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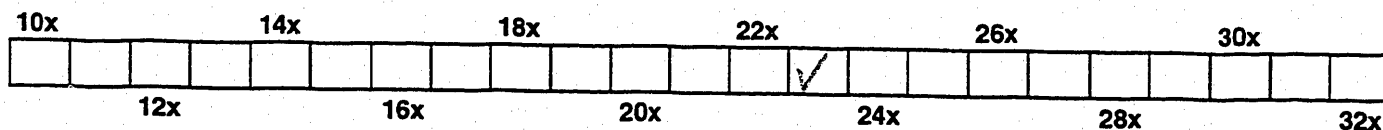
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THE  
CONSOLIDATED STATUTES  
FOR  
UPPER CANADA.

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PROCLAIMED AND PUBLISHED UNDER THE AUTHORITY OF THE ACT  
22 VICT. CAP. 30, A. D. 1859.

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TORONTO:  
PRINTED BY STEWART DERBISHIRE AND GEORGE DESBARATS,  
LAW PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY, FROM THE AMENDED  
ROLL OF THE SAID CONSOLIDATED STATUTES DEPOSITED IN THE OFFICE  
OF THE CLERK OF THE LEGISLATIVE COUNCIL AS DIRECTED BY  
THE SAID ACT, 22 VICT. CAP. 30, 1859.

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1859.



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OF THE

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WHICH APPLY TO

# UPPER CANADA ONLY.

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PROVINCE OF  
CANADA. }

**EDMUND HEAD.**

**VICTORIA**, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come—GREETING :

JNO. A. MACDONALD, } **WHEREAS** in and by a certain Act of the Legis-  
*Atty. Genl.* } tature of the Province of Canada, passed in the  
Twenty-second year of Her Majesty's Reign, and intituled, " An Act respecting  
the Consolidated Statutes for Upper Canada," it is amongst other things enacted  
that " The printed Roll attested as that of the Public General Statutes which  
apply exclusively to Upper Canada, revised, classified and consolidated, under  
the signature of His Excellency the Governor General, that of the Clerk of the  
Legislative Council and that of the Clerk of the Legislative Assembly, and  
deposited in the office of the Clerk of the Legislative Council, shall be held to  
be the original thereof, and to embody the several Acts and parts of Acts men-  
tioned as to be repealed in the Schedule A thereto annexed ; but the marginal  
notes thereon, and the references to former enactments at the foot of the several  
sections thereof, form no part of the said Statutes and shall be held to have  
been inserted for convenience of reference only, and may be omitted or cor-  
rected, and any mis-print or clerical error in the said Roll may also be cor-  
rected,—in the Roll hereinafter mentioned ;" That " The Governor may select  
such Acts and parts of Acts passed during the present Session, as he may deem  
it advisable to incorporate with the said Statutes contained in the said first  
mentioned Roll, and may cause them to be so incorporated therewith, adapting  
their form and language to those of the said Statutes (but without changing  
their effect), inserting them in their proper places in the said Statutes, striking  
out of the latter any enactments repealed by or inconsistent with those so incor-  
porated, altering the numbering of the chapters and sections, if need be, and  
adding to the said Schedule A a list of the Acts and parts of Acts of the present  
Session so incorporated as aforesaid ; and the Governor may direct that all  
sums of money stated in the said Roll in Halifax currency, be converted into  
dollars and cents, in all cases where it can be conveniently done ;" That " So  
soon as the said incorporation of such Acts and parts of Acts with the said  
Statutes, and the said addition to the said Schedule A shall have been com-  
pleted, the Governor may cause a correct printed Roll thereof attested under  
his signature and countersigned by the Provincial Secretary, to be deposited in  
the office of the Clerk of the Legislative Council, which Roll shall be held to  
be the original thereof, and to embody the several Acts and parts of Acts men-  
tioned as repealed in the amended Schedule A thereto annexed ; any marginal  
notes however, and references to former enactments which may appear thereon  
being held to form no part of the said Statutes but to be inserted for convenience of  
reference only ;" That " The Governor in Council, after such deposit of the said  
last mentioned Roll, may, by Proclamation, declare the day on, from and after  
which the same shall come into force and have effect as law by the designation  
of " The Consolidated Statutes for Upper Canada ;" And that " On, from and  
after such day, the same shall accordingly come into force and effect as and by  
the designation of " The Consolidated Statutes for Upper Canada," to all intents  
as though the same were expressly embodied in and enacted by this Act, to  
come into force and have effect on, from and after such day ; and on, from and  
after the same day, all the enactments in the several Acts and parts of Acts in

such amended Schedule A mentioned as repealed shall stand and be repealed,— save only as hereinafter is provided;” AND WHEREAS THE RIGHT HONORABLE SIR EDMUND WALKER HEAD, Baronet, being Governor General of Our said Province of Canada, hath selected such Acts and parts of Acts passed during the Session of the Legislature of the Province of Canada now last past, as he deemed it advisable to incorporate with the Statutes contained in the printed roll attested as that of the Public General Statutes which apply exclusively to Upper Canada, revised, classified and consolidated, under his signature, that of the Clerk of the Legislative Council, and that of the Clerk of the Legislative Assembly, and deposited in the office of the Clerk of the Legislative Council, and hath caused them to be so incorporated therewith, adapting their form and language to those of the said Statutes, (but without changing their effect,) hath caused them to be inserted in their proper places in the said Statutes, striking out of the latter such enactments as are repealed by, or are inconsistent with those so incorporated, and hath caused the numbering of the Chapters and Sections to be altered, as was necessary, and hath caused to be added to the Schedule A a list of the Acts and parts of Acts of the said Session so incorporated as aforesaid, and hath caused all sums of money stated in the said Roll in Halifax currency, to be converted into dollars and cents, in all cases where it could be conveniently done; and so soon as the said incorporation of such Acts and parts of Acts with the said Statutes and the said addition to the said Schedule A was completed, hath caused a correct printed roll thereof, attested under his signature and countersigned by the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Council; AND WHEREAS the provisions contained in the first three sections of the said Act have been thus duly carried into effect; AND WHEREAS Our said Governor, after such deposit of the said last mentioned Roll, by and with the advice and consent of Our Executive Council for the said Province, hath declared the FIFTH day of DECEMBER next as the day on, from and after which the same shall come into force and have effect as law by the designation of “The Consolidated Statutes for Upper Canada;” Now KNOW YE, that by and with the advice of Our Executive Council of the said Province of Canada, We do, by this Our Royal Proclamation, declare that on, from and after the FIFTH day of the month of DECEMBER now next ensuing, the said last mentioned Roll attested under the signature of Our said Governor of Our Province of Canada, countersigned by the Provincial Secretary and deposited in the office of the Clerk of the Legislative Council of the said Province as aforesaid, shall come into force and have effect as law by the designation of “The Consolidated Statutes for Upper Canada,” to all intents as though the same were expressly embodied in and enacted by the said Act. Of all which Our loving subjects of Our said Province, and all others whom these presents may concern, are hereby required to take notice, and to govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province of Canada to be hereunto affixed: WITNESS, Our Right Trusty and Well-Beloved the Right Honorable SIR EDMUND WALKER HEAD, Baronet, One of Our Most Honorable Privy Council, Governor General of British North America, and Captain General and Governor in Chief in and over Our Provinces of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward, and Vice Admiral of the same, &c., &c., &c. At Our Government House, in Our CITY of QUEBEC, in Our said Province of Canada, this NINTH day of NOVEMBER, in the year of Our Lord, one thousand eight hundred and fifty-nine, and in the Twenty-third year of Our Reign.

By Command,

CHARLES ALLEYN, *Secretary.*



THE  
CONSOLIDATED STATUTES  
FOR  
UPPER CANADA.

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TITLE 1.  
PRELIMINARY PROVISIONS.

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CAP. I.

An Act respecting the Consolidated Statutes for Upper Canada.

[Assented to 4th May, 1859.]

**W**HEREAS it has been found expedient to revise, classify and consolidate the Public General Statutes which apply exclusively to Upper Canada, including both those passed by the Legislature of the late Province of Upper Canada, and those passed by the Parliament of Canada;— And whereas such revision, classification and consolidation have been made accordingly; And whereas it is expedient to provide for the incorporation therewith of the Public General Statutes passed during the present Session in so far as the same affect Upper Canada exclusively, and for giving the force of law to the body of Consolidated Statutes to result from such incorporation: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

1. The printed Roll attested as that of the said Statutes so revised, classified and consolidated as aforesaid, under the signature of His Excellency the Governor General, that of the Clerk of the Legislative Council and that of the Clerk of the Legislative Assembly, and deposited in the office of the Clerk of the Legislative Council, shall be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned as to be repealed in the Schedule A thereto annexed; but the marginal notes thereon, and the references to former

Original Roll of Statutes revised, &c., to be certified and deposited.

As to marginal notes, misprints, &c.

former enactments at the foot of the several sections thereof form no part of the said Statutes, and shall be held to have been inserted for convenience of reference only, and may be omitted or corrected, and any mis-print or clerical error in the said Roll may also be corrected,—in the Roll hereinafter mentioned.

Governor may cause the legislation of this Session to be incorporated with the Statutes in the said Roll.

2. The Governor may select such Acts and parts of Acts passed during the present Session, as he may deem it advisable to incorporate with the said Statutes contained in the said first mentioned Roll, and may cause them to be so incorporated therewith, adapting their form and language to those of the said Statutes (but without changing their effect), inserting them in their proper places in the said Statutes, striking out of the latter any enactments repealed by or inconsistent with those so incorporated, altering the numbering of the chapters and sections, if need be, and adding to the said Schedule A a list of the Acts and parts of Acts of the present Session so incorporated as aforesaid; and the Governor may direct that all sums of money stated in the said Roll in Halifax currency, be converted into dollars and cents, in all cases where it can be conveniently done.

Certified Roll including the legislation of the present Session to be deposited and serve as the original thereof.

3. So soon as the said incorporation of such Acts and parts of Acts with the said Statutes, and the said addition to the said Schedule A shall have been completed, the Governor may cause a correct printed Roll thereof attested under his signature and countersigned by the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Council, which Roll shall be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned as repealed in the amended Schedule A thereto annexed; any marginal notes however, and references to former enactments which may appear thereon being held to form no part of the said Statutes but to be inserted for convenience of reference only.

Proclamation for bringing the Consolidated Statutes into force on a certain day.

4. The Governor in Council, after such deposit of the said last mentioned Roll, may, by Proclamation, declare the day on, from and after which the same shall come into force and have effect as law by the designation of "The Consolidated Statutes for Upper Canada."

On and after that day, they shall be in force—and the enactments embodied in them, repealed.

5. On, from and after such day, the same shall accordingly come into force and effect as and by the designation of "The Consolidated Statutes for Upper Canada," to all intents as though the same were expressly embodied in and enacted by this Act, to come into force and have effect on, from and after such day; and on, from and after the same day, all the enactments in the several Acts and parts of Acts in such amended Schedule A mentioned as repealed, shall stand and be repealed, save only as hereinafter is provided.

Exception.

Saving as to transactions, &c., anterior to the repeal.

6. The repeal of the said Acts and parts of Acts shall not revive any Act or provision of law repealed by them; nor shall the said repeal prevent the effect of any saving clause in the said

said Acts and parts of Acts, or the application of any of the said Acts or parts of Acts or of any Act or provision of laws formerly in force,—to any transaction, matter or thing anterior to the said repeal, to which they would otherwise apply.

7. The repeal of the said Acts and parts of Acts shall not affect—

Certain matters anterior to the repeal not to be affected by it,—  
Penalties, &c.

1. Any penalty, forfeiture or liability, civil or criminal, incurred before the time of such repeal, or any proceedings for enforcing the same, had, done, completed or pending at the time of such repeal,—

2. Nor any indictment, information, conviction, sentence or prosecution had, done, completed or pending at the time of such repeal,—

Indictments, &c.

3. Nor any action, suit, judgment, decree, certificate, execution, process, order, rule or any proceeding, matter or thing whatever respecting the same, had, done, made, entered, granted, completed, pending, existing, or in force at the time of such repeal,—

Actions, &c.

4. Nor any act, deed, right, title, interest, grant, assurance, descent, will, registry, contract, lien, charge, matter or thing, had, done, made, acquired, established or existing at the time of such repeal,—

Acts, deeds, rights, &c.

5. Nor any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto, at the time of such repeal,—

Offices, &c.

6. Nor any marriage, certificate or registry thereof, lawfully had, made, granted or existing before or at the time of such repeal,—

Marriages, &c.

7. Nor shall such repeal defeat, disturb, invalidate or prejudicially affect any other matter or thing whatsoever, had, done, completed, existing or pending at the time of such repeal;

Any other matters, &c.

8. But every

But the same to remain valid. &c.

Such penalty, forfeiture and liability, and every such

Indictment, information, conviction, sentence and prosecution, and every such

Action, suit, judgment, decree, certificate, execution, process, order, rule, proceeding, matter or thing, and every such

Act, deed, right, title, interest, grant, assurance, descent, will, registry, contract, lien, charge, matter or thing, and every such

Office, appointment, commission, salary, allowance, security and duty, and every such

Marriage, certificate and registry, and every such other matter and thing, and the force and effect thereof, respectively,

And may be enforced, &c., and under what laws.

May and shall, both at law and in equity, remain and continue as if no such repeal had taken place, and, so far as necessary, may and shall be continued, prosecuted, enforced and proceeded with under the said Consolidated Statutes and other the Statutes and Laws having force in Upper Canada, so far as applicable thereto, and subject to the provisions of the said several Statutes and Laws.

Consolidated Statutes not to be deemed new Laws.

8. The said Consolidated Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said Acts and parts of Acts so repealed, and for which the said Consolidated Statutes are substituted.

How construed if in any case they differ from the repealed Acts, &c.

9. But if upon any point the provisions of the said Consolidated Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then as respects all transactions, matters and things subsequent to the time when the said Consolidated Statutes take effect, the provisions contained in them shall prevail, but as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail.

As to references to repealed Acts, in former Acts, &c.

10. Any reference in any former Act remaining in force, or in any instrument or document, to any Act or enactment so repealed, shall after the Consolidated Statutes take effect, be held, as regards any subsequent transaction, matter or thing, to be a reference to the enactments in the Consolidated Statutes having the same effect as such repealed Act or enactment.

As to effect of insertion of an Act in Schedule A.

11. The insertion of any Act in the said Schedule A shall not be construed as a declaration that such Act or any part of it was or was not in force immediately before the coming into force of the said Consolidated Statutes.

Copies by Queen's Printer to be evidence.

12. Copies of the said Consolidated Statutes printed by the Queen's Printer from the amended Roll so deposited, shall be received as evidence of the said Consolidated Statutes in all Courts and places whatsoever.

As to translation into French.

13. It shall not be necessary that the said Consolidated Statutes for Upper Canada be translated into French; but the Governor may, in his discretion, cause a translation to be made and printed at any time hereafter.



**14.** The laws relating to the distribution of the printed copies of the Statutes shall not apply to the said Consolidated Statutes, but the same shall be distributed in such numbers and to such persons only, as the Governor in Council may direct.

As to distribution of copies.

**15.** This Act shall be printed with and shall form the first Chapter of the said Consolidated Statutes, and shall be subject to the rules of construction prescribed in the second Chapter thereof;—And any Chapter of the said Statutes may be cited and referred to in any Act and proceeding whatever, Civil and Criminal, either by its title as an Act,—or by its number as a Chapter in the copies printed by the Queen's Printer,—or by its short title.

This Act to form part of Consolidated Statutes.

How they may be cited.

## C A P . I I .

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

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

**1.** The foregoing Act, this Act and the following series of Acts shall apply to Upper Canada only and shall constitute the Consolidated Statutes of Upper Canada exclusively ; and in pleading, citing or otherwise referring to them or any of them, it shall be sufficient to use the expression "The Consolidated Statutes for Upper Canada," adding the Chapter when necessary.

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

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

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

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

Meaning of the words "The Governor."

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

Meaning of the word "Proclamation."

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

When Proclamation to be by order in Council.

The words  
"Upper Cana-  
da."

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

The word  
"County."

**7.** The word "County" shall include United Counties.

The words  
"Superior  
Courts."

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

The words  
"Superior  
Courts of Com-  
mon Law."

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

As to Number  
or Gender.

**10.** Words importing the Singular Number or the Masculine Gender shall include more persons, parties or things of the same kind than one, and females as well as males—and the converse. 7 W. 4, c. 14.

The Interpre-  
tation Clause  
of the Municip-  
al Act ap-  
plied.

**11.** The interpretation clause of the Act respecting Municipal Institutions shall, so far as the terms explained are respectively applicable, extend to each of the following Consolidated Statutes which relate to any such Municipalities.

The word  
"Person."

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

The words  
"Month and  
Year."

**13.** The word "Month" shall mean a Calendar month, and the word "Year" a Calendar year.

The words  
"Oath, Affirm-  
ation, &c."

**14.** The word "Oath" shall mean any oath lawfully administered, and shall include a Solemn Affirmation whenever an affirmation may be made instead of an oath, and in like cases the word "Sworn" shall include the word "Affirmed."

Who may ad-  
minister oath,  
&c.

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

The words  
"Justices of  
the Peace."

**16.** The words "Justice of the Peace," shall include Magistrate or two or more Justices of the Peace or Magistrates assembled or acting together; and if any thing be directed to be done by or before a Magistrate or a Justice of the Peace or other Public Officer or Functionary, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is

to be done, and whenever power is given to any person, Officer or Functionary to do or enforce any act or thing, all necessary powers to enable him to do or enforce such act or thing shall be implied.

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

**18.** Unless otherwise provided or there be something in the context or other provisions of the Act indicating a different meaning or calling for a different construction : Unless otherwise provided.

**1.** The law in the last Act, and in the following series of Acts, is to be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent and meaning ; The Acts to be considered as always speaking.

**2.** The word " shall " is to be construed as imperative and the word " may " as permissive ; Force of words " shall " " may."

**3.** Whenever the word " herein " is used in any section of an Act, it shall be understood to relate to the whole Act, and not to that section only. And of " herein."

**19.** The provisions contained in the Interpretation Act of Canada, and not contained in this Act, shall also apply to the Consolidated Statutes for Upper Canada, as if incorporated herein. The Interpretation Act of Canada to apply.

