said A. B. reside in the county of ———, where the said offence is alleged to have been committed: these are therefore to command you forthwith to take and convey the said A. B. to the said county of ———, and there carry him before some justice or justices of the peace in and for that county, and near where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and I hereby further command you to deliver to the said justice or justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this warrant.

Given under my hand and seal, at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(R. 2.)

*Order for payment of the constable's expenses.*

To R. W., esquire, treasurer of the county of ——— :

Whereas W. T., constable of ———, in the county of ———, hath, in obedience to a certain warrant of J. S., esquire, a justice of the peace for the county of ———, taken and conveyed one A. B., charged before the said J. S. with having [*&c.*, *stating shortly the offence.*] from ———, in the said county of ———, to ———, in the said county of ———, a distance of ——— miles, and produced the said A. B. before me, S. P., one of her majesty's justices of the peace in and for the county of ———, and delivered him into the custody of ——— by my direction to answer to the said charge, and further to be dealt with according to law; and whereas the said W. T. hath also delivered to me the said warrant together with the information in that behalf, and also the deposition of C. D. in the said warrant mentioned, and hath proved to me upon oath the handwriting of the said J. S. subscribed to the same; and whereas I have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from the said county of ——— to the said county of ——— and taking him before me is the sum of ———, that the reasonable expenses of the said W. T. in returning will amount to the further sum of ———, making together the sum of ——— : These are therefore to order you as such treasurer of the said county of ———, to pay unto the said W. T. the said sum of ———, for which payment this order shall be your sufficient voucher and authority.

CHAP. 169. Given under my hand, this — day of — A.  
D. 18—.

J. S., J. P.

(S 1.)

*Recognizance of bail.*

Be it remembered that on the — day of —, A. D. 18—, A. B. of —, (*laborer,*) L. M. of —, (*grocer,*) and N. O. of —, (*butcher,*) personally came before me, the undersigned, a justice of the peace for the said county, and severally acknowledged themselves to owe to our lady the queen the several sums following, that is to say: the said A. B. the sum of —, and the said L. M. and N. O. the sum of — each, to be levied of their several goods and lands respectively, to the use of our said lady the queen, her heirs and successors, if he the said A. B. fail in the condition hereof.

Taken and acknowledged the day and year first above mentioned, at —, before me.

J. S., J. P.

*Condition in ordinary cases.*

The condition of this recognizance is such, that whereas the said A. B. was this day charged before me, the justice therein mentioned, for that [*&c. as in the warrant;*] if therefore the said A. B. will appear at the next session of oyer and terminer and general jail delivery, [*or court of general sessions of the peace,*] to be holden in and for the county of —, and there surrender himself into the custody of the keeper of the jail there, and plead to such indictment as may be found against him by the grand jury, in respect of such charge, and take his trial upon the same, and not depart the court without leave, then the said recognizance to be void.

(S. 2.)

*Notice of the said recognizance to be given to the accused and his bail.*

Take notice that you A. B. of —, are bound in the sum of —, and your sureties L. M. and N. O. in the sum of — each, that you A. B. appear, [*&c. as in the condition of the recognizance,*] and not depart the said court without leave; and unless you the said A. B. personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this — day of —, A. D. 18—.

J. S., J. P.

(S. 3.)

CHAP. 169.

*Certificate of consent to bail by the committing justice endorsed on the commitment.*

I hereby certify that I consent to the within named A. B. being bailed by recognizance, himself in ——— and [two] sureties in ——— each.

J. S., J. P.

(S. 4.)

*The like on a separate paper.*

Whereas, A. B. was on the ——— day of ———, A. D. 18—, committed by me to the jail at ———, charged with [naming the offence shortly.] I hereby certify that I consent to the said A. B. being bailed by recognizance, himself in ——— and [two] sureties in ——— each. Dated this ——— day of ———, A. D. 18—.

J. S., J. P.

(S. 5.)

*Warrant of deliverance on bail being given for a prisoner already committed.*

To the keeper of the jail at ———, in the county of ———:

Whereas A. B. late of ———, (*laborer,*) hath before me a justice of the peace for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and general jail delivery, (*or court of general sessions of the peace,*) to be holden in and for the county of ———, to answer our sovereign lady the queen, for that (*&c. as in the commitment,*) for which he was taken and committed to your said jail: these are therefore to command you, that if the said A. B. do remain in your custody in such jail for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under my hand and seal at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(T.)

*Warrant of commitment.*

To any constable of ———, and to the keeper of the jail at ———, in the county of ———:

Whereas A. B. was this day charged before me J. S., a justice of the peace in and for the said county, on the oath of C. D. of ———, (*farmer,*) and others, for that (*&c. stating shortly the offence:*) These are therefore to command you the said constable to take the said A. B. and him safely

CHAP. 169. convey to the said jail, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you the keeper of the said jail to receive the said A. B. into your custody in the said jail, and there safely keep him until delivered by due course of law.