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## T I T L E 2.

### TERRITORIAL DIVISIONS.

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#### C A P . I I I .

An Act respecting the Territorial Division of Upper Canada.

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

#### COUNTIES.

**1.** The Territorial Division of Upper Canada into Counties shall continue as at present, and such Counties respectively shall Existing organization continued.

shall consist of the several Townships hereinafter mentioned as forming such Counties, including in the said Townships and Counties the Cities, Towns and Incorporated Villages situated within the limits of such Townships and Counties respectively, and including in certain of such Counties other lands as hereinafter mentioned. 14, 15 V. c. 5, s. 1,—See 38 G. 3, c. 5,—2 G. 4, c. 3,—12 V. cc. 11, 78, 79.

Glengarry.

## 1.—THE COUNTY OF GLENGARRY,

Shall consist of the Townships of—

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

Stormont.

## 2.—THE COUNTY OF STORMONT,

Shall consist of the Townships of—

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

Prescott.

## 3.—THE COUNTY OF PRESCOTT,

Shall consist of the Townships of—

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

Russell.

## 4.—THE COUNTY OF RUSSELL,

Shall consist of the Townships of—

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

Carleton.

## 5.—THE COUNTY OF CARLETON,

Shall consist of the Townships of—

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

## 6.—THE COUNTY OF RENFREW,

Renfrew.

Shall consist of the Townships of—

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

And the Villages of.... 1. Renfrew,  
2. Pembroke.

## 7.—THE COUNTY OF LANARK,

Lanark.

Shall consist of the Townships of—

- |                   |                       |
|-------------------|-----------------------|
| 1. North Burgess, | 8. Lanark,            |
| 2. Bathurst,      | 9. Lavant,            |
| 3. Beckwith,      | 10. Montague,         |
| 4. Drummond,      | 11. Pakenham,         |
| 5. Dalhousie,     | 12. Ramsay,           |
| 6. Darling,       | 13. Sherbrooke North, |
| 7. Elmsley North, | 14. Sherbrooke South, |

The Town of..... 1. Perth,  
And the Village of..... 1. Smith's Falls.

## 8.—THE COUNTY OF DUNDAS,

Dundas.

Shall consist of the Townships of—

- |              |                   |
|--------------|-------------------|
| 1. Mountain, | 3. Winchester,    |
| 2. Matilda,  | 4. Williamsburgh, |

And the Village of..... 1. Iroquois.

## 9.—THE COUNTY OF GRENVILLE,

Grenville.

Shall consist of the Townships of—

- |                  |                         |
|------------------|-------------------------|
| 1. Augusta,      | 4. Oxford, (on Rideau), |
| 2. Edwardsburgh, | 5. Wolford,             |
| 3. Gower South,  |                         |

The Town of..... 1. Prescott,  
And the Village of..... 1. Kemptville.

## 10.—THE COUNTY OF LEEDS,

Leeds.

Shall consist of the Townships of—

- |             |             |
|-------------|-------------|
| 1. Burgess, | 2. Bastard, |
|-------------|-------------|

- |                           |                               |
|---------------------------|-------------------------------|
| 3. Front of Escott,       | 9. Front of Leeds and Lans-   |
| 4. North Crosby,          | downe,                        |
| 5. South Crosby,          | 10. Rear of Leeds and Lans-   |
| 6. Elmsley,               | downe,                        |
| 7. Elizabethtown,         | 11. Front of Yonge,           |
| 8. Kitley,                | 12. Rear of Yonge and Escott, |
| And the Town of . . . . . | 1. Brockville.                |

Frontenac.

## 11.—THE COUNTY OF FRONTENAC,

Shall consist of the Townships of—

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

Addington.

## 12.—THE COUNTY OF ADDINGTON,

Shall consist of the Townships of—

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

Lennox.

## 13.—THE COUNTY OF LENNOX,

Shall consist of the Townships of—

- |                              |                           |
|------------------------------|---------------------------|
| 1. Adolphustown,             | 3. South Fredericksburgh, |
| 2. North Fredericksburgh,    | 4. Richmond,              |
| And the Village of . . . . . | 1. Napanee.               |

PrinceEdward.

## 14.—THE COUNTY OF PRINCE EDWARD,

Shall consist of the Townships of—

- |                           |                  |
|---------------------------|------------------|
| 1. Athol,                 | 4. Hallowell,    |
| 2. Ameliasburgh,          | 5. Marysburgh,   |
| 3. Hillier,               | 6. Sophiasburgh, |
| And the Town of . . . . . | 1. Picton.       |

Hastings.

## 15.—THE COUNTY OF HASTINGS,

Shall consist of the Townships of—

- |              |                 |
|--------------|-----------------|
| 1. Bangor,   | 5. Elzevir,     |
| 2. Carlow,   | 6. Farady,      |
| 3. Cashel,   | 7. Grimsthorpe, |
| 4. Dunganan, | 8. Herschel,    |

- |                         |                 |
|-------------------------|-----------------|
| 9. Huntingdon,          | 17. Monteagle,  |
| 10. Hungerford,         | 18. Rawdon,     |
| 11. Lake,               | 19. Sidney,     |
| 12. Limerick,           | 20. Tyendinaga, |
| 13. McClure,            | 21. Thurlow,    |
| 14. Madoc,              | 22. Tudor,      |
| 15. Marmora,            | 23. Wicklow,    |
| 16. Mayo,               | 24. Wollaston,  |
| The Town of.....        | 1. Belleville,  |
| And the Village of..... | 1. Trenton.     |

## 16.—THE COUNTY OF NORTHUMBERLAND,

Northumber-  
land.

Shall consist of the Townships of—

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

## 17.—THE COUNTY OF DURHAM,

Durham.

Shall consist of the Townships of—

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

## 18.—THE COUNTY OF PETERBOROUGH,

Peterborough.

Shall consist of the Townships of—

- |                      |                     |
|----------------------|---------------------|
| 1. Asphodel,         | 15. Glamorgan,      |
| 2. Anstruther,       | 16. Guilford,       |
| 3. Belmont,          | 17. Harburn,        |
| 4. Bruton,           | 18. Harcourt,       |
| 5. Burleigh,         | 19. Harvey,         |
| 6. Cardiff,          | 20. Minden,         |
| 7. Cavendish,        | 21. Methuen,        |
| 8. Chandos,          | 22. Monaghan North, |
| 9. Douro,            | 23. Monmouth,       |
| 10. Dudley,          | 24. Otonabee,       |
| 11. Dummer,          | 25. Smith,          |
| 12. Dysart,          | 26. Snowdon,        |
| 13. Ennismore,       | 27. Stanhope,       |
| 14. Galway,          |                     |
| And the Town of..... | 1. Peterborough,    |
| Village.....         | 1. Ashburnham.      |

Victoria.

## 19.—THE COUNTY OF VICTORIA,

Shall consist of the Townships of—

- |             |                  |
|-------------|------------------|
| 1. Anson,   | 11. Laxton,      |
| 2. Bexley,  | 12. Longford,    |
| 3. Carden,  | 13. Lutterworth, |
| 4. Dalton,  | 14. Macaulay,    |
| 5. Digby,   | 15. Mariposa,    |
| 6. Draper,  | 16. Oakley,      |
| 7. Eldon,   | 17. Ops,         |
| 8. Emily,   | 18. Ryde,        |
| 9. Fenelon, | 19. Somerville,  |
| 10. Hindon, | 20. Verulam,     |
- And the Town of..... 1. Lindsay.

Simcoe.

## 20.—THE COUNTY OF SIMCOE,

Shall consist of the Townships of—

- |                      |                  |
|----------------------|------------------|
| 1. Adjala,           | 11. Mono,        |
| 2. Balaklava,        | 12. Nottawasaga, |
| 3. Essa,             | 13. Orillia,     |
| 4. Flos,             | 14. Oro,         |
| 5. Gwillimbury West, | 15. Robinson,    |
| 6. Innisfil,         | 16. Sunnidale,   |
| 7. Muskoka,          | 17. Tay,         |
| 8. Matchedash,       | 18. Tiny,        |
| 9. Medonte,          | 19. Tecumseth,   |
| 10. Mulmur,          | 20. Tossorontio, |
21. Vespra, together with (exclusive of the Townships of Balaklava, Muskoka and Robinson) the tract of land bounded on the east by the line between the late Home and Newcastle Districts prolonged to French River, on the west by Lake Huron, on the north by French River, and on the south by the River Severn and the Township of Rama, and the Islands in Lakes Simcoe and Huron, lying wholly or for the most part opposite to the said County of Simcoe, or any part thereof and contiguous thereto,
- And the Towns of..... 1. Barrie,  
2. Bradford, and  
3. Collingwood.

York.

## 21.—THE COUNTY OF YORK,

Shall consist of the Townships of—

- |                       |                 |
|-----------------------|-----------------|
| 1. Etobicoke,         | 6. Markham,     |
| 2. Gwillimbury East,  | 7. Scarborough, |
| 3. Gwillimbury North, | 8. Vaughan,     |
| 4. Georgina,          | 9. Whitechurch, |
| 5. King,              | 10. York,       |
- The City of..... 1. Toronto,  
And the Villages of.... 1. Newmarket,  
2. Yorkville.



## 22.—THE COUNTY OF PEEL,

Peel.

Shall consist of the Townships of—

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

And the Villages of.... 1. Brampton,  
2. Streetsville.

## 23.—THE COUNTY OF ONTARIO,

Ontario.

Shall consist of the Townships of—

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

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

## 24.—THE COUNTY OF HALTON,

Halton.

Shall consist of the Townships of—

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

## 25.—THE COUNTY OF WATERLOO,

Waterloo.

Shall consist of the Townships of—

- |                    |               |
|--------------------|---------------|
| 1. North Dumfries, | 4. Woolwich,  |
| 2. Waterloo,       | 5. Wellesley, |
| 3. Wilmot,         |               |

The Town of..... 1. Galt,

And the Villages of—

- |                 |                 |
|-----------------|-----------------|
| 1. Berlin,      | 3. Preston, and |
| 2. New Hamburg, | 4. Waterloo.    |

## 26.—THE COUNTY OF BRANT,

Brant.

Shall consist of the Townships of—

- |                    |               |
|--------------------|---------------|
| 1. Brantford,      | 4. Onondaga,  |
| 2. Burford,        | 5. Oakland,   |
| 3. South Dumfries, | 6. Tuscarora, |

And the Towns of—

- |                  |           |
|------------------|-----------|
| 1. Brantford and | 2. Paris. |
|------------------|-----------|

## 27.—THE COUNTY OF WELLINGTON,

Wellington.

Shall consist of the Townships of—

- |              |             |
|--------------|-------------|
| 1. Arthur,   | 3. Erin,    |
| 2. Amaranth, | 4. Eramosa, |

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

Grey.

## 28.—THE COUNTY OF GREY,

Shall consist of the Townships of—

- |   |                            |
|---|----------------------------|
| 1. Artemesia,   | 10. Melancthon,            |
| 2. Bentinck,  | 11. Normanby,              |
| 3. Collingwood,   | 12. Osprey,                |
| 4. Derby,   | 13. Proton,                |
| 5. Euphrasia,   | 14. Sydenham,              |
| 6. Egremont,  | 15. Saint Vincent,         |
| 7. Glenelg,   | 16. Sullivan,              |
| 8. Holland,   | 17. Sarawak, together with |
| 9. Keppel,  | (exclusive of the Town-    |
| ships of Keppel and Sarawak) that portion of the Penin- |                            |
| sular Tract of land known as the Indian Reserve, and    |                            |
| situated between lines drawn northward from the north-  |                            |
| east angle of Arran and the north-west angle of Derby,  |                            |
| until they respectively strike Colpoys' Bay on the east |                            |
| side of the Indian Village, and waters of the Georgian  |                            |
| Bay, and the Islands contiguous thereto,                |                            |
| And the Town of.....1 Owen Sound.                       |                            |

Bruce.

## 29.—THE COUNTY OF BRUCE,

Shall consist of the Townships of—

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

Huron.

## 30.—THE COUNTY OF HURON,

Shall consist of the Townships of—

- |              |              |
|--------------|--------------|
| 1. Ashfield, | 3. Colborne, |
| 2. Biddulph, | 4. Grey,     |

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

## 31.—THE COUNTY OF PERTH,

Perth.

Shall consist of the Townships of—

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

## 32.—THE COUNTY OF LAMBTON,

Lambton.

Shall consist of the Townships of—

- |                      |  |
|----------------------|--|
| 1. Bosanquet,        | 8. Sarnia,   |
| 2. Brooke,           | 9. Sombra, including Walpole<br>Island, St. Anne's Island,<br>and the other Islands at the<br>mouth of the River St.<br>Clair, |
| 3. Dawn,             | } (12 V.c. 79, s. 2.)  |
| 4. Euphemia,         |  |
| 5. Enniskillen,      | 10. Warwick,   |
| 6. Moore,            | 1. Port Sarnia.  |
| 7. Plympton,         |  |
| And the Town of..... |  |

## 33.—THE COUNTY OF KENT,

Kent.

Shall consist of the Townships of—

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

## 34.—THE COUNTY OF ESSEX,

Essex.

Shall consist of the Townships of—

- |                |               |
|----------------|---------------|
| 1. Anderdon,   | 4. Mersea,    |
| 2. Colchester, | 5. Maidstone, |
| 3. Gosfield,   | 6. Malden,    |

- |                   |                  |
|-------------------|------------------|
| 7. Rochester,     | 9. Tilbury West, |
| 8. Sandwich,      |                  |
| And the Towns of— |                  |
| 1. Amherstburgh,  | 3. Windsor.      |
| 2. Sandwich, and  |                  |

Elgin.

## 35.—THE COUNTY OF ELGIN,

Shall consist of the Townships of—

- |                |                      |
|----------------|----------------------|
| 1. Aldborough, | 5. Southwold,        |
| 2. Bayham,     | 6. South Dorchester, |
| 3. Dunwich,    | 7. Yarmouth,         |
| 4. Malahide,   |                      |

And the Villages of—

- |                    |            |
|--------------------|------------|
| 1. St. Thomas, and | 2. Vienna. |
|--------------------|------------|

Middlesex.

## 36.—THE COUNTY OF MIDDLESEX,

Shall consist of the Townships of—

- |                      |                    |
|----------------------|--------------------|
| 1. Adelaide,         | 7. London,         |
| 2. Carradoc,         | 8. Mosa,           |
| 3. North Dorchester, | 9. Metcalfe,       |
| 4. Delaware,         | 10. Nissouri West, |
| 5. Ekfrid,           | 11. West Williams, |
| 6. Lobo,             | 12. East Williams, |
|                      | 13. Westminster,   |

And the City of..... 1. London.

Norfolk.

## 37.—THE COUNTY OF NORFOLK,

Shall consist of the Townships of—

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

And the Town of..... 1. Simcoe.

Oxford.

## 38.—THE COUNTY OF OXFORD,

Shall consist of the Townships of—

- |                   |                  |
|-------------------|------------------|
| 1. Blenheim,      | 7. Oxford North, |
| 2. Blandford,     | 8. Oxford East,  |
| 3. Dereham,       | 9. Oxford West,  |
| 4. North Norwich, | 10. Zorra East,  |
| 5. South Norwich, | 11. Zorra West,  |
| 6. Nissouri East, |                  |

The Town of..... 1. Woodstock,

And the Villages of.... 1. Ingersoll,  
2. Embro.

## 39.—THE COUNTY OF HALDIMAND,

Haldimand.

Shall consist of the Townships of—

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

## 40.—THE COUNTY OF WELLAND,

Welland.

Shall consist of the Townships of—

- |                              |                |
|------------------------------|----------------|
| 1. Bertie,                   | 5. Stamford,   |
| 2. Crowland,                 | 6. Thorold,    |
| 3. Humberstone,              | 7. Willoughby, |
| 4. Pelham,                   | 8. Wainfleet,  |
| The Town of..... 1. Clifton, |                |

And the Villages of—

- |                   |                 |
|-------------------|-----------------|
| 1. Chippewa,      | 4. Thorold, and |
| 2. Fort Erie,     | 5. Welland.     |
| 3. Merrittsville, |                 |

## 41.—THE COUNTY OF LINCOLN,

Lincoln.

Shall consist of the Townships of—

- |              |                  |
|--------------|------------------|
| 1. Clinton,  | 5. Gainsborough, |
| 2. Caistor,  | 6. Louth,        |
| 3. Grimsby,  | 7. Niagara,      |
| 4. Grantham, |                  |

And the Towns of—

- |                   |                    |
|-------------------|--------------------|
| 1. Niagara,       | 3. St. Catherines. |
| 2. Queenston, and |                    |

## 42.—THE COUNTY OF WENTWORTH,

Wentworth.

Shall consist of the Townships of—

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

The City of..... 1. Hamilton,

And the Town of..... 1. Dundas.

## UNITED COUNTIES.

United Counties.

2. For municipal, judicial and all purposes not otherwise provided for by law, the following Counties, already united, shall continue to form Unions of Counties, that is to say : 14, 15 V. c. 5, s. 2.

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

Cities not to be part of Counties for municipal purposes.

But, for municipal purposes, the Cities of—

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

shall not form parts of the Counties of York, Wentworth, Frontenac, Middlesex and Carleton, within the limits whereof they are respectively situate, but shall, for municipal purposes, be Counties of themselves. 12 V. c. 78.

#### COURTS IN UNITED COUNTIES.

Names of United Counties.

And each of such Unions, under the name of the United Counties of \_\_\_\_\_ and \_\_\_\_\_ (*naming them*), shall, for all purposes (except as before excepted) so long as such Counties remain united, have in common, as if one County, all Courts, Offices and Institutions established by Law, pertaining to Counties.

Courts to be held as formerly.

**3.** The Courts of Assize and Nisi Prius, of Oyer and Terminer and Gaol Delivery, of Quarter Sessions of the Peace, County Courts, Surrogate Courts and Division Courts, shall be held in and for the said Counties and United Counties according to Law and the Statutes relating to such Courts respectively.

#### COURT HOUSES—GAOLS—SCHOOL HOUSES.

The property, officers, &c., continued.

**4.** The Court-houses and Gaols, County Grammar School-houses, and all other property, real and personal, and all the Offices and Officers of the Counties and United Counties, existing at the time this Act comes into force, shall belong to and continue in the Counties and United Counties respectively of the like names under this Act, and, as respects such Unions, until the dissolution thereof under the provisions of the Act for the "Regulation of Municipal Institutions in Upper Canada." 12 V. c. 78, s. 37.

#### TOWNSHIPS BOUNDED BY CERTAIN LAKES AND RIVERS.

Limits of townships bounded

**5.** The limits of all the Townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit,

Detroit, Lake St. Clair, the River St. Clair and Lake Huron, shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each Township respectively; and unless herein otherwise provided, such Townships shall also include all the Islands, the whole or the greater part of which are comprised within the said outlines so prolonged. 14, 15 V. c. 5, s. 11.

by certain  
Lakes and  
Rivers.

#### TOWNSHIPS ON THE OTTAWA.

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

Limits of town-  
ships on the  
Ottawa.

#### TOWNSHIPS ON LAKE ST. FRANCIS AND RIVER ST. LAWRENCE.

7. The limits of the Townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and unless herein otherwise provided, shall also include all the Islands, the whole or the greater part of which are comprised within the outlines of the said Townships so prolonged.

In Glengarry.

#### TOWNSHIPS ON THE BAY OF QUINTÉ AND ON OTHER BAYS, LAKES AND RIVERS.

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

On Bay of  
Quinté, and on  
other Bays,  
Lakes and  
Rivers.

#### CERTAIN ISLANDS EXCEPTED.

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

The last four  
sections not to  
include Islands  
being town-  
ships of them-  
selves.

## NEW TOWNSHIPS.

New town-  
ships.

**10.** All tracts of land in Upper Canada not already included in any Township, from time to time by Proclamation erected into Townships, shall be subject to and have the benefit of all enactments and provisions of Law to which other Townships are subject or entitled by the Consolidated Statutes of Upper Canada or of Canada, unless clearly inapplicable to such new Township. 8 V. c. 7, s. 2.

The Governor  
may constitute  
townships,  
counties and  
unions, &c.

**11.** Subject to the provisions of the Act respecting the Municipal Institutions of Upper Canada, the Governor may, by Order in Council, issue a Proclamation under the Great Seal of the Province, to have force of law from a day to be named therein, and thereby constitute Townships and Counties, and Unions of Townships and Counties in those parts of Upper Canada in which Townships and Counties, or Unions thereof, have not been constituted, and may fix the metes and boundaries thereof. See 22 V. c. 99, s. 27.

## GORES OF LAND.

The Governor  
may annex  
Gores.

**12.** The Governor may also, in like manner, annex any Gore, or small Tract of Land not included in the original survey or forming part of any Township, and not of sufficient extent to form a Township of itself, to any Township, or partly to each of more Townships than one, to which it may be adjacent; and such Gore or Tract shall thenceforward for all purposes form part of such Township or Townships. See Municipal Act, and 12 V. c. 11, s. 2.

## TITLE 3.

## EXECUTIVE GOVERNMENT.

## CAP. IV.

## An Act respecting Government Debentures.

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

## GOVERNMENT DEBENTURES.

Receiver Gen-  
eral to pay  
money borrow-  
ed upon De-  
bentures, by  
warrants of  
the Governor.

**1.** When by any Statute having force of Law in Upper Canada, any money is granted to be paid out of the public revenues, or when by any such Statute the Government is authorized to borrow money upon Debentures, such moneys shall be paid by the Receiver General, under Warrants for that



that purpose to be issued by the Governor or His Deputy. 7 W. 4, c. 14, ss. 3, 13,—I. S. 3, 4 V. c. 35, s. 40.

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

Government Debentures to be signed by the Receiver General, and out of what moneys payable.

3. The Debentures so issued, and from time to time remaining undischarged and uncanceled, shall, after the same become due and payable, be received and taken as cash by every Receiver and Collector of Customs, or of any revenue or tax whatsoever, granted, due or payable to Her Majesty by any Statute or otherwise, and shall also be received at the office of the Receiver General from the said Collectors and Receivers, or from any person there making any payment to Her Majesty, upon any account, or for any cause. 7 W. 4, c. 14, s. 6,—See 12 V. c. 5, ss. 1, 2.

Debentures overdue to be received as cash by Collectors, &c.

4. The Debentures aforesaid shall be charged against and be credited to such Collector, Receiver, and other person, and the Receiver General, respectively, in their accounts with each other, and with Her Majesty, and the interest accrued upon any such Debentures shall be allowed to any person or body corporate or politic, paying the same to any Receiver or Collector as aforesaid, to the respective days upon which such Debentures are so paid; but no interest shall run or be paid or be chargeable upon or for any such Debentures during the time they remain in the hands of any of the said Receivers or Collectors. 7 W. 4, c. 14, s. 6,—See 12 V. c. 5, ss. 1, 2.

And be received as cash by the Receiver General.

Interest suspended when received by collectors.

5. And to the end that it may be known from what period such debentures bearing interest remain from time to time in the hands of the Receivers or Collectors, every such Receiver and Collector shall require the person paying him any such Debenture, to write his name, and, in words at full length, the day of the month and year on which the same is so paid, and to such day, the interest which such Receiver or Collector so allows shall be allowed to him when he pays such Debenture to the Receiver General. 7 W. 4, c. 14, s. 7.

Date of payment in as cash to be indorsed.

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

Return to be made to the Governor by Receiver General before each session.

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

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

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

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

Interest on Debentures to be paid half-yearly.

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

Receipts to be taken for interest—when paid.

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

Warrants to be issued for the payment of interest.

9. The Governor shall, after the thirtieth day of June, and thirty-first day of December in each year, issue warrants to the Receiver General for the payment of the amount of interest advanced, according to the receipts taken as aforesaid. 7 W. 4, c. 14, s. 10.

A separate warrant for payment of each Debenture.

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

When interest to cease on debentures called in.

11. At any time after any such Debenture has become due, the Governor may direct a notice to be inserted in the *Canada Gazette*, requiring the holders thereof to present the same for payment, according to the conditions of the Act under which the same were issued ; and if after the insertion of such notice for three months, any such Debenture then payable remain out more than six months from the first publication of the notice, interest thereon shall cease at the expiration of the said six months. 7 W. 4, c. 14, s. 12.

## C A P . V .

An Act respecting the Registration of Deeds and Instruments creating Debts to the Crown.

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

Instruments creating debts

1. No deed, bond, contract or other instrument, under seal, or of record, whereby any debt, obligation or duty is incurred

or

or created to Her Majesty, shall be valid or sufficient to charge or affect any lands or any interest in lands, of the person executing the same or affected thereby, as against any subsequent purchaser or mortgagee for valuable consideration of the same lands from such person, or against any subsequent registered judgment on the same lands against such person, unless a copy of such deed, bond, contract or other instrument, certified by the proper officer having the custody of the same, had been registered in the Office of the Clerk of the Court of Queen's Bench in Toronto, before the execution of the deed, conveyance or agreement of such subsequent purchaser or mortgagee, or the registry of such subsequent judgment. 14, 15 V. c. 9, s. 1.

to the Crown to be registered in Queen's Bench.

**2.** Upon production to such Clerk of a copy of any such deed, bond, contract or other instrument so certified as aforesaid, he shall enter and register the same in a book to be kept by him for that purpose, and after such registry all the lands of the person executing such deed, bond, contract or other instrument, shall be bound and charged thereby. 14, 15 V. c. 9, s. 2.

Clerk to register the Instrument on production of certified copy from the proper officer.

**3.** The Governor in Council may order that all or any lands bound by such deed, bond, contract or other instrument, shall be released from the charge created thereby, and upon the production of such order certified by the President or Clerk of the Executive Council, the Clerk of the Court of Queen's Bench shall enter and register the same in the said book as a release of the lands mentioned in the order, whereupon the lands shall be released accordingly. 14, 15 V. c. 9, s. 3.

Governor may order property bound by the registered Instrument to be released.

**4.** The Clerk of the Court of Queen's Bench shall be entitled to demand from the person producing the same for registry, the sum of One Dollar, to be paid to the fee fund in the same manner as other fees are paid to such fund. 14, 15 V. c. 9, s. 4.

Clerk's fee.

## C A P . V I .

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

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

### EXISTING PENSIONS CONTINUED.

**1.** Every person at present allowed a Pension shall, subject to the provisions of this Act, continue to receive the same ; and every Officer, Non-commissioned Officer, and Private Militiaman, or Teamster of any Militia Corps or Detachment raised in Upper Canada, or Militiaman who acted as Provincial Artillery

Present pensions continued.

Artillery Driver, or in the Coloured Corps, or was employed with the Indians, or served in the Provincial Marine Establishment, and whose name now stands on the Pension List of Upper Canada, or whose Widow or Children is or are now receiving a pension on his account, shall be deemed to have been a Militiaman. 53 G. 3, c. 4, s. 1,—2 G. 4, c. 4, s. 19,—1 V. c. 44, s. 1.

#### WHO TO BE PENSIONED AND THE AMOUNT.

Description of persons entitled to pensions.

**2.** In case any Officer, Non-commissioned Officer, Private Militiaman, or Teamster of the Militia, or of any such Corps or Detachment, has been or should, after this Act takes effect, be killed in any engagement with the Enemy, or by accident or casualty, while performing any duty on actual Service in the Militia, or has died or should thereafter die while in captivity as a Prisoner of War, or of wounds received in action with the Enemy, or of any disease contracted while on such Service, or within twelve months after such disease was contracted, and left or leave a Widow, or a Child or Children; then his Widow, during her Widowhood, and in case of her death or marriage, his Child or Children, being under the age of sixteen years, and until they respectively attain that age, shall be allowed a pension of Eighty Dollars per annum, to be paid to such Widow, or, in case of her death or marriage, to be paid for the use of such Child or Children, to his or their Guardian, or to the Executor or Administrator of his or their Father, by the Receiver General, out of any moneys in his hands subject to the disposition of the Legislature, and in discharge of the Warrants of the Governor, who may order such pension to be paid in advance quarterly or half yearly. 53 G. 3, c. 4, s. 5,—2 G. 4, c. 4, ss. 2, 21,—7 G. 4, c. 6, s. 5,—1 V. c. 44, s. 2.

Persons wounded or disabled.

**3.** In case any person has been wounded or should hereafter be wounded, or in any way disabled while in the Public Service as a Militiaman, and be unable to maintain himself, he may claim and be allowed a pension of Eighty Dollars per annum. 1 V. c. 44, s. 5.

#### WHO NOT TO BE PENSIONED.

Persons specially provided for not within this Act.

Persons otherwise provided for excluded.

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

**5.** No person receiving a Pension in any other of Her Majesty's dominions, by reason of wounds or injuries received on Militia Service in Upper Canada, shall receive any additional Pension. 2 G. 4, c. 4, s. 22.

#### LOCAL MEDICAL BOARDS.

The Governor in my appoint

**6.** In the case of any person claiming such pension, as having been so wounded or disabled during or since the War with the United

United

United States of America, the Governor may appoint three Surgeons (legally authorized to practise Physic and Surgery, and resident in the County in which the person resides,) to examine him, and the decision of such Surgeons, or of any two of them, shall be final; and if they, or any two of them are satisfied, upon examination, that such person is actually disabled from wounds or accident received in such Service, and certify the same, then, upon such certificate being submitted to the Governor, he may cause the name of such person to be placed on the Militia Pension List of Upper Canada, and such person shall from thenceforth receive a Pension of Eighty Dollars per annum, in the same manner as other Militia Pensioners. 7 W. 4, c. 103,—1 V. c. 44, s. 5.

Local Medical Boards to examine applicants for pensions.

#### GENERAL MEDICAL BOARD.

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

May appoint a General Board.

#### POWERS AND DUTIES OF THE GENERAL BOARD.

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

The Governor may require pensioner to appear before such Board.

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

What proof the Governor may require.

More than the oath of a widow may be required.

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

The General Board may inquire into all cases.

**11.** In every case where a pension is applied for by or has been granted to any Widow or Child of a deceased Militiaman who died after his discharge from actual service, the said last mentioned Board may inquire into the circumstances under which such Militiaman died, and whether his death was caused by disease contracted or wounds received while in actual service; and if the Board report to the Governor that such Militiaman did not die from disease so contracted or wounds so received, the application shall be rejected, or the name of the Widow or Child shall be erased from the Pension List, and the pension shall cease. 3 V. c. 27, s. 5.

#### PENSIONER'S OATHS, &c.

Affidavits to be made by pensioners half-yearly.

**12.** Every Pensioner on the Militia Pension List shall, as soon as convenient after the first day of January, and the first day of July in each year, transmit to the Receiver General an affidavit (or affirmation), made before a Justice of the Peace having Jurisdiction in the County or place in which the same is administered, in one of the following forms: 2 G. 4, c. 4, ss. 15, 18,—1 V. c. 44, s. 3.

Forms of.

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

Or,

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

Or,

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

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

4.—I, A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, Guardian of the Child (or Children) of \_\_\_\_\_, or Executor (or Administrator) of \_\_\_\_\_, (as the case may be,) do solemnly swear (or affirm) that I verily believe that G. H., K. L. and M. N. (naming all the Children under sixteen years of age), are Children of the said \_\_\_\_\_, who was killed in action

action with the enemy,—or, who died from wounds received in action,—or, who died from disease contracted whilst on Service (or, as the case may be as aforesaid); and that each of them the said G. H., K. L. and M. N. is under the age of sixteen years. 2 G. 4, c. 4, ss. 15, 18.

#### WHO TO CERTIFY THE OATHS.

**13.** Any one of Her Majesty's Justices of the Peace, or the Senior Officer of the Regiment of Militia within whose jurisdiction or limits the person making such affidavit (or affirmation) resides, is to certify, in confirmation of the same, in the form following: 2 G. 4, c. 4, ss. 15, 18.

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

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

Dated                      day of                      , 18 .

#### WHAT VOUCHERS AUTHORIZE PAYMENT.

And such affidavit (or affirmation) and certificate, with the receipt of the pensioner, Widow, Guardian, Executor or Administrator, or his or her Agent (as the case may be), shall be a sufficient Voucher for the payment of the Pension. 2 G. 4, c. 4, s. 15.

Such affidavit and certificate sufficient to authorize payment.

#### WARRANTS FOR PAYMENT.

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

Warrants for payment may include several sums.

#### PUBLICATION OF ORDERS TO PAY.

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

Notice of payment ordered, to be given by Receiver General.

## C A P . V I I .

## An Act respecting the Sale and Purchase of Claims due to Government for moneys advanced to Public Works.

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

The Governor in Council may assign certain claims against certain Companies, and to whom and how.

**1.** The Governor by Order in Council, and on the conditions and with the provisions and limitations expressed therein, may assign, transfer and convey to any Municipal Corporation, in or through whose Municipality any public work or improvement hereinafter mentioned may lie or pass, or to any incorporated Company or other party who may agree to purchase the same, the claim of the Province for any sum of money due from any Company or party, arising out of any advance or payment made by the Government of the Province, or of Upper Canada, under any Act of the Legislature of Upper Canada, to or for any Company incorporated, for the purpose of constructing any canal, railroad, harbour, road or other work and improvement of a public nature that may be mentioned in the Order in Council. 13, 14 V. c. 71, s. 1.

The order in Council may include the undertaking of sureties.

**2.** The Order in Council may also include the undertaking of any third person who becomes surety for the due payment of the consideration money, and the faithful performance of any conditions therein mentioned; and such Order in Council shall transfer to and vest in the assignee therein named, all the rights of the Crown in and to the debt or claim thereby intended to be transferred, and shall have effect according to the tenor thereof, as if the clauses, conditions and provisions thereof were inserted in this Act. 13, 14 V. c. 71, s. 1.

What to be sufficient evidence of transfer.

**3.** A copy of the *Canada Gazette* containing any such Order in Council, or any copy of such Order certified by the Provincial Secretary, shall be evidence thereof, and the consent and agreement of all the parties named therein shall be presumed, unless disputed by such parties, and if disputed, the same may be proved by any copy of the Order in Council on which the consent of the parties is written and attested by such signature or seal as would be sufficient to make any deed or agreement the deed or agreement of such parties. 13, 14 V. c. 71, s. 1.



## CAP. VIII.

## An Act respecting Light Houses.

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

1. The Governor may appoint proper Light-House Keepers, and may remove them and appoint others in their stead; and such keepers shall be allowed such salaries respectively, as the Governor in Council may authorize. 3 W. 4, c. 34, ss. 1, 2. Governor to appoint Light-House Keepers.
2. No Light-House Keeper shall be entitled to receive any portion of his salary during any half year in which he neglects to keep the lamps under his charge lighted throughout the whole night of every night during the period for which the Commissioner of Public Works directs the same to be lighted. 3 W. 4, c. 34, s. 3. Salary of keeper forfeited if light not kept up.
3. The whole, or a portion, as the Governor in Council may direct, of the expense of Light-House Keepers at Pier Harbours, shall be sustained by such Harbours respectively, whether in the possession of public or of private companies. 7 W. 4, c. 96, s. 3. A sum granted sufficient to pay Light House Keeper.
4. The Commissioner of Public Works shall make the necessary arrangements for causing the Light-Houses to be kept properly lighted during the continuance of the Navigation in each year, and shall advertise annually for tenders for supplying the Light-Houses with oil, wicks, lamps, glass tubes, and all other necessaries, for maintaining the lights therein, and shall enter into contracts with any person or persons for furnishing such supplies, to any or all of the said Light-Houses; and a sum of money sufficient to defray the necessary expenditure for such supplies, shall be annually granted for that purpose. 7 W. 4, c. 96, ss. 3, 4. The Commissioner of Public Works to advertise for tenders for supplies necessary for lighting and maintaining Light Houses.
5. All sums of money from time to time necessary for the purposes aforesaid, shall be paid from and out of the Consolidated Revenue Fund, remaining unappropriated in the hands of the Receiver General, in discharge of the warrant or warrants of the Governor issued for that purpose, and shall be accounted for in like manner as other public moneys. 7 W. 4, c. 96, s. 6. Moneys to be paid by Receiver General.
6. Accounts in detail with vouchers, of all sums expended under this Act, shall be annually laid before both Branches of the Legislature. 7 W. 4, c. 96, s. 5. Accounts of expenditure to be rendered.