Given under my hand and seal, at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(T. 2.)

*Jailor's receipt to the constable for the prisoner, and justice's order thereon for payment of the constable's expenses in executing the commitment.*

I hereby certify that I have received from W. T., constable of ———, the body of A. B., together with a warrant under the hand and seal of J. S., esquire, a justice of the peace for the county of ———, and that the said A. B. was [sober, bruised, or as the case maybe] at the time he was so delivered into my custody.

P. K., jailer.



## APPENDIX.

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AN ACT TO AMEND THE ACT TO ESTABLISH A MORE EQUAL  
AND JUST SYSTEM OF ASSESSMENT, AND THE ACT IN  
AMENDMENT THEREOF.

(Passed the 7th day of May, A. D. 1858.)

Be it enacted by the governor, council, and assembly, as follows :

1. For the present year the assessment for county and poor rates in all the counties of this province, which have not carried out the provisions of the act hereby amended, shall be made and collected under chapters forty-six and eighty-nine of the revised statutes, and in the same manner as if the act hereby amended had not passed ; and in such counties all proceedings of the court of sessions and of county and town officers, already taken in conformity with such chapters, are legalized and confirmed. And the assessment for poor and county rates in the counties in which such assessment shall have been made only partially in conformity with such act, shall, as to the remaining provisions of such act, be made and collected under such clauses of said chapters forty-six and eighty-nine, as it shall be necessary to resort to for the purpose of completing and collecting such assessment. And in the last mentioned counties such assessment, and the proceedings thereunder are legalized and confirmed.

Assessments for county and poor rates to be made under caps. 46 and 89 rev. stat.

In case proceedings under the act hereby amended have been taken.

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AN ACT TO AMEND CHAPTER TWO OF THE REVISED STATUTES,  
" OF EXECUTIVE AND LEGISLATIVE DISABILITIES."

(Passed the 7th day of May, A. D. 1858.)

Be it enacted by the governor, council, and assembly, as follows :

1. In addition to the persons named in the said chapter, the following persons holding the situations hereinafter mentioned within this province, by themselves or deputies, or by others in trust for them or for their benefit, shall be incapable of being appointed to, or holding seats in, the executive council ; or of being appointed to, or of sitting or

Prothonotaries and judges of probate disqualified from becoming members of the legislative or executive council, or house of assembly.

voting in, the legislative council; or of being elected as members of, or sitting or voting in, the house of assembly, that is to say: judges of probate and prothonotaries, and such persons disabled as aforesaid, shall be subject to the operation of the second section of the said chapter.

Operation of  
act when to  
commence, &c.

2. This act shall not come into operation until the dissolution of the present house of assembly shall have been notified by proclamation in the royal gazette, and thereafter no person holding either of the offices mentioned in the preceding section shall continue to hold a seat in the legislative council, unless within one month after the issuing of such proclamation he shall resign such of the above offices as he may then hold, and shall signify his resignation to the provincial secretary; and no person shall thereafter be capable of being nominated or returned at any election of members to serve in general assembly, unless he shall, within twenty days previously to his being nominated a candidate at such election, resign such of the above named offices as he may then hold, and shall signify such resignation to the provincial secretary.

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AN ACT TO ESTABLISH THE BOUNDARY LINE BETWEEN THE  
PROVINCES OF NOVA SCOTIA AND NEW BRUNSWICK.

(Passed the 7th day of May, A. D. 1838.)

Be it enacted by the governor, council, and assembly, as follows:

Line of division<sup>s</sup>

1. The line of division between the provinces of Nova Scotia and New Brunswick, as defined by the commissioners appointed for that purpose under chapter 54 of the acts of 1836, shall be as follows, that is to say: To commence at the mouth of the Messequash River in Cumberland Bay, thence following the several courses of such river to a post near Black Island; thence following the line marked on the plan and survey made by Alexander Munro and now deposited in the crown land office of this province; north fifty-four degrees twenty-five minutes east, two hundred and eighty-eight chains to the northern angle of Trenholm's Island: thence north thirty-seven degrees east, eighty-five chains and eighty-two links to a post; thence north seventy-six degrees east, forty-six chains and twenty links to the head of the lakes at the portage; thence south sixty-five degrees forty-five minutes east, three hundred and ninety-four chains and forty links to Tidnish bridge; thence following the several courses of the Tidnish river along its northern upland bank to the mouth of such river; and thence following the north-westerly channel to the deep waters of the Bay Verte, securing to the province of Nova Scotia the navi-

gable waters and control of the Tidnish river. Provided Provide. that nothing in this act shall in any way affect any suits at law pending for or in respect of lands which have heretofore been deemed within the province of Nova Scotia.