## TITLE 4.

## THE ADMINISTRATION OF JUSTICE.

## 1. LAW OF ENGLAND IN RELATION TO PROPERTY AND CIVIL RIGHTS.

## CAP. IX.

## An Act respecting Property and Civil Rights.

Recital of Act  
of U. C.

32 G. 3, c. 1.

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

## THE LAW OF ENGLAND TO BE THE RULE.

The Law of  
England to be  
the rule of de-  
cision.

1. In all matters of controversy relative to property and Civil Rights, resort shall continue to be had to the laws of England as they stood on the said fifteenth day of October, one thousand seven hundred and ninety-two, as the rule for the decision of the same; and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the several Courts of Law and Equity in Upper Canada, shall continue to be regulated by the rules of evidence established in England, as they existed on the day and year last aforesaid, except so far as the said Laws and Rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament still having force of law in Upper Canada, or by any Act of the late Province of Upper Canada, or of the Province of  
Canada,

Canada, still having force of law, or by the Consolidated Statutes relating to the Province of Canada, or to Upper Canada exclusively. 32 G. 3, c. 1, ss. 3, 5, 6.

STATUTES OF JEOfAILS ADOPTED.

2. The Statutes of jeofails, of limitations, and for the amendment of the law excepting those of mere local expediency which previous to the seventeenth day of January, one thousand eight hundred and twenty-two, had been enacted respecting the law of England and then continued in force, shall be valid and effectual for the same purposes in Upper Canada, excepting so far as the same have, since the day last aforesaid, been repealed, altered, varied, modified or affected in the manner mentioned in the first section of this Act. 2 G. 4, c. 1, s. 24.

Statutes of Jeofails, &c., adopted.

2. COURTS.

C A P. X.

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

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

QUEEN'S BENCH AND COMMON PLEAS.

1. Her Majesty's Court of Queen's Bench for Upper Canada, and the Court of Common Pleas for Upper Canada, shall continue under the names aforesaid, and all Commissions, Rules, Orders and Regulations granted or made, in, by, or respecting the said Courts, or the Judges or Officers thereof, existing and in force when this Act takes effect, shall remain in force until altered or rescinded or otherwise determined. 34 G. 3, c. 2, s. 1,—12 V. c. 63.

Courts of Q. B. and C. P. continued.

NAME OR STYLE OF.

2. The said Court of Queen's Bench shall, during the reign of a King, be called "His Majesty's Court of King's Bench for Upper Canada," and during the reign of a Queen "Her Majesty's Court of Queen's Bench for Upper Canada." 2 V. c. 1, s. 1.

Style or name of such Courts.

JURISDICTION.

3. The said Courts shall be Courts of Record of Original and Co-ordinate jurisdiction, and shall respectively possess all

Jurisdiction of.

all

all such powers and authorities as by the law of England are incident to a Superior Court of Civil and Criminal jurisdiction; and shall have, use and exercise all the rights, incidents and privileges of a Court of Record, and all other rights, incidents and privileges as fully to all intents and purposes as the same are, at the time this Act takes effect, used, exercised and enjoyed by any of Her Majesty's Superior Courts of Common Law at Westminster, in England, and may and shall hold plea in all and all manner of Actions, Causes and Suits as well Criminal as Civil, real, personal and mixed, and may and shall proceed in such Actions, Causes and Suits by such process and course as are provided by law, and as shall tend with justice and dispatch to determine the same; and may and shall hear and determine all issues of law; and may and shall also hear and (except in cases otherwise provided for) by and with an inquest of twelve good and lawful men, determine all issues of fact that may be joined in any such Action, Cause or Suit, and Judgment thereon give, and execution thereof award in as full and ample a manner as, at the time this Act takes effect, can or may be done in Her Majesty's Courts of Queen's Bench, Common Bench, or in matters which regard the Queen's revenue (including the Condemnation of Contraband or Smuggled Goods,) by the Court of Exchequer in England. 12 V. c. 63, ss. 1, 8,—34 G. 3, c. 2, s. 1,—35 G. 3, c. 4.

#### PLACE OF SITTING.

Where to be held.

4. The aforesaid Courts shall be held at the City of Toronto. 12 V. c. 63, s. 1, & I. S,—3, 4, V. c. 35, s. 44.

#### THE JUDGES.

Chief Justices and Judges of.

5. The said Court of Queen's Bench shall be presided over by the Chief Justice of Upper Canada and two Puisne Justices, and the said Court of Common Pleas by a Chief Justice and two Puisne Justices, and such Courts respectively may be holden by any one or more of the Judges thereof in the absence of the others; and the Chief Justice and Justices of the said Courts respectively shall have, use and exercise all the rights, incidents and privileges of a Judge of a Court of Record, and all other rights, incidents and privileges as fully to all intents and purposes as the same are, at the time this Act takes effect, used, exercised or enjoyed by any of the Judges of any of Her Majesty's Superior Courts of Common Law at Westminster. 34 G. 3, c. 2, s. 1,—12 V. c. 63, ss. 2, 3.

Rank of the Judges.

6. The Chief Justice of Upper Canada shall have rank and precedence before all the other Judges of Her Majesty's Courts of Law and Equity, the Chief Justice of the said Court of Common Pleas shall have rank and precedence next after the Chancellor of Upper Canada, and the Puisne Judges of the Superior Courts

Courts of Common Law and Equity in Upper Canada shall have rank and precedence as between themselves, according to the Seniority of appointment to their respective Offices. 12 V. c. 63, s. 2,—12 V. c. 64, s. 2.

7. Her Majesty may, from time to time, supply any vacancy in the number of the Judges in either of the said Courts of Common Law by appointing, by Letters Patent under the Great Seal of this Province, a Barrister of the Upper Canada Bar of at least ten years' standing to fill such vacancy. 12 V. c. 63, s. 2.

The Crown may supply vacancies.

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

Oath of office of the Judges.

#### OATH.

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

#### PRACTICE COURT.

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

Practice Court.

#### JUDGES' CHAMBERS.

10. The Chief Justices and Judges of the said respective Courts, shall, in rotation or otherwise as they may agree among themselves, sit in Chambers or elsewhere, and there transact any such business as may be transacted in either of the said Courts by a single Judge out of Court, whether such business be in the Court of which such Judge is a member or in the other Court,

A Judge to sit in Chambers.

Court, subject to the right of appeal to, and of review by the full Court in which the matter may be depending. 12 V. c. 63, s. 9,—13, 14 V. c. 51, s. 5.

#### TENURE OF OFFICE.

Tenure of office.

**11** The Judges of the said Superior Courts of Common Law shall hold their offices during good behaviour, and all future Commissions to the Judges of the said Courts shall be, to hold during good behaviour, and the Commissions of Judges for the time being shall continue and remain in full force during good behaviour, notwithstanding the demise of the Crown. 12 V. c. 63, s. 4,—4 W. 4, c. 2, s. 1.

#### REMOVAL AND RIGHT OF APPEAL.

Removal of Judges and right to appeal.

**12.** The Governor may, upon the address of both Houses of the Provincial Parliament, remove any such Judge; and in case any Judge so removed thinks himself aggrieved by such removal, he may within six months appeal to Her Majesty in Her Privy Council, and in case of such appeal the motion shall not be final until such appeal has been determined by Her Majesty in Her Privy Council. 12 V. c. 63, s. 4.

#### APPOINTMENT OF A SUCCESSOR.

Appointment of Successor.

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

#### SALARIES.

Salaries charged on the Consolidated Revenue Fund.

**14.** There shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any Act of the Parliament of this Province passed prior to the thirtieth May, one thousand eight hundred and forty-nine, to be paid out of the same, but with preference to all other payments after that date charged on the said Fund,) the yearly sums following as and for the salaries of the said Judges, that is to say: to each of the said Chief Justices, five thousand dollars, and to each of the said Puisne Justices, four thousand dollars, to be paid quarterly by equal portions

on the first days of January, April, July and October in each year, free and clear from all taxes and deductions whatsoever, and so in proportion for any broken period to a Judge newly appointed, resigning or removed, or to the executors or administrators of a Judge dying within the Quarter computed as aforesaid; But nothing in this clause contained shall affect the amount of the salary of the present Chief Justice of Upper Canada during his tenure of office. 12 V. c. 63, s. 5.

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

**15.** From and out of the Consolidated Revenue Fund, there is hereby granted to Her Majesty, annually, a sum sufficient to enable Her Majesty to pay to the Judges of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, for the purpose of defraying their travelling expenses, the sum of one hundred dollars for each time they hold any such Court or Courts in any County, except the County of York; and also to pay to the Sheriff of the County of York the sum of two dollars thirty-three and one third cents per day for attending the said Court of Queen's Bench during its sittings in each Term. 7 W. 4, c. 1, s. 10.

Travelling expenses.

Allowance to Sheriff of York.

RETIRING ANNUITY.

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

Retiring annuities

**17.** Such annuity shall be charged upon and be paid out of the Consolidated Revenue Fund of this Province, after paying or reserving sufficient to pay all such sums as have been directed by any Act of the Parliament of this Province passed prior to the thirtieth day of May, in the year of our Lord, one thousand eight hundred and forty-nine, to be paid out of the same, but with preference to all other payments after that date charged on the said Fund, and such annuity shall be paid quarterly by equal portions on the first days of January, April, July and October in each year, free and clear from all taxes and deductions whatsoever, and so in proportion for any broken period when such Judge resigns or dies within the Quarter computed as aforesaid; and the executors or administrators of such Judge

To be paid out of the Consolidated Revenue Fund.

Judge shall be paid the amount that had accrued at the time of his death computed from the next preceding quarter day. 12 V. c. 63, s. 6.

## TERMS.

Terms of the  
Courts of Law.

**18.** The Terms of the said Courts of Queen's Bench and Common Pleas shall annually be as follows: Hilary Term shall begin on the first Monday in February; Easter Term on the third Monday in May; Trinity Term on the Monday next after the twenty-first day of August; and Michaelmas Term on the third Monday in November; and each of the said Terms respectively shall end on the Saturday of the ensuing week. 12 V. c. 63, s. 19,—20 V. c. 57, s. 29.

Duration of the  
Terms.

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

## JUDGMENT MAY BE DELIVERED AFTER TERM.

Judgment may  
be delivered  
after Term.

**20.** The Judges of the said Superior Courts may during each Term appoint one or more days within three weeks next ensuing the last day of such term, on which they will give Judgment; and such Superior Courts on the days so appointed may sit in Banc for the purpose only of giving Judgments and of making Rules and Orders in matters previously moved and argued in such Courts respectively; and all Judgments, Rules and Orders pronounced and made on such days shall have the same effect as if pronounced or made in Term-time. 19 V. c. 43, s. 316.

## TRIALS AT BAR.

Trials at Bar  
on the part of  
Suitors.

**21.** The plaintiff or demandant, and the defendant or tenant, respectively, in any action in either of the said Superior Courts may, in the Term next after issue joined, apply to the said Courts respectively for a trial *at bar*, and each of the said Courts respectively may, in its discretion, upon hearing the parties, grant or refuse the same. 20 V. c. 57, s. 13.

On the part of  
the Crown.

**22.** In all cases in which the Crown may be actually or immediately interested, a trial *at bar* may be had as of right upon, and shall be regulated and governed by the same principles, as in similar cases in England. 20 V. c. 57, s. 14.

When trial to  
be had.

**23.** In case any trial *at bar* be directed, the Judges of either of the said Courts may appoint such day or days for the trial thereof as they think fit, and the time so appointed, if in vacation, shall, for the purposes of such trial, be deemed and taken to be a part of the preceding term. 20 V. c. 57, s. 15.

CLERKS.



CLERKS.

24. Her Majesty may, by Letters Patent under the Great Seal of this Province, from time to time, appoint to each of the said Superior Courts of Common Law separately, a Clerk of the Crown and Pleas, and to both of the said Courts jointly, a Clerk of the Process, which Clerks shall hold office during Her Majesty's pleasure. 12 V. c. 63, ss. 11, 12,—19 V. c. 43, ss. 2, 3.

Clerks of the Crown and Process Clerk.

25. Each of the said Clerks of the Crown and Pleas may appoint, subject to the approval of the Judges of his Court, a Senior and Junior Clerk; and with the like approval, may remove at pleasure any Clerk so appointed by him. 12 V. c. 63, s. 11.

Assistant-Clerks.

26. Except in the County of York, the several Clerks of the County Courts shall be *ex officio* Deputy Clerks of the Crown and Pleas in each of the said Superior Courts, but each person not being a Clerk of a County Court who, on the thirtieth day of May, one thousand eight hundred and forty-nine, held and still holds the office of such Deputy Clerk, shall continue to hold the same at the pleasure of the Crown, and shall discharge the duties of such Deputy Clerk of the Crown subject to the provisions and with the remuneration mentioned in this Act. 12 V. c. 63, s. 11.

Deputy Clerks of the Crown.

27. There shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as had been directed by any Act of the Parliament of this Province passed prior to the thirtieth day of May, one thousand eight hundred and forty-nine, to be paid out of the same, but with preference to all other payments after that date charged thereon), the yearly sums following as and for the salaries of the Clerks of the said Courts, that is to say: 12 V. c. 63, ss. 13, 17.

Salaries, &c.

To each Clerk of the Crown and Pleas.....\$	1600	00
(except Charles Coxwell Small, Esquire, the Clerk of the Crown and Pleas, in the Court of Queen's Bench, whose Salary, while he continues to hold the said office, shall be per year.\$		
To the Process Clerk.....\$	1400	00
To each Senior Clerk.....\$	1000	00
To each Junior Clerk.....\$	600	00

19 V. c. 43.

To each Deputy Clerk of the Crown, such sum as the Governor in Council appoints, not in any case exceeding four hundred dollars, nor less than eighty dollars yearly. 12 V. c. 63, s. 13.

To be paid  
quarterly.

**28.** All the said salaries shall be paid quarterly on the first days of January, April, July and October in each year, free and clear from all taxes and deductions whatever, and so in proportion for any broken period, to any of the said Clerks newly appointed, resigning or removed or to the executors or administrators of a Clerk dying within the Quarter computed as aforesaid. 12 V. c. 63, ss. 13, 17.

The taking of  
fees prohibited.

**29.** Unless specially authorized, neither of the Clerks of the Crown and Pleas, nor any of their Deputies, nor the said Process Clerk, shall take for his own use or benefit, directly or indirectly, any fee or emolument whatever save the salary aforesaid; and all the fees, dues and profits received by or on account of the said Clerks of the Crown and their Deputies, and the said Process Clerk respectively, shall form part of the Consolidated Revenue Fund of this province. 12 V. c. 63, s. 14,—9 V. c. 33, s. 5.

The Clerks to  
give securities.

**30.** The Clerks of the Crown and Pleas, the Clerk of the Process, and the Deputy Clerks of the Crown and Pleas in the said Superior Courts, shall, within one month next after their appointment, give security to Her Majesty, in such sum, and with so many sureties, and in such form as the Governor in Council directs, conditioned respectively, for the due performance of the duties of their office, and for the rendering of the quarterly accounts and returns required from them by law, and for the due payment to the Receiver General of this Province, of all the fees, dues, emoluments, perquisites and profits received by them on account of their said offices respectively, and for and on account of any duty or service done and performed by them respectively, in their said several offices. 20 V. c. 57, s. 1,—*And see* 12 V. c. 63, s. 15.

Consequences  
of neglecting to  
do so.

**31.** The neglect by any such Clerk or Deputy Clerk to give such security or to render quarterly returns, or to pay over all such moneys within twenty days next after each quarterly day, shall render his appointment void; but the forfeiture of office shall not affect any act done by him during the time he actually continues to hold his appointment. 12 V. c. 63, s. 16,—20 V. c. 57, s. 1.

Who to ap-  
prove of the  
sureties.

**32.** The Governor shall in his discretion approve of the security and sureties so given by each Principal Clerk, and the Judge of the County Court having first certified his approval in writing of the security and sureties given by the Deputy Clerk of the Crown for his County, the Governor shall in his discretion approve of the security and sureties so given by such Deputy Clerk, and such securities, when executed and approved, shall be duly recorded in the manner provided by the Consolidated Statute of Canada regulating the securities to be given by Public Officers, and then deposited in the office of the Minister of Finance. 20 V. c. 57, s. 2.

**33.** If any surety in any such security dies or ceases to reside in Upper Canada, or becomes insolvent, the Clerk or Deputy Clerk shall, within one month after his knowledge of the fact, or after being thereto required by the Minister of Finance, give a new security in manner hereinbefore provided, and the omission to give such new security shall render void the appointment of the Clerk or Deputy Clerk so omitting, but the forfeiture of Office shall not affect any act done by him during the time he actually continues to hold his appointment. 20 V. c. 57, s. 2.

The death or removal of a surety provided for.

**34.** The Clerks of the Crown and Pleas and the Clerk of the Process respectively shall keep their Offices in Osgoode Hall. 19 V. c. 43, s. 3.

Principal offices to be held at Osgoode Hall.

**35.** The Clerk of the Process shall have a separate seal for sealing Writs in each of the said Courts, to be approved by the Chief Justice of the Court, and he shall seal therewith and sign all Writs and Process issued from such Courts respectively. 19 V. c. 43, s. 4.

Duties of the Clerk of the Process.

**36.** The Clerk of the Process shall keep each Deputy Clerk of the Crown and Pleas supplied with Blank Writs and Process of all descriptions sealed and signed by him and to be filled up and issued by them; and he shall in like manner keep the Clerks of the Crown and Pleas supplied with all Writs and Process other than those which he is himself required to issue; and he shall have a reasonable allowance for printing, procuring and transmitting blank forms of Writs and Process, and for necessary books and stationery. 19 V. c. 43, ss. 3, 4.

To supply Deputy Clerks of the Crown with blank writs;

And also the Chief Clerks.

**37.** Each Deputy Clerk of the Crown and Pleas shall, if proper accommodation be afforded him, keep his office in the Court House of his County, and until he can obtain such accommodation he shall keep his office in some convenient place in the County Town. 19 V. c. 43, s. 13.

Where Deputy Clerks' offices to be kept.

**38.** Except between the first day of July and the twenty-first day of August, every Deputy Clerk's office shall be kept open from ten o'clock in the morning until three o'clock in the afternoon, Sundays, Christmas Day, Good Friday, Easter Monday, the birth-day of the Sovereign, New Years day, and any day appointed by Royal proclamation for a general fast or thanksgiving, excepted; and between the first day of July and the twenty-first day of August, such offices shall be kept open from nine in the morning until noon. 19 V. c. 43, s. 13,—*See* 13, 14 V. c. 23, s. 5,—14, 15 V. c. 94, s. 2.

Office hours, Summer vacations.

**39.** The Clerk of the Process shall make to the Minister of Finance, quarterly returns, verified by his affidavit, of all Writs and Process issued by him in suits brought at Toronto, or supplied by him to the Clerks and Deputy Clerks of the Crown to be issued by them. 19 V. c. 43, s. 5,—22 V. c. 14, s. 6. (1859.)

The Clerk of Process to make quarterly returns.

To account for fees received by him.

**40.** The Clerk of the Process shall receive the fees on Writs and Process issued by him at Toronto as aforesaid. 19 V. c. 43, s. 5.

To be applied to Consolidated Revenue Fund.

**41.** All such fees shall form part of the Consolidated Revenue Fund of the Province. 19 V. c. 43, s. 5.

The Clerks of the Crown and Deputy Clerks to make quarterly returns.

**42.** The Clerks of the Crown and Pleas in each of the said Courts, the Process Clerk and the Deputy Clerks of the Crown respectively, shall, quarterly, on the first days of January, April, July and October, in each year, make up and render to the Minister of Finance a true account in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said Officers respectively, in such form and with such particulars as the Minister of Finance from time to time requires. 12 V. c. 63, ss. 15, 16,—19 V. c. 43, s. 5, *latter part*.

To be signed and declared before a Judge.

**43.** Such accounts shall be signed by the Officer rendering the same, and shall, in the case of the said Principal Clerks and Process Clerk respectively, be declared before one of the Judges of the Court to which he belongs, and in the case of the Deputy Clerks shall be declared before the Judge of the County Court to which he belongs. 12 V. c. 63, ss. 15, 16.

To pay over balances.

**44.** Each such Officer shall, within ten days after the rendering of such account by him, pay over the amount of all such fees, dues, perquisites and profits to the Receiver General, and if default be made in such payment, the amount due by the Officer making such default, shall be a specialty debt to Her Majesty. 12 V. c. 63, ss. 15, 16,—19 V. c. 43, s. 5.

Deputy Clerks of the Crown to submit their accounts to County Attorneys—duty of the latter as to such accounts.

**45.** The Deputy Clerk of the Crown in every County in Upper Canada shall submit his accounts and books for examination to the County Attorney of the County, and the County Attorney shall inspect and examine such accounts and compare them with the Books required to be kept by the Deputy Clerk of the Crown, and such County Attorney shall certify on every such account, that he believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and shall forthwith forward every such account to the Minister of Finance. 20 V. c. 59, s. 14.

Clerks to obey the Statutes and rules of Court.

**46.** The Clerks of the Crown, the Clerk of the Process, and the Deputy Clerks of the Crown respectively, shall perform the duties of their several offices as regulated by any Act of Parliament, or by the rules and practice of the said Courts, and all sums and fees shall continue to be payable to and receivable by them accordingly. 19 V. c. 43, s. 3, *end*—See 12 V. c. 63, ss. 12, 32.

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

The Clerk in Chambers.

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

## C A P . X I .

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

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

## THE COURTS.

1. Except in that County or Union of Counties within which the City of Toronto is situate, Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery, shall be held in every County or Union of Counties in Upper Canada in each and every year in the vacations between Hilary and Easter Terms, and between Trinity and Michaelmas Terms, and in the County or Union of Counties within which the City of Toronto is situate, such Courts shall be held three times in each year, to commence on the Thursday next after the holding the Municipal Elections in January, on the second Monday in April, and on the second Monday in October, and all such Courts shall be held, with or without commissions, as to the Governor may seem best, and (except as to the County in which the City of Toronto is situated) on such days as the Chief Justices and Judges of the Superior Courts of Common Law shall respectively name. 7 W. 4, c. 1, s. 8,—14, 15 V. c. 118,—16 V. c. 175,—20 V. c. 57, s. 30.

Courts of Assize and Nisi Prius, Oyer and Terminer and Gaol Delivery.

Commissions dispensed with.

2. In case commissions be issued, such commissions shall always contain the names of the Chief Justices and Judges aforesaid, one of whom, if any one of them be present, shall preside in the said Courts respectively, and such commissions may also contain the names of any of the Judges of the County Courts, and of any of Her Majesty's Counsel Learned in the Law of the Upper Canada Bar, one of whom shall preside in the absence of the Chief Justices and of all the other Judges of the said Superior Courts. 7 W. 4, c. 1, s. 8,—14, 15 V. c. 118,—16 V. c. 175,—20 V. c. 57, s. 30.

Commissions may issue.

3. If no such commissions be issued, the said Courts shall be presided over by one of the Chief Justices or of the Judges of the said Superior Courts, or in their absence, then by some one Judge of a County Court, or by some one of Her Majesty's Counsel Learned in the Law of the Upper Canada Bar, upon such Judge or Counsel being requested by any one of the said Chief Justices or Judges of such Superior Courts to attend for that purpose. 7 W. 4, c. 1, s. 8,—14, 15 V. c. 118,—16 V. c. 175,—20 V. c. 57, s. 30.

A Judge of one of the Superior Courts of Law to preside, if any present.

Their absence provided for.

4. Each of the said Chief Justices and Judges and of such Judges of the County Court and of such Counsel Learned in the Law, presiding at any Court of Assize and Nisi Prius, or of Oyer

The Judge or Officer presiding to possess

the same jurisdiction as under Commissions.

Oyer and Terminer and General Gaol Delivery, shall possess, exercise and enjoy all and every the like powers and authorities heretofore set forth and granted in Commissions issued for holding all or any of the said Courts. 7 W. 4, c. 1, s. 8,—14, 15 V. c. 118,—16 V. c. 175,—20 V. c. 57, s. 30.

Associate Justices dispensed with.

5. It shall not be necessary to name any associate Justices in any Commissions of Oyer and Terminer and General Gaol Delivery, or that any associate Justices should be nominated to, or attend, or be present, at any Court of Oyer and Terminer and General Gaol Delivery. 20 V. c. 57, s. 30.

Special Commissions may issue.

6. The Governor may issue special Commissions of Oyer and Terminer or of Gaol Delivery for the trial of offenders, whenever he deems it expedient. 2 G. 4, c. 1, s. 28,—7 W. 4, c. 1, s. 8,—19 V. c. 43, s. 152,—20 V. c. 57, s. 30.

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

7. Whenever from illness of the Judge, or from unavoidable detention at the last Assize town, or from other casualty, the Judge whose duty it may be to hold any Court of Assize and Nisi Prius, or of Oyer and Terminer or General Gaol Delivery, does not arrive in time, or is not able to open such Court on the day appointed for that purpose, the Sheriff of the County in which such Court should be holden, or, in his absence, his Deputy, may, after the hour of eight of the clock in the afternoon of such day, adjourn by his proclamation, the Court or Courts which should have been opened on that day, to an hour on the following day to be by him named, and so from day to day until the Judge arrives to open such Court or Courts, or until such Sheriff receives other direction from the Judge in that behalf. 7 W. 4, c. 1, s. 9.

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

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

#### CLERKS OF ASSIZE.

Who to officiate as Clerks of Assize.

9. The Deputy Clerks of the Crown in the several Counties or Union of Counties in Upper Canada except the County in which the City of Toronto is situated, shall *ex officio* be and act as Clerks of Assize and Marshals at the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, to be holden in their respective Counties or Unions of Counties, and shall have all the powers and perform all the functions incident to the same as such Clerks of Assize and Marshals.

**10.** The said Deputy Clerks of the Crown respectively, shall, immediately after each sitting of such Courts, forward by post to the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, every recognizance, indictment, paper or proceeding in any criminal matter, in their custody as such officers respectively, and also the usual and proper returns as such Clerks of Assize and Marshals. 14, 15 V. c. 118, s. 1.

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

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

And to pay the Postage thereon, &c.

**12.** In the event of any Clerk of Assize being absent, or being prevented by illness or other cause from performing his duties as such Clerk, the presiding Judge of Assize may authorize some person to act as Clerk of Assize, and the person so authorized to act shall receive the remuneration payable for the performance of the duties. 16 V. c. 175, s. 16.

Absence of Clerk of Assize provided for.

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

Wm. A. Campbell, Esquire, to prepare the Precepts.

**14.** When the day is not fixed by law, he shall procure such Precepts as soon as conveniently may be after the commission or other day has been appointed upon which the Jurors to be returned upon such Precepts are to be summoned to attend, and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding sittings of the same Courts; and for preparing, procuring and transmitting each Precept, he shall be entitled to receive one dollar, payable out of the Fees receivable by him. 16 V. c. 175, s. 19.

At what periods Precepts to be issued.

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

The Clerks of Assize to prepare Precepts after the demise of Mr. Campbell.

Mr. Campbell to hold office during good behaviour.

**16.** William Alexander Campbell, so long as he continues to be the Marshal and Clerk of Assize for the County of York, shall hold office during good behaviour, and shall act as Marshal and Clerk of Assize at the Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol Delivery for the said County of York, but he shall be removable by the Judges of the Superior Courts of Common Law, or a majority of them. 14, 15 V. c. 118, s. 8.

How removable.

His salary.

**17.** He shall in lieu of fees, except under the fourteenth section, receive, as such Marshal and Clerk of Assize, the salary of twelve hundred dollars per annum, which shall be charged upon and payable out of the Fee Fund. 14, 15, V. c. 118, s. 8.

His duties and liabilities as Clerk of Assize in Toronto.

**18.** He shall as Marshal and Clerk of Assize for the said County of York, be subject to all the provisions relating to records, exhibits and other documents in this Act contained. 14, 15 V. c. 118, s. 8.

When he ceases to be such Clerk, the Clerks of the Crown or their Deputies to officiate.

**19.** In the event of the death or removal from office of the said William Alexander Campbell, the Clerks of the Crown and Pleas for the time being of the said Superior Courts respectively shall, alternately (commencing with the senior in office of such Clerks) personally or by Deputy, act as such Marshal and Clerk of Assize for the said County of York, and shall have all the powers and exercise all the functions that are by law had and exercised by the Clerks of Assize. 14, 15, V. c. 118, s. 8.

A sum of one dollar to be paid upon the entering of each *Nisi Prius* record.

**20.** The sum of one dollar shall be paid to each Clerk of Assize upon each *Nisi Prius* record entered with him whether the cause be tried or not, and the said fees shall be by him accounted for, paid over and applied in aid of the fund created for providing better accommodation for the Superior Courts. 14, 15 V. c. 118, s. 3.

Remuneration of Deputy Clerks of the Crown when they act as Clerks of Assize.

**21.** Every Clerk of Assize, being a Deputy Clerk of the Crown or authorized to act as such under the twelfth section, may retain, out of such fees, a sum equal to four dollars for each day's attendance as Clerk of Assize, and postage as hereinbefore provided. 14, 15 V. c. 118, s. 3.

Not to receive fees on the criminal side.

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

The Clerk of Assize, County of York, placed upon the same footing.

**23.** The Marshal and Clerk of Assize of the County of York, under the nineteenth section, shall take and receive the same fees only as are taken by the other Marshals and Clerks of Assize under this Act, and such fees shall be by him accounted for, paid over and applied in the same manner as the other fees taken under the authority of this Act. 14, 15 V. c. 118, s. 9.



C A P. XII.

An Act respecting the Court of Chancery.

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

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

SEAL.

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

THE JUDGES.

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

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

5. The Judges shall hold their offices during good behaviour; but the Governor in Council may remove any of them upon the address of the two Houses of the Parliament of the Province; and in case a Judge so removed thinks himself aggrieved thereby, he may within six months appeal to Her Majesty in Her Privy Council, and in that case such amotion shall not be final until the appeal has been determined by Her Majesty in Her Privy Council. 12 V. c. 64, s. 3. To hold office during good behaviour.

SALARIES.

6. In respect to the salaries of the Judges, there shall, out of the Consolidated Revenue Fund of the Province, (after paying or reserving sufficient to pay all such sums as were before the thirtieth Salaries provided for.

thirtieth of May, one thousand eight hundred and forty-nine, directed by any Act of the Parliament of this Province, to be paid out of the same, but with preference to all other payments thereafter charged upon the same) be paid to the Chancellor, Five thousand dollars per annum; and to each of the other Judges, four thousand dollars per annum; and these sums shall be paid quarterly, free from all taxes and deductions, on the first day of January, the first day of April, the first day of July, and the first day of October, by equal portions, the first payment to be made on the first of those days which occurs after the appointment of the Judge entitled to receive the same; and in case any of the Judges be removed from office or die or resign office, such Judge or his executor or administrator shall be entitled to receive such proportionable part of the salary as accrued during the time that he executed the office subsequent to the last payment, and the successor to the office vacated by such Judge shall receive such portion of the salary as accrues from the day of his appointment. 12 V. c. 64, s. 4.

#### RETIRING ANNUITIES.

Retiring annuities provided for.

7. In case any Judge of the said Court of Chancery has continued in the office of a Judge of one or more of the Superior Courts of Law or Equity in Upper Canada, for fifteen years, or becomes afflicted with some permanent infirmity disabling him from the due execution of his office, and in case such Judge resigns his said office of Judge, Her Majesty may, by Letters Patent under the Great Seal of this Province, reciting such period of service or permanent infirmity, grant unto such Judge an annuity equal to two thirds of the salary annexed to the office of such Judge, to commence immediately after the period of his resignation and to continue thenceforth during his natural life; and such annuity shall be charged upon and be paid out of the Consolidated Revenue Fund of this Province, after paying or reserving sufficient to pay all such sums of money as by any Acts of the Parliament of this Province in force on the thirtieth day of May, one thousand eight hundred and forty-nine, have been directed to be paid thereout, but with preference to all other payments thereafter charged upon the same fund; and such annuity shall be paid quarterly, by equal portions on the first days of January, April, July and October, in each year, free from all taxes and deductions whatsoever; and the first quarterly payment, or a proportionate part thereof to be computed from the time of his resignation, shall be made on such of the said days as next happens after the resignation; and the executors or administrators of the person to whom the annuity has been granted shall be paid such proportionate part of the same as accrued from the commencement, or the last quarterly payment thereof, as the case may be, to the day of his death. 12 V. c. 64, s. 5.

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

"I, \_\_\_\_\_, do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me, as Chancellor (or Vice-Chancellor). So help me God."

## OFFICERS.

9. The Governor in Council may, from time to time, under the Great Seal of the Province, appoint during pleasure, one Registrar, one Master in ordinary, one Accountant, and a Sergeant-at-Arms, to the Court; and these Officers shall, in addition to the duties usually performed by the like officers in England, be liable to perform any other duties assigned to them by the Court. 7 W. 4, c. 2, s. 9,—12 V. c. 64, s. 12.

10. The Registrar and Master in ordinary may each appoint one Clerk, subject to the approval of the Judges, and may with the like approval remove such Clerk at pleasure. 13, 14 V. c. 50, s. 3,—12 V. c. 64, s. 12.

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

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

13. The Judges may, from time to time, under the Seal of the Court, appoint, and at their discretion remove, local Masters and Deputy Registrars (both of which offices may be held by one person,) in such places respectively out of Toronto, as the Judges may

Oath of office.

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

Registrar and Master may appoint Clerks.

Not allowed fees.

How fees to be disposed of.

To make quarterly returns of fees received;

And pay the same to the Receiver General.

The Court may appoint and remove local Masters and Deputy Registrars.

Also Commissioners for taking affidavits.

And an Usher.

may think expedient for the purpose of promoting as far as practicable the local administration of justice; and the Judges may likewise in manner aforesaid, appoint and remove Commissioners for administering oaths and taking affidavits and depositions in the said Court with the powers formerly possessed by Masters Extraordinary and Examiners; And also an Usher to attend on the Court, and the respective Judges thereof, during the sittings of the Court and Judges respectively for the transaction of business, and to execute such process of the Court as may be directed to him. 13, 14 V. c. 50, s. 1,—20 V. c. 56, ss. 17, 19,—7 W. 4, c. 2, s. 10.

Salaries of Officers provided for.

**14.** There shall be paid out of the Consolidated Revenue Fund of the Province, (after paying or reserving sufficient to pay all such sums as were directed by any Act of the Parliament of this Province before the Thirtieth day of May, one thousand eight hundred and forty-nine, to be paid thereout, but with preference to all payments thereafter charged upon the same) the yearly sums following as and for the salaries of the Master in ordinary, the Registrar and the Clerk of the Registrar, that is to say: to the Master, two thousand dollars; to the Registrar, one thousand six hundred dollars; and to the Clerk, five hundred dollars; which sums shall be paid quarterly, free from all taxes and deductions, on the four quarterly days hereinbefore mentioned; but the payment to be made in each case on the first of the quarterly days which happens after the right thereto accrues, shall be a rateable proportion of a Quarter's Salary, according to the time then elapsed since the accrual of the right; and in case of a vacancy in the office of such Master, Registrar or Clerk, the person making the vacancy, his executors or administrators, shall be entitled to a proportional part of his salary according to the time elapsed between the vacancy and the last quarterly payment; and there shall also be paid out of the Consolidated Revenue Fund of the Province (after paying or reserving sufficient to pay all such sums as have been directed by any Act of the parliament of this Province before the Tenth day of August one thousand eight hundred and fifty, to be paid out of the same, but with preference to all payments thereafter charged upon the same) the yearly sum of five hundred dollars, for the salary of the Clerk in the Master's Office. 12 V. c. 64, s. 12,—13, 14 V. c. 50, s. 3.

Local Officers may take fees.

**15.** The local Masters, the Deputy Registrars and the Commissioners may retain to their own use all the fees of office which they respectively receive not belonging to any fee fund; and need not account to the Crown for any portion of such fees: 20 V. c. 56, s. 16.

The Governor may appoint additional Clerks.

**16.** The Governor in Council may, from time to time, appoint an additional Clerk or additional Clerks in the Court, when the business of the Court requires the same and the Judges

of the Court apply for such appointment, and the Clerk or Clerks shall perform such duties as the Court may, from time to time, by general orders or otherwise, direct. 20 V. c. 56, s. 18.