AN ACT TO AMEND THE JURY LAW.

(Passed the 7th day of May, A. D. 1858.)

Be it enacted by the governor, council, and assembly, as follows :

1. All jury panels, whether grand or petit, drawn from any jury lists at the last sittings of the supreme court in the several counties, and all venires and other proceedings connected therewith, are hereby declared legal and valid notwithstanding the lists from which such panels were drawn may have been from any cause whatever informally or illegally made up ; and although the copies of such lists may not have been given to the clerk of the peace and prothonotary or posted as required by law. All jury panels declared legal.

AN ACT TO AUTHORIZE A PROVINCIAL LOAN.

(Passed the 24th day of March, A. D. 1858.)

Be it enacted by the governor, council, and assembly, as follows :

1. The governor may cause a cash account to be opened at one or more of the banks in the city of Halifax, and may borrow and receive from such banks such sums of money as may be necessary for the use of the province, in such amounts as may from time to time be required, under such conditions and upon such terms, stipulations, and agreements for the payment and repayment of such monies, and for the management of such accounts, as by the governor in council may be established, prescribed, and directed, with the consent of the directors of the bank ; or otherwise may borrow and receive from any other persons, corporations, and companies, a sum not to exceed thirty thousand pounds, at the lowest interest at which such loan can be effected. Governor empowered to borrow a sum not exceeding £30,000.

2. The money may be drawn for and received from time to time in such sums and under such restrictions and regulations as may be prescribed by the governor in council, with the consent of the lenders thereof. Money, how drawn.

3. For the repayment of all monies borrowed under this act and for the final payment and discharge of the balance which shall be remaining due and unpaid on the final closing Repayment.

of the accounts with such lender, with interest, the public funds, monies and credits of this province, are hereby pledged and rendered liable.

Accounts, &c.,  
to be laid before  
Committee of  
Legislature.

4. An account of all sums borrowed or repaid under this act, with the date of the loans and repayments respectively, shall be laid before the joint committee of the legislature appointed to examine the public accounts, together with the drafts and vouchers relating to the same, at its next session.

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TO THE

## REVISED STATUTES.

[SECOND SERIES.]

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FINIS.



## ERRATA AND CORRIGENDA.

NOTE.—On receiving this book the owner should note the following corrections at the pages and sections referred to—

- PAGE 10—Section 11 for “thirty sixth” read “thirty-fifth.”
- “ 64 marginal note section 23, for “from” read “for.”
- “ 72 marginal note section 3, insert “brothels.”
- “ 79 schedule B., for “successor” read “successors.”
- “ 79 *ibid.* for “peunds” read “pounds.”
- “ 80 schedule E., for “hiers” read “heirs.”
- “ 80 *ibid.* for “licences” read “licenses,”
- “ 87 section 36, in third line, for “postmaster” read “postmaster general.”
- “ 175 section 29, for “fifteenth” in first line read “nineteenth.”
- “ 181 section 71, for “this act” read “all the sections of this chapter from 69 to 86 inclusive.”
- “ “ section 74, for “second” read “seventieth.”
- “ 183 sections 84 and 85, for “fourteen” in these sections read “fifteen”
- “ “ section 87, for “seventeen” read “eighteen.”
- “ 205 section 46, for “health” read “health,” and for “prevnting” read “preventing.”
- “ 207 section 3, for “bounderies” read “boundaries.”
- “ 212 section 17, for “practical” read “practicable.”
- “ 213 in chapter 60 *passim*, read “superintendent” for “superintendant.”
- “ 269 section 94, for “71 to 87” read “77 to 93.”
- “ 306 section 4, for “transfor” read “transfer.”
- “ 355 section 6, for “good” in first line, read “goods.”
- “ 412 in marginal note to section 12, leave out the word “deputy,” and instead of words “give certified copies of,” substitute the words “transmit original.”
- “ 416 section 25, for “comital” read “committal.”
- “ 418 in section 34 insert a comma between the words “tender payment” and leave out the words “lesser of” and for “lease” read “release.”
- “ 481 section 131, for “succeednig” read “succeeding.”
- “ 496 in first line, for “sett” read “set.”
- “ 502 section 112, after “that” in second line insert “it.”
- “ 505 section 135, strike out the comma between “issue” and “roll” in both 2nd and 4th lines.
- “ 514 section 192, for “induce” read “adduce.”
- “ 514 section 197, for “expressed” read “express” and for “equery” read “enquiry.”
- “ 575 section 2, for “snall” read “shall.”
- “ 581 section 2, for “jurors” read “sessions.”
- “ 583 in section 22, for “seven” “eight” “nine” “ten” read “seventeen” “eighteen” “nineteen” “twenty.”
- “ 586 section 2, leave out the “as” after “well.”
- “ 589 section 11, leave out the word “not” in third line.