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

Oath of office of Officers.

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

**18.** When not convenient to a person appointed to any office to attend at Toronto, to take the oath of office, the Court may direct the oath to be taken before the Judge of the County Court of the County in which such Officer resides, and the oath shall be certified by such Judge and filed in the Office of the Registrar. 1 V. c. 14, s. 3.

Who to administer.

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

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

#### THE CONDUCT OF BUSINESS.

**20.** The Court shall be holden at the City of Toronto, or in any other place from time to time appointed by Proclamation of the Governor. 7 W. 4, c. 2, s. 1.

The Court to sit at Toronto.

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

The Judges to sit together.

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

May sit separately for certain purposes.

have all the powers of the full Court, subject to any general orders in that behalf. 20 V. c. 56, s. 7.

The Judges to make Circuits for taking evidences and other purposes.

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

Witnesses to be examined *vivâ voce*.

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

#### RULES OF DECISION.

Rules of decision.

**25.** The rules of decision in the Court shall, except when otherwise provided, be the same as governed the Court of Chancery in England in like cases on the fourth day of March, one thousand eight hundred and thirty-seven, and the Court shall possess power to enforce obedience to its orders, judgments and decrees, to the same extent as was then possessed by the Court of Chancery in England. 7 W. 4, c. 2, s. 6,—12 V. c. 64, s. 9.

#### GENERAL JURISDICTION.

Jurisdiction.

**26.** The Court shall have the like jurisdiction and power as by the laws of England were at the said date possessed by the Court of Chancery in England, in respect of the matters hereinafter enumerated, that is to say:

1. In all cases of fraud and accident;
2. And in all matters relating to trusts, executors and administrators, copartnership and account, mortgages, awards, dower, infants, idiots, lunatics and their estates;

3. And also to stay waste ;
4. To compel the specific performance of agreements ;
5. To compel the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same ;
6. To prevent multiplicity of suits ;
7. To stay proceedings in a Court of Law prosecuted against equity and good conscience ;
8. To decree the issue of Letters Patent from the Crown to rightful claimants ;
9. To repeal and avoid Letters Patent issued erroneously or by mistake or improvidently or through fraud ;
10. And generally, the like jurisdiction and power as the Court of Chancery in England possessed on the tenth day of June, one thousand eight hundred and fifty-seven, as a Court of Equity to administer justice in all cases in which there exists no adequate remedy at Law. 7 W. 4, c. 2, s. 2,—16 V. c. 159, s. 21,—13, 14 V. c. 50, s. 4,—20 V. c. 56, s. 1,—12 V. c. 64, s. 8.

## INJUNCTIONS.

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

## WILLS.

**28.** The Court shall have jurisdiction to try the validity of Last Wills and Testaments, whether the same respect real or personal estate, and to pronounce such Wills and Testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the Court has jurisdiction to try the validity of deeds and other instruments. 12 V. c. 64, s. 10. The Court may try the validity of Wills.

## ALIMONY.

**29.** The Court shall also have jurisdiction to decree alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights ; and alimony when decreed shall continue until the further order of the Court. 7 W. 4, c. 2, s. 3,—20 V. c. 56, s. 2. Alimony may be decreed without divorce.

In suits for alimony a *Nisi Execut* may be issued.

**30.** See *Post*, Cap. 24, respecting Arrest and Imprisonment for Debt, &c., page 274,

## LUNATICS.

Cases of Lunatics and their estates.

**31.** In the case of Lunatics, Idiots and persons of unsound mind, and their Property and Estates, the jurisdiction of the Court shall include that which in England is conferred upon the Lord Chancellor by a Commission from the Crown, under the Sign Manual. 9 V. c. 10, s. 1.

The word "Lunatic," extended.

**32.** The word "Lunatic" is used in the subsequent sections of this Act as including an Idiot or other person of unsound mind. 9 V. c. 10, s. 1.

Commissions of Lunacy may be dispensed with.

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

Traverse of Inquisition of Lunacy.

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

Time to be limited.

1. In every order giving effect to such petition, the Court shall limit a time not exceeding six months from the date of the order, within which the person desiring to traverse, and all other proper parties, shall proceed to the trial of the traverse; But the Court may under the special circumstances of any case, and upon a petition being presented for that purpose, and upon the circumstances being substantiated upon affidavit, allow the traverse to be had or tried after the time limited; and in such special case, the Court may make such orders as seem just; 9 V. c. 10, s. 3.

May be tried in any Court of Record or before one of the Chancery Judges.

2. The trial may be ordered to take place in any Court of Record in Upper Canada, or before a Judge of the Court of Chancery with the aid of a Jury, according to the circumstances of the case and the situation of the parties; 9 V. c. 10, s. 3,—20 V. c. 56, s. 13.

What security the Traverser shall give.

3. The Court may order that the person to traverse, if he is not the party who has been found Lunatic, shall, within one month after the date of the order, file with the Registrar of the Court a bond, with one or more sureties, in favor of the Registrar for the time being, and conditioned for all proper parties proceeding to the trial of the traverse within the time limited; such bond before the filing thereof being approved of and certified to be sufficient.



sufficient by the Judge of the County Court of the County in which the parties reside, or by one of the Judges or Masters of the Court of Chancery ;

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

When the Traverser barred.

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

Proceedings in lieu of traverse when no Commission has issued.

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

New trials may be granted.

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

Property of Lunatics.

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

Security to be given by the Committee.

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

The Committee to file an Inventory of present property.

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

Also, of after-discovered property.

4. Every inventory shall be verified by the oath of the Committee. 9 V. c. 10, s. 6.

To be verified on oath.

**38.** Whenever the personal estate of a Lunatic is not sufficient for the discharge of his debts, the following steps may be taken : 9 V. c. 10, s. 7.

When estate not sufficient to pay debts.

Committee to apply for leave to mortgage or sell, &c.

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

What the Petition is to contain.

2. Such petition shall set forth the particulars and amount of the estate real and personal of the Lunatic, the application made of any personal estate, and an account of the debts and demands against the estate ;

The truth of, to be inquired into.

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

If personal estate insufficient, real estate may be disposed of.

4. If it appears to the Court that the personal estate is not sufficient for the payment of debts, and that the same has been applied to that purpose as far as the circumstances of the case render proper, the Court may order the real estate or a sufficient portion of it to be mortgaged, leased or sold either by the Committee or otherwise ;

Debts to be paid out of the proceeds.

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

Rateably and without preference.

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

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

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

Surplus sums how to be applied or disposed of.

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

When a Lunatic is a Trustee

41. When a Lunatic is seized or possessed of real estate, by way of mortgage, or as a Trustee for others in any manner, the.

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

or Mortgagee, his Committee may act, and how far.

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

Instruments executed by the Committee to be valid.

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

Specific performance how compelled in such cases.

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

Costs and expenses how to be defrayed.

#### PARTITION.

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

Partition and sale of joint estates.

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

Effect of Decree for.

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

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

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

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

INFANTS.

The custody of infants.

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

A sale of the estates of minors may be authorized.

**50.** When an infant is seized or possessed of or entitled to any real estate in fee, or for a term of years, or otherwise howsoever, in Upper Canada, and the Court is of opinion that a sale, lease or other disposition of the same or of any part thereof, is necessary or proper for the maintenance or education of the infant, or that, by reason of any part of the property being exposed to waste and dilapidation, or to depreciation from any other cause, his interest requires or will be substantially promoted by such disposition, the Court may order the sale, or the letting for a term of years, or other disposition of such real estate or any part thereof, to be made under the direction of the Court or one of its officers, or by the Guardian of the infant, or by any person appointed by the Court for the purpose, in such manner and with such restrictions as to the Court may seem expedient, and may order the infant to convey the estate as the Court thinks proper. 12 V. c. 72, ss. 1,2,—13, 14 V. c. 50, s. 8.

No sale contrary to a devise.

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

The application to be by next friend or guardian.

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

When a substitute for an infant may be appointed.

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

Decds executed in behalf of, to be valid.

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

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

The Court to direct the application of the proceeds.

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

The quality of surplus moneys upon sale of real estate.

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

In cases of dower a composition may be made.

#### SPECIAL PROVISION RESPECTING MORTGAGES.

**58.** Whereas the law of England was at an early period introduced into Upper Canada, and continued to be the rule of decision in all matters of controversy relative to property and civil rights, while at the same time, from the want of an equitable jurisdiction, until the fourth day of March, one thousand eight hundred and thirty-seven, it was not in the power of mortgagees to foreclose, and mortgagors out of possession were unable to avail themselves of their equity of redemption, and in consequence of the want of these remedies the rights of the respective parties, or of their heirs, executors, administrators or assigns, may be attended with peculiar equitable considerations, as well in regard to compensation for improvements, as in respect to the right to redeem, depending on the circumstances of each case, and a strict application of the rules established in England might be attended with injustice; the Court shall have authority in every case of mortgage, where, before the said fourth day of March, one thousand eight hundred and thirty-seven, the estate had become absolute in law, by failure in performing the condition, to make such decree in respect to foreclosure or redemption, and with regard to compensation for improvements, and generally with respect to the rights and claims of the mortgagor and mortgagee, and their respective heirs, executors, administrators or assigns, as may appear to the Court just and reasonable under all the circumstances of the case, subject however to appeal by either party. 7 W. 4, c. 2, s. 11.

Special provisions in cases of mortgages forfeited before the 4th March, 1837.

## DORMANT EQUITIES

Provisions respecting Equities of long standing in relation to real estate.

**59.** Whereas by the Act to establish the Court of Chancery in Upper Canada, it was provided that the rules of decision in the said Court should be the same as governed the Court of Chancery in England; And whereas in regard to claims upon, or interests in real estate arising before the said date, it is just to restrict the future application of the said rules of decision to cases of fraud, and in regard to other cases, it is expedient to extend thereto in manner hereinafter provided, the authority so given to the Court as aforesaid in case of mortgages: Therefore, no title to or interest in real estate which is valid at law, shall be disturbed or otherwise affected in Equity by reason of any matter or upon any ground which arose before the Fourth day of March, A. D. one thousand eight hundred and thirty-seven, or for the purpose of giving effect to any equitable claim, interest or estate, which arose before the said date, unless there has been actual and positive fraud in the party whose title is sought to be disturbed or affected. 18 V. c. 124, s. 1.

And in regard to other equitable claims.

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

## APPEALS.

Appeals from Decree, &c., of County Courts.

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

Appeals from decisions of certain Commissioners for protection of Crown Lands.

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

## VESTING ORDERS.

**63.** In every case in which the Court has authority to order the execution of a Deed, conveyance, transfer or assignment of any property, real or personal, the Court may make an order or a decree vesting such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such Deed, conveyance, assignment or transfer if executed; and thereupon the order or decree shall have the same effect both at Law and in Equity as if the legal or other estate or interest in the property had been actually conveyed, by Deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a *chose in action*, as if such *chose in action* had been actually assigned to such last mentioned person. 20 V. c. 56, s. 8.

Vesting order, effect of.

## REGISTRATION.

**64.** The filing of a bill or the taking of a proceeding, in which bill or proceeding any title or interest in land is brought in question, shall not be deemed notice of the bill or proceeding to any person not being a party thereto, until a certificate by the Registrar or a Deputy Registrar of the Court, in the form mentioned in this section, has been registered in the Registry Office of the County in which the land is situate:

A bill filed, &c., not notice unless certificate be registered in the County Registrar's Office.

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

Form of Certificate.

But no certificate is required to be registered of a suit or proceeding for the foreclosure of a registered mortgage. 18 V. c. 127, s. 3,—20 V. c. 56, s. 9.

Not necessary in foreclosure cases.

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

Decree affecting lands may be registered.

**66.** Every decree or order made or to be made directing any sum of money, or any costs, charges or expenses, to be paid, either at one time or by several or periodical payments to any person, or into the Court, or to the credit of any cause, or otherwise, may be registered in any County Registry Office upon delivery to the County Registrar of a certificate of the Registrar or a Deputy Registrar of the Court, stating the title of the cause or matter in which the decree or order was made, and the date of the decree or order, and the amount of the money therein, or in any report made in pursuance thereof, mentioned to be payable; and the certificate shall be recorded by the County Registrar

What other Decree may be registered, and bind lands.

Registrar in the same books and in the same manner as certificates of judgments at Law are registered, and the registry of the certificate shall have the same effect as the registry of a judgment at Law, and may be discharged therefrom in the same manner as a judgment at Law. 20 V. c. 56, s. 10.

When the Court may relieve part of an estate from the lien created by registration.

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

The Court may order sale of the real estate.

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

#### ISSUES.

Issues out of Chancery may be tried without feigned issues at law.

**69.** In any case in which the Court requires an issue to be tried by a jury, it shall not be necessary to commence any feigned action in a Court of Law; but upon an office copy of the decree or order directing the trial of the issue, being entered for trial in the same manner as a *Nisi Prius* record is entered, the issue shall be tried at the Assizes, or at the sittings of a County Court in Upper Canada, in the same manner as issues are tried in actions brought in the Superior Courts of Law or in the County Courts, and the finding of the jury shall be endorsed upon such office copy and signed by the presiding Judge, and the office copy shall then be transmitted to the Registrar of the Court of Chancery; or instead of directing an issue to be tried at law, the Court may try the same by a Jury without the intervention of a Court of Common Law, and may issue a precept or order directed to the Sheriff of any County the Court sees fit, requiring him to strike and summon a Jury for that purpose; and at the trial, one Judge or more of the Court of Chancery may sit or preside. 20 V. c. 56, s. 13.

Or by the Court of Chancery or a Judge thereof.

#### PARTIES.

Service in proceedings for foreclosure or sale how made.

**70.** In any suit instituted in the Court of Chancery by a mortgagee or judgment creditor, or by any other person having a charge on real property, for the foreclosure or sale of property, and to which suit any judgment creditor of the mortgagor or of the judgment debtor, or of the person liable to the charge, is a defendant, personal



personal service on such defendant shall not be necessary, and it shall be sufficient to serve the process of the Court, whether the same be an office copy of the bill or an office copy of the decree or decretal order, upon his Attorney in the action at Law in which the judgment has been recovered; but the plaintiff in any such suit in Chancery may elect to serve the judgment creditor personally instead of serving the Attorney. 20 V. c. 56, s. 14.

#### ABSENTEES.

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

Service on absentees.

#### MONEY IN COURT.

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

Money in Court how to be disposed of.

#### FEE FUND.

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

Fees to be taken to form a Suitors' Fee Fund.

#### GENERAL ORDERS.

**74.** All general orders of the Court existing when this Act takes effect are hereby confirmed and declared to be as effectual as if the same were hereby specially enacted; but the same may, from time to time, be suspended, repealed, varied and re-enacted by the Court, and shall, in all respects be subject to the control and direction of the Court and the respective Judges thereof, as in the case of any other general orders

Existing orders to continue until altered, &c.

orders which the Court is empowered to make under the general or other jurisdiction thereof. 20 V. c. 56, s. 21,—12 V. c. 64, s. 9.

The Court empowered to make orders.

**75.** The Court may, from time to time, make such General Orders as to the Court may seem expedient, for regulating the Offices of the Masters and Registrars, and for regulating and securing the due performance of the duties of all the Officers of the Court, and for regulating and adapting to the circumstances of this Province, the practice and proceedings of the Court, and more especially the nature and form of the process and pleadings, the taking, publishing, using and hearing of testimony, the examination of the parties to a suit upon their oaths, *visû voce* or otherwise, the allowance and amount of costs and every other matter deemed expedient for better attaining the ends of Justice, and advancing the remedies of Suitors; and the Court may, from time to time, suspend, repeal, vary or revive any such orders, but no such order shall have the effect of altering the principles or rules of decision of the Court. 12 V. c. 64, s. 11,—See c. 72, s. 7,—7 W. 4, c. 2, s. 4,—20 V. c. 56, s. 21.

#### PRISONS.

Gaols to be Prisons of the Court.

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

### C A P . X I I I .

#### An Act respecting the Court of Error and Appeal.

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

#### EXISTING COURTS CONTINUED.

The Court of Appeal continued.

**1.** The " Court of Error and Appeal," at present existing in Upper Canada, is hereby continued, and shall be called the Court of Error and Appeal. 12 V. c. 63, s. 36.

#### THE JUDGES IN APPEAL.

Who to compose the Court.

**2.** The Judges for the time being of the Courts of Queen's Bench, Chancery and Common Pleas in Upper Canada, shall be *ex officio* members of the Court of Appeal. 20 V. c. 5, s. 2.

Retired Judges may be added.

**3.** The Governor may, by Commission under the Great Seal, from time to time, appoint any retired Judge of any of the said Superior Courts, as an additional Judge of the Court of Error and Appeal. 20 V. c. 5, s. 2.

4. Every person so appointed shall take such rank and precedence, after the Chief Justice of Upper Canada, the Chancellor of Upper Canada, and the Chief Justice of the Court of Common Pleas, as may be designated in his Commission. 20 V. c. 5, s. 2.

Rank of.

## WHO TO PRESIDE.

5. The Chief Justice of the Court of Queen's Bench for the time being, and in his absence, the Judge entitled to precedence over all the other Judges present, shall preside. 20 V. c. 5, s. 4.

The Chief Justice to preside.

## QUORUM.

6. Seven members of the Court shall be necessary to constitute a quorum. 20 V. c. 5, s. 4.

Seven Members to be a quorum.

## CLERK.

7. The Registrar of the Court of Chancery shall *ex officio* be Clerk of the Court of Error and Appeal. 12 V. c. 63, s. 43.

Who to be Clerk.

## TIMES AND PLACE OF SITTING.

8. The Court of Error and Appeal shall hold its sittings at the City of Toronto, on the second Thursday next after the several Terms of Hilary, Easter and Michaelmas, and may adjourn from time to time, and meet again at the time fixed on the adjournment, for the transaction of business. 20 V. c. 5, s. 4.

The Court to sit at Toronto three times a year.

## JURISDICTION AND POWERS.

9. The Court shall have an appellate Civil and Criminal Jurisdiction throughout Upper Canada, and an appeal shall lie thereto from all judgments of the Courts of Queen's Bench and Common Pleas, and from all judgments, orders and decrees of the Court of Chancery. 12 V. c. 63, s. 40.

Jurisdiction of the Court.

10. The Court shall have power to quash proceedings in cases brought before it, in which Error or Appeal does not lie, or where such proceedings are taken against good faith, or in which proceedings might heretofore have been quashed in the Court, according to the law and practice in England. 20 V. c. 5, s. 6.

May quash proceedings; when.

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

May dismiss Appeals; when.

## DUTIES OF CLERK.

The Clerk to certify result of Appeals.

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

## APPELLANTS MAY DISCONTINUE.

Appellants may discontinue.

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

## RESPONDENTS MAY ASSENT TO REVERSAL.

A Respondent may consent to a reversal of the judgment or decree, &c.

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

## SECURITIES.

Appellants to give security.

**15.** No appeal shall be allowed until the appellant has given proper security to the extent of four hundred dollars, to the satisfaction of the Court from whose order, decree or judgment he is about to appeal, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment or decree appealed from be affirmed. 12 V. c. 63, s. 40.—*The proviso and see Post, ss. 17, 35, 59 & 60.*

## STAY OF EXECUTION.

When perfected, execution to be stayed.

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

## EXCEPTIONS.

Subject to certain exceptions in which partial performance is required

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

Court or placed in the custody of such Officer or Receiver as the Court appoints, nor until security has been given to the satisfaction of the Court appealed from, and in such sum as that Court directs, that the Appellant will obey the Order of the Appellate Court; 12 V. c. 63, s. 40, No. 2.

by delivery into Court.

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

Or by executing the instrument.

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

Or by the giving of special security not to commit waste.

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

Or to pay debt and costs.

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

When given, a *fiat* to stay execution to be granted.

#### WHEN EXECUTION SUPERSEDABLE.

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

Execution may be superseded, or payment of money levied be withheld.

## DEATH OR MARRIAGE NOT TO ABATE.

Death of Appellant not to abate the appeal;

**19.** The death of the appellant after the security has been perfected and allowed shall not cause the appeal to abate. 20 V. c. 5, s. 10.

Nor of the Respondent;

**20.** The death of the respondent shall not cause the appeal to abate. 20 V. c. 5, s. 11.

Nor the marriage of a *feme sole*.

**21.** The marriage of a woman appellant or respondent shall not abate the appeal, but the proceedings in error and appeal shall go on as if no such marriage had taken place, and the decision of the Court shall be certified as in other cases. 20 V. c. 5, s. 12.

APPEALS FROM THE COURT OF QUEEN'S BENCH AND COMMON PLEAS IN CASES OTHER THAN JUDGMENTS OR MATTERS OF RECORD.

1.—IN CERTAIN CIVIL CASES.

Appeals from the Superior Courts of Common Law.

**22.** An appeal shall lie from a Judgment upon a special case in the same manner as from a Judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error and Appeal shall, as nearly as possible, be the same as in the case of a special verdict, and that Court shall draw any inferences of fact from the facts stated in the special case, which the Court by which the case was originally decided ought to have drawn. 20 V. c. 5, s. 13.

From judgments, special verdicts and special cases, &c.

On rules to enter a verdict or non-suit on points reserved.

**23.** An appeal shall lie in the case of a rule to enter a verdict or non-suit upon a point reserved at the trial whether a rule to shew cause has been refused or granted, or has been discharged or made absolute. 20 V. c. 5, s. 14.

And on rules for new trial on certain grounds.

**24.** In all cases of motion for a new trial upon the ground that the Judge has not ruled according to law, if the rule to shew cause be refused, or if granted, be afterwards discharged or made absolute, the party decided against may appeal, provided any one of the Judges dissent from the rule being refused, or when granted, being discharged or made absolute, as the case may be, or provided the Court in its discretion think fit that an appeal should be allowed. 20 V. c. 5, s. 15.

In case one Judge dissents or Court allows appeal.

But due notice must be given, within 14 days.

**25.** No appeal shall be allowed under the three preceding sections, unless notice thereof be given in writing to the opposite party or his Attorney and to the Clerk of the Crown of the proper Court, within fourteen days after the decision complained of, or within such further time as the Court appealed from, or a Judge, may allow. 20 V. c. 5, s. 16.

**26.** Where the application for a new trial is upon matter of discretion only, as on the ground that the verdict is against the weight of evidence, or otherwise, no appeal shall be allowed. 20 V. c. 5, s. 15.

No appeal where the matter is discretionary with the Court.

**27.** An appeal shall lie in ejectment in the same manner and to the same extent as in any other case. 20 V. c. 5, s. 17.

In ejectments.

**28.** An appeal shall lie in all cases in which a By-law of a Municipal Corporation has been quashed by rule of Court after argument. 20 V. c. 5, s. 18.

When By-laws quashed.

## 2.—IN CRIMINAL CASES.

**29.** A person convicted of treason, felony, or misdemeanor, before any Court of Oyer and Terminer or Gaol Delivery, whose conviction has been affirmed by either of the Superior Courts of Common Law, may appeal against the affirmation, and the Court of Error and Appeal shall make such rule or order therein, either in affirmance of the conviction or for granting a new trial, or otherwise, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect; But no such appeal shall be made unless allowed by the Superior Court appealed from, or by two of the Judges thereof, in term or vacation; nor unless such allowance has been granted and the appeal been heard, within six months after the conviction was affirmed, unless otherwise ordered by the Court of Error and Appeal; and any rule or order of the Court of Error and Appeal shall be final. 20 V. c. 61, s. 4.

Appeal in criminal cases affirmed by the Superior Courts of Law.

## 3.—APPEALS RESTRICTED.

**30.** No other appeal from a decision of the Court of Queen's Bench or Common Pleas shall be allowed, unless the judgment, decision, or other matter appealed against, appears of record. 20 V. c. 5, s. 19.

No other appeals in matters not of record.

## 4.—PROCEDURE.

**31.** In cases not otherwise provided for, an appeal against any Judgment or decision shall be commenced and prosecuted with effect within four years after the judgment or decision has been entered of record, given, or completed, unless with respect to any person entitled to appeal, and who is, at the time such title accrues, within the age of twenty-one years, *feme covert*, *non compos mentis*, or without the limits of this Province, and then such person shall have for commencing his appeal and prosecuting the same with effect, six years after becoming of full age, *discoverte*, of sound memory, or returning to the Province; and if the opposite party, at the time the title to appeal accrues, be out of the province, then the party desirous of appealing shall have for commencing his appeal and prosecuting the same with effect, six years after the return of such party to this province. 19 V. c. 43, ss. 293, 294.

Appeals limited: to 4 years, &c.

Or six years in certain cases.

Writs of Appeal abolished. Appealing, to be a step in the cause.

**32.** A Writ of Error and Appeal shall not be used in any civil case, and the proceeding to appeal against a Judgment shall be a step in the cause. 20 V. c. 5, s. 20.

The Notice of Appeal.

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

To be filed, &c.

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

Form of Memorandum.

The memorandum may be to the effect following :

“ In the (Q. B. or C. P.)

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

*(The day of lodging note of Error.)*

“ A. B. and C. D.

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

“ A. B., Plaintiff,

“ (or C. D., Defendant),

“ (or E. F., Attorney for Plaintiff or Defendant);”

20 V. c. 5, Sch. A 1.

Allowance of security to be a supersedeas of execution.

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

Assignment of errors dispensed with.

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

Form of Suggestion.

**37.** The suggestion shall be to the effect following :

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

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

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



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

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

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

Roll and suggestion to be made up in ten days.

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

Practice where some only of several parties appeal.

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

The clerk to certify transcript of the judgment below.

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

Frame of appeal in special instances.

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

What the case to set forth.

To be left with Clerk of Appeal.

**44.** When the case has been so stated and settled, the same shall be forthwith delivered by the Appellant to the Clerk of the Court of Error and Appeal, and the cause may, after the security required to be given by the appellant has been duly allowed, be set down for argument. 20 V. c. 5, s. 27.

Copies for each Judge required.

**45.** The appellant shall, at least four clear days before the day appointed for hearing the argument, deliver to the Clerk, a copy for each of the Judges, of the transcript of the Judgment or Case, or in default, the appeal may be dismissed with costs. 20 V. c. 5, s. 28.

Suggestion in case of death.

**46.** In case of the death of one of several appellants, a suggestion may be made of his death, and the proceedings may thereupon be continued at the suit of and against the surviving appellant, as if he were the sole appellant; and such suggestion shall not be traversable, but if untrue may be set aside on motion. 20 V. c. 5, s. 29.

Executor or Administrator may continue appeals.

**47.** In case of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving appellant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the proceedings may thereupon be continued at the suit of and against such legal representative as the appellant, and if no such suggestion be made, the respondent may proceed to an affirmation of the Judgment according to the practice of the Court, or take such other proceedings as he may be entitled to; and such suggestion, if made, shall not be traversable, but if untrue may be set aside on motion. 20 V. c. 5, s. 30.

Appeal may be continued against surviving respondent.

**48.** In case of the death of one of several respondents, a suggestion may be made of such death, and the proceedings may be continued against the surviving respondent; and such suggestion shall not be traversable, but if untrue may be set aside on motion. 20 V. c. 5, s. 31.

Notices in case of the death of all the respondents.

**49.** In case of the death of a sole respondent or of all the respondents, the appellant may proceed upon giving one month's notice of the appeal, and of his intention to continue the same, to the representative of the deceased, or if no such notice can be given, then upon giving the notice to the parties interested as the Court or a Judge may direct. 20 V. c. 5, s. 32.

Interest to be allowed.

**50.** When on an appeal against a Judgment in any action personal, the Court of Error and Appeal gives Judgment for the Defendant in error, interest shall be allowed by the Court for such time as execution has been delayed by the appeal. 7 W. 4, c. 3, s. 22.

**51.** If a woman, being appellant or respondent, marries Judgments affirmed.  
 pending the appeal, and Judgment be given for her, execution may thereupon be issued in the Court below, by the How execution to issue if a  
 authority of the husband, without any suggestion or Writ of feme sole marries.  
 Revivor, and if judgment be given against her, such judgment may be executed in the Court below against the wife alone, or by suggestion or Writ of Revivor pursuant to the *Common Law Procedure Act*, judgment may be obtained against the husband and wife, and execution issued thereon. 20 V. c. 5, s. 33. Pending the appeal.

#### APPEALS FROM THE COURT OF CHANCERY.

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

**53.** Such petition shall not be answered, but proceedings shall go on as if the petition had been answered and as if the time named in the notice had been appointed by the Court for hearing the appeal. Petition not to be answered, when to be heard.

**54.** The petition shall be in the following form :

“ IN THE COURT OF ERROR AND APPEAL.

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

“ To the Honorable the Judges of the said Court.

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

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

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

“ And your petitioner will ever pray, &c. ”

(Certificate of Counsel to be added.)

Within what time Appeals must be brought to a hearing.

**55.** In case of an appeal from the Court of Chancery, the appellant shall bring the same to a hearing if the appeal is from a Decree or Decretal Order, within one year from the pronouncing thereof; and if the appeal is from an Interlocutory Order, not being a Decretal Order, then within six months from the pronouncing of the same, or within such further time in either case as may be allowed for the purpose by the Court of Error and Appeal, or by the Court of Chancery or a Judge thereof, upon special grounds shewn to the satisfaction of the Court or Judge granting the same. 20 V. c. 5, s. 35.

Time to be reckoned from the Decree or Order becoming absolute.

**56.** As to a Decree or Order which, under any General Orders of the Court of Chancery, does not become absolute upon the same being pronounced, the time limited for appealing therefrom shall be computed from the time when the same does become absolute. 20 V. c. 5, s. 35.

#### APPEALS TO HER MAJESTY, IN HER PRIVY COUNCIL.

Appeal final in matters not exceeding \$4000.

**57.** The judgment of the Court of Error and Appeal shall be final where the matter in controversy does not exceed the sum or value of four thousand dollars. 12 V. c. 63, s. 46.

When Appeal may be to the Queen in Privy Council.

**58.** In a case exceeding that amount, as well as in a case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an Appeal shall lie to Her Majesty in Her Privy Council. 12 V. c. 63, s. 46.

Security to be given.

**59.** But no such Appeal shall be allowed until the appellant has given security in two thousand dollars, to the satisfaction of the Court appealed from, that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the Judgment or Decree appealed from be affirmed. 12 V. c. 63, s. 46.

The execution to be stayed.

**60.** Upon the perfecting of such security, execution shall be stayed in the original cause. 12 V. c. 63, s. 46, *and see ante* ss. 16, 17, 35.

The 16th section to apply.

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

The Judges may approve of the sureties.

**62.** Every Judge of the Court of Error and Appeal shall have authority to approve of and allow the security to be given by a party who intends to appeal to Her Majesty in Her Privy Council,

Council, whether the application for such allowance be made during the sitting of the said Court, or at any other time. 20 V. c. 5, s. 36.

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

#### GENERAL RULES.

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

#### THE CLERK'S FEES AND ACCOUNTS.

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

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

## C A P . X I V .

## An Act respecting the Court of Impeachment.

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

## THE COURT.

The Court constituted.

**1.** The Court of Impeachment, heretofore established, and existing when this Act takes effect, shall continue and be called the Court of Impeachment, and shall possess all the incidents, powers and privileges of a Superior Court of Record, and shall be composed of the Chief Justice of Upper Canada, the Chancellor of Upper Canada, and the Chief Justice of the Court of Common Pleas, and shall hold its sittings at the City of Toronto as occasion may require. 20 V. c. 58, s. 11.

## ABSENCE OF JUDGES.

Absence of a Judge of the Court of Impeachment provided for.

**2.** In case of the illness or unavoidable absence of any of the Judges of the said Court, the Senior Puisne Judge of the Superior Courts of Common Law, may, with like powers, act instead of the Judge so ill or absent. 20 V. c. 58, s. 13.

## RULES.

May make orders.

**3.** The Court may make such rules and orders as may from time to time be deemed necessary. 20 V. c. 58, s. 11.

## JURISDICTION.

Jurisdiction. The Governor may transmit charges against any County Court Judge.

**4.** In case any complaint for inability or misbehaviour in office be preferred against any Judge of any County Court, and if the Governor finds the same sufficiently sustained and of sufficient moment to demand judicial investigation by the Court of Impeachment, he shall direct such complaint and all papers and documents therewith connected, to be transmitted to the Chief Justice of Upper Canada as President of the Court. 20 V. c. 58, s. 12.

## SITTINGS.

Sittings to be appointed as required.

**5.** The Court of Impeachment shall thereupon appoint a day for the meeting of the Court, and at such sittings or at any adjournment thereof, the Judges of the said Court shall proceed to the trial of the charges laid and set forth in the complaint, and to the hearing of the parties complainant and accused, their counsel, witnesses and proofs respectively, and shall adjudicate upon such complaint and charges. 20 V. c. 58, s. 12.

## JUDGMENT.

## JUDGMENT.

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

Decision if inability is complained of.

7. If the complaint be for misbehaviour in office, the Court shall determine whether such Judge is guilty or not guilty of the misbehaviour, and if not guilty, then, whether the conduct of such Judge is censurable or unbecoming.

If misbehaviour is complained of.

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

The decision to be certified to the Governor and to be final.

## COSTS.

9. The said Court may award reasonable costs to be paid by one party to the other, according to the nature of the adjudication, viz : If the complaint be adjudged false or vexatious, the accused shall be entitled to his costs of defence ; if the conduct of the Judge complained against (whether he be found guilty or not guilty) be adjudged censurable and unbecoming, the complainant shall be entitled to his costs of prosecution. 20 V. c. 58, s. 12.

Costs provided for.

## 3.—INFERIOR COURTS.

## C A P . X V .

## Act respecting County Courts.

## 1.—COMMON LAW JURISDICTION.

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

1. There shall be in every County, or Union of Counties, in Upper Canada, a Court of Law and of Record, to be styled "The County Court of the County of \_\_\_\_\_, or United Counties of \_\_\_\_\_" (as the case may be); and the County Courts already established under such names respectively, and all existing Commissions, Judges and Officers of such County Courts, shall continue subject to the provisions of this Act. 8 V. c. 13, ss. 2, 72,—16 V. c. 20, s. 3.

Existing Courts continued.

The Governor to appoint one or two Judges to each Court.

2. The Governor shall from time to time appoint, under the Great Seal, one person or two persons, being a Barrister or Barristers of at least five years' standing at the Bar of Upper Canada, to be the Judge or Junior Judge in each of the said Courts.

Tenure of office.

3. The Judges of the several County Courts holding office when this Act takes effect, as well as Judges appointed under the last section, shall hold their offices during good behaviour, but shall be subject to removal by the Governor for inability or misbehaviour in case such inability or misbehaviour be established to the satisfaction of the Court of Impeachment for the trial of charges preferred against Judges of County Courts. 8 V. c. 13, ss. 2, 3,—20 V. c. 58, s. 10.

The Senior Judge to be styled "The Judge," &c.

4. In case more than one Judge of the County Court be appointed for any County, then, unless otherwise expressed in the Commission, the Judge whose Commission has priority of date shall be styled "The Judge of the County Court of \_\_\_\_\_" (as the case may be), and the other Judge of the same Court shall be styled the Junior Judge thereof. 16 V. c. 20, s. 1.

To reside within the County.

Not to practise under penalty.

5. The Judge of the County Court, and the Junior Judge, if there be one, shall reside within the County or Union of Counties for which he is appointed, and no such Judge shall, during the continuance of his appointment, directly or indirectly, practise in the profession of the Law as Counsel, Attorney, Solicitor or Notary Public under the penalty of forfeiture of office, and the further penalty of four hundred dollars to be recovered by any person who may sue for the same by action of debt or information in either of the Superior Courts of Common Law—one half of which pecuniary penalty shall belong to the party suing, and the other half to Her Majesty. 8 V. c. 13, s. 3,—16 V. c. 20, ss. 1, 2.

Junior Judge may hold Division Courts; And the County Court in the absence of the Senior Judge.

6. In case of the appointment of a Junior Judge for any County, such Junior Judge may preside over all or any of the Division Courts within the County, and shall, as regards any such Division Courts, have the same duties, powers and authorities as the Judge; and in case of the death, illness or unavoidable absence or the absence on leave of the Judge, such Junior Judge shall, during such illness or absence, hold the County Court, and shall perform and discharge all the other ordinary duties and functions of, and shall exercise all the powers vested in, and do all acts required or allowed to be done by the Judge of such County Court. 16 V. c. 20, ss. 1, 2,—20 V. c. 58, s. 14,—22 V. c. 93, s. 60.

Senior Judge to hold Division Courts when expedient.

7. The appointment of a Junior Judge shall not prevent or excuse the Judge of the County Court from presiding at any of the Division Courts within his County when the public interests require it. 16 V. c. 20, s. 1.



8. In case no Junior Judge be appointed, the Governor may from time to time appoint a Barrister of at least three years' standing at the Bar of Upper Canada, to be Deputy Judge for any County, and such Deputy Judge shall hold office during pleasure, and in case of the death, illness or unavoidable absence, or the absence on leave of the Judge, shall perform all the duties of and incident to the office of Judge of the County Court and Division Courts and all acts required or allowed to be done by the Judges of the County Court and as effectually as a Junior Judge; but no such Deputy Judge shall be disabled from practising the profession of the Law while holding his appointment. 20 V. c. 58, s. 14.

A Deputy Judge may be appointed if there is no Junior Judge.

9. No County Court Judge, Junior, or Deputy Judge, shall enter upon the duties of his office until he has taken the following oath before some person appointed by the Governor to administer the same, that is to say: 8 V. c. 13, s. 4,—20 V. c. 58, s. 15.

Oath of office.

"I, \_\_\_\_\_, do swear that I will (*in the case of a Deputy Judge add the words "as occasion may require"*) truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the County Court of the County of \_\_\_\_\_, or United Counties of \_\_\_\_\_, (*as the case may be*), and of the several Division Courts within the same, without fear, favor or malice. So help me God." 8 V. c. 13, s. 4,—20 V. c. 58, s. 15.

Form of.

10. Every County Court Judge shall be paid by a certain yearly salary of not more than two thousand six hundred dollars nor less than one thousand dollars, and the Governor in Council shall fix the amount of such salary, having due regard as well to the population of the several Counties as to the amount of fees received from the County Court and Division Court "Fee Fund" for the respective Counties. 8 V. c. 13, ss. 61, 66,—19 V. c. 90, s. 22,—See 13, 14 V. c. 53, s. 12.

Salaries.

11. The Governor in Council may, within the limits aforesaid, increase the salary of any such Judge, and as vacancies occur may diminish such salary. 13, 14 V. c. 53, s. 12,—19 V. c. 90, s. 22.

May be increased or diminished.

12. In case the Governor in Council is satisfied that under the provisions hereinafter contained, an allowance for travelling expenses ought to be made, then a sum not exceeding two hundred dollars a year may be paid to any of the said Judges over and above his salary, to be paid in the same manner and out of the same fund as the salary of such Judge, as indemnity for his travelling expenses in holding Division Courts, due regard in fixing the amount being had, to the extent, population, amount of business and other circumstances of the several Counties and Divisions; and, within the limits aforesaid, the amount fixed for

Travelling expenses may be allowed.

for travelling expenses may be from time to time increased or diminished. 16 V. c. 177, s. 25.

#### TERMS.

Terms of the Courts.

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

Judgments may be pronounced in vacation.

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

#### SITTINGS.

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

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

#### JURISDICTION.

Jurisdiction restricted.

**16.** The said Courts shall not have cognizance of any action:

1. Where the title to land is brought in question; or,
2. In which the validity of any devise, bequest or limitation under any will or settlement is disputed; or,
3. For any libel or slander; or,
4. For criminal conversation or seduction; or
5. Of any action against a Justice of the Peace for any thing done by him in the execution of his office if he objects thereto. 8 V. c. 13, ss. 50, 5,—19 V. c. 90, s. 20,—16 V. c. 180, s. 9,—12 V. c. 66, s. 7,—*And see* 13, 14 V. c. 52.

Jurisdiction allowed.

**17.** Subject to the exceptions contained in the last preceding section, the County Courts shall have jurisdiction and hold plea:

1. In all personal actions where the debt or damages claimed do not exceed the sum of two hundred dollars;

2. In all causes and suits relating to debt, covenant and contract, to four hundred dollars, where the amount is liquidated or ascertained by the act of the parties or by the signature of the Defendant; and

3. To any amount on bail-bonds given to a Sheriff in any case in a County Court, whatever may be the penalty; and

4. On Recognizances of Bail taken in a County Court, whatever may be the amount recovered or for which the Bail therein may be liable. *See references s. 16.*

18. In any case not expressly provided for by law, the practice and proceedings in the several County Courts in Upper Canada shall be regulated by and shall conform to the practice of the Superior Courts of Common Law, and the practice for the time being of the said Superior Courts, shall, in matters not expressly provided for, apply and extend to the County Courts and to all actions and proceedings therein. 19 V. c. 90, s. 19. General rule as to Practice.

19. The several County Courts may, in Term time, by rule or order, set aside Verdicts or Non-suits, and grant new trials, and make orders for judgment *non obstante veredicto*, or for arresting judgment, and such Courts in Term time and the Judges thereof in vacation, may by rule or order set aside judgments by default, set aside proceedings for irregularity, grant time for any pleading, and order stay of proceedings till security be given for costs, and may issue summonses and make orders in all matters of practice in like manner and on the like principles and grounds and to the same extent as in the Superior Courts, or by the Judges thereof in their Courts, and may cause rules on Sheriffs, or any other rules, orders or proceedings thereupon to be served in any County. 8 V. c. 13, s. 37,—9 V. c. 7, s. 2,—12 V. c. 66, ss. 6, 10. Powers as to new trials, &c.

20. No plea, replication or other pleading, whereby the title to any land, or to any annual or other rent, duty or other custom or thing, relating to or issuing out of lands or tenements, is brought in question, shall be received by any County Court without an affidavit thereto annexed that the same is not pleaded vexatiously, nor for the mere purpose of excluding the Court from jurisdiction, but that the same does contain matter which the Deponent believes to be necessary for the party pleading to enable him to go into the merits of his case. 8 V. c. 13, s. 13. Pleas to the jurisdiction must be verified.

21. The County Courts may issue writs of *Fieri Facias* against goods, and against lands, and writs of *Capias ad Satisfaciendum* against the person, in like cases, upon the same terms, and in the same order, as similar writs may be issued in the Superior Courts of Common Law; 8 V. c. 13, s. 49. Writs of execution.

The

Writs of execution may run into other Counties.

**22.** The County Courts may issue writs of execution against the person, lands or goods, writs of subpoena, rules on the Sheriff, and all other rules, orders and proceedings into any other County, to be served or executed therein; and Judge's summonses and orders may be issued in like manner; and all such writs, rules, summonses, orders and proceedings, shall be of equal force and effect, and as binding as if the same had issued from the Court or by the Judge of the County to or into which they may be so issued, and all subsequent proceedings thereupon shall be carried on in the Court in which the action has been brought or the Judgment entered. 13, 14 V. c. 52, s. 3:

Power to enforce rules, &c.

**23.** The several County Courts shall have and exercise the same powers to enforce their rules, regulations and directions as the Superior Courts of Common Law possess, and may punish by fine or imprisonment, or by both, for any wilful contempt or resistance to their regular process, rules or orders, but such fine shall in no case exceed one hundred dollars, nor shall such imprisonment exceed six months. 8 V. c. 13, s. 48. See 22 V. c. 93, s. 9.

CLERK.

The Governor to appoint Clerks.

**24.** The Governor shall from time to time appoint, under the Great Seal, a Clerk to every County Court, to hold office during pleasure. 8 V. c. 13, s. 2.

Where his office is to be held.

**25.** The Clerk of every County Court shall keep his office in the Court House, or if there be no room therein, then in such place within the County Town as the Judge directs. 12 V. c. 66, s. 12,—8 V. c. 13, s. 73.

Office hours.

**26.** Every such Clerk shall keep his office open for the transaction of business on every day, Sundays, Christmas Day, New Year's day, Good Friday, Easter Monday, the birth day of the Sovereign, and any day appointed by Royal Proclamation for a general fast or thanksgiving excepted, from the hour of ten in the forenoon to the hour of three in the afternoon, and in Term Time from nine in the forenoon to four in the afternoon. 8 V. c. 13, s. 73,—12 V. c. 66, s. 12,—13, 14 V. c. 23, s. 5,—See 19 V. c. 43, s. 13.

The Clerk to issue all Writs, &c.

**27.** The Clerk of every County Court shall keep an account of all Writs, including *Subpenas*, and of all Rules and Orders of his Court, and of all other papers and proceedings whatsoever, mentioned and included in the Schedule hereto annexed upon which Fees are to be collected by such Clerk and paid over to the Fee Fund through the County Attorney, and he shall receive and take all Fees payable on every such Writ or other proceeding, and shall duly and regularly enter an account of all such Fees in a Book to be kept by him, which Book shall be open to all persons desirous of searching the same on payment of twenty-five cents for each search, and such Clerk shall,

To receive certain fees for the Fee Fund.

at the periods, from time to time appointed by the Governor, submit his accounts to be audited by the Judge of the County Court; but no such fee shall be demanded or received for searching either the Appearance or Plea Book only. 20 V. c. 59, s. 13,—8 V. c. 13, s. 62.

**28.** The Clerk of every County Court shall, from time to time, as often as required so to do by the County Attorney of his County, and at least once in every three months, deliver to him, verified by the affidavit of such Clerk sworn before the Judge or a Justice of the Peace of the County, a full account in writing of the fees received in his Court, and a like account of all fines levied by the Court. *Post c.* 19, ss. 38, 99,—8 V. c. 13, s. 64,—20 V. c. 59, ss. 12, 13.

Clerk to render accounts to County Attorney.

**29.** The fees from time to time received by such Clerks respectively, and payable to the General Fee Fund, shall be by them paid over from time to time to the County Attorney, and at least once in every three months, and shall form part of a fund, to be called the General Fee Fund, and be applied towards the payment of the salaries of the Judges of the County Courts. 8 V. c. 13, s. 64.

To pay over Fee Fund fees.

**30.** Unless otherwise ordered or provided by rule of Court under the Common Law Procedure Act, the fees specified in the Schedule subjoined shall be the Fees which are to be received by the Clerks of the several County Courts and which are to belong to, and to be by them paid over to the Fee Fund. 8 V. c. 13, s. 75,—20 V. c. 58, s. 8.

Fees to belong to Fee Fund.

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

To tax costs.

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

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

### SCHEDULE.

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

See s. 30, *Sup.*

	\$	cts.
Every Writ of Summons or Capias ad Respondendum,	0	30
		Every

	\$	cts.
Every Verdict, 20 V. c. 58, s. 19.....	1	25
Every Certificate of Proceedings made by a Judge to be transmitted to the Court of Queen's Bench, or Common Pleas.....	0	50
Every Rule requiring a motion in open Court,.....	0	30
Every Rule or Order of Reference,.....	0	30
Every other Rule or Judge's Order,.....	0	25
Every Recognizance of Bail taken by a Judge,.....	0	30
Every Affidavit administered by Judge,.....	0	20
Every reference on a Bill, Note, Bond, Covenant, Account or Claim,.....	0	60
Every Writ of Subpœna,.....	0	20
Every Judgment entered,.....	1	25
Every oath administered in open Court,.....	0	20
For every Special hearing before the Judge. 19 V. c. 99, s. 18.....	1	0
For every day's sitting in taking Examinations and Evidence,.....	2	0
On every reference to the County Judge, from the Superior Courts, <i>two dollars per day</i> , for every day's sitting, in taking the Examinations and Evidence. 19 V. c. 90, s. 18.		
<i>Twenty cents per folio</i> on the Evidence taken by the County Judge on every Reference to him from the Superior Courts.		
For every Report on the Examinations and Evidence on the Reference to the County Judge by the Superior Courts, <i>one dollar</i> .		
In applications and proceedings other than in suits in any Court of Civil Judicature, the same fees as nearly as the nature of the case will allow, as are payable under the Act for the relief of Insolvent Debtors. 19 V. c. 90, s. 21.		

2. EQUITY JURISDICTION.

**33.** The County Courts in Upper Canada shall possess the like jurisdiction and authority in respect of the matters herein-after mentioned as was possessed by the Court of Chancery of Upper Canada, on the twenty-third May, one thousand eight hundred and fifty-three. 16 V. c. 119, s. 1.

**34.** Any person seeking equitable relief may (personally or by Attorney) enter a claim against any person from whom such relief is sought, with the Clerk of the County Court of the County

Equity jurisdiction of.

Claims may be entered with the Clerk in cases—

County within which such last mentioned person resides, in any of the following cases, that is to say: 16 V. c. 119, s. 2.

1. A person entitled to and seeking an account of the dealings and transactions of a partnership dissolved or expired, the joint stock or capital not having been over eight hundred dollars. Of partnership;

2. A creditor upon the estate of any deceased person, such creditor seeking payment of his debt (not exceeding two hundred dollars) out of the deceased's assets (not exceeding eight hundred dollars); Of estates of deceased persons.

3. A legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy (not exceeding two hundred dollars in amount or value) out of such deceased person's personal assets (not exceeding eight hundred dollars); Legatees.

4. A residuary legatee, or one of the residuary legatees of any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding eight hundred dollars); Residuary Legatees.

5. An executor or administrator of any such deceased person seeking to have the personal estate (not exceeding eight hundred dollars) of such deceased person, administered under the direction of the Judge of the County Court for the County within which such executor or administrator resides; Executors and Administrators.

6. A legal or equitable mortgagee whose mortgage has been created by some instrument in writing, or a judgment creditor having duly registered his judgment, or a person entitled to a lien or security for a debt, seeking foreclosure or sale or otherwise to enforce his security, where the sum claimed as due does not exceed two hundred dollars; Mortgagees

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

8. Any person seeking equitable relief for, or by reason of any matter whatsoever, where the subject matter involved does not exceed the sum of two hundred dollars. In all cases not exceeding \$200.

**35.** Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing trees or timber, may be granted by the Judge of any County Court, and such injunctions shall only remain in force for a period of one month, unless sooner dissolved on an application to the Court of Chancery; but the power to grant such injunction shall not authorize the prosecuting of the suit in the County Court, Injunctions.

Court, and the injunction may be extended and the suit further prosecuted to judgment or otherwise in the Superior Court in the like manner as if the same had originated in that Court. 16 V. c. 119, s. 2, No. 9.

## PROCEDURE.

Practice.

**36.** When not otherwise provided by Rules or Orders of the Court of Chancery, the forms and course of proceeding in the cases enumerated above, may be in principle as hereinafter provided, and the claim may be as follows: 16 V. c. 119, s. 3.

In the County Court of the County of

Form of claim,  
&c.

A. B., of the Township of \_\_\_\_\_, in the said County, states, that from the \_\_\_\_\_ day of \_\_\_\_\_ down to the \_\_\_\_\_ day of \_\_\_\_\_, he, and C. D., of the Township of \_\_\_\_\_, in the said County, carried on the business of \_\_\_\_\_ in copartnership, under certain articles of copartnership, dated the \_\_\_\_\_ day of \_\_\_\_\_, and made between the said A. B., and the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_ (or under a verbal agreement, &c., as the case may be), that the said Copartnership was dissolved (or expired, as the case may be,) on the \_\_\_\_\_ day of \_\_\_\_\_, yet that the said C. D., refuses to account with the said A. B. concerning the dealings and transactions thereof. The said A. B. claims relief in the premises, and that an account of the partnership dealings and transactions between the said A. B. and C. D., may be taken, and the affairs and business of the said Copartnership wound up and settled under the directions of the Court, and such further relief given as may be just and proper. And the said A. B. requests that a Writ of Summons be issued from the Court, according to the Statute in that behalf, requiring the said C. D. to appear on the \_\_\_\_\_ day of \_\_\_\_\_, before the Judge of the Court, to show cause, if he can, why the relief claimed by the said A. B. should not be had, and such order in the premises made as may be just.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

A. B., in person.

(Or A. B. by J. P., one, &c.) 16 V. c. 119, A.

To be filed  
with the Clerk,  
and proceed-  
ings thereon.

**37.** Upon entering the claim with the Clerk, the Clerk shall number and file the same according to the order in which it is entered, and shall thereupon issue a Summons under the seal of the Court, briefly stating the nature of the claim and bearing the number of the claim on the margin thereof, requiring the person against whom the claim is made, to appear before the Judge on some day in the next term of the Court, or (by a Special Order of the Judge,) on a day out of term and therein named, to show cause why the relief claimed by the Plaintiff



Plaintiff should not be had, or why such Order as may be just with reference to the claim should not be made. 16 V. c. 119, ss. 4, 5.

**38.** The Writ of Summons shall be to the effect following: Form of Summons.  
16 V. c. 119, s. 5.

Victoria, &c.,  
(County of .)

To C. D. of , GREETING :

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

Witness, , Judge of the County Court of the County of , at , this day of 16 V. c. 119, B.

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

**40.** When necessary, *alias* and *pluries* Writs of Summons may be issued. Alias Summons may issue.

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

**42.** The Judge, on hearing the claim, and what the Plaintiff alleges in support thereof, and any other evidence which he produces in that behalf, whether oral or written or by affidavit; and what is alleged on the part of the Defendant, and the evidence The hearing.

evidence which he produces in that behalf, whether oral or written or by affidavit, or on production of an affidavit, that the Writ of Summons and copy of claim have been personally served on the Defendant, may, if he, the said Judge, thinks fit, make an Order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, before himself, if he deems such course expedient, or before the Clerk of the Court, at days or times to be appointed by the Judge for the purpose, or the Judge may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or may make such other Order, as according to the nature and circumstances of the case may seem to be just and proper. 16 V. c. 119, s. 7.

The taking of accounts may be ordered.

Parties may be added or cited.

**43.** The Judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to the claim, or on any proceedings with reference to any account or inquiries directed to be taken or made, or otherwise. 16 V. c. 119, s. 7.

Oral evidence to be on oath.

**44.** All oral evidence given by any person before the Judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said Judge. 16 V. c. 119, s. 7.

Costs in default of appearance.

**45.** In default of the appearance of either of the parties, the Judge may make such Order as to the payment of costs by the party in default, as to him seems meet. 16 V. c. 119, s. 7.

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

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

When a trial by Jury is to take place.

**47.** If an order be made allowing trial by Jury, the trial shall take place at the then next Sittings of the County Court, and shall be conducted in the same manner as other trials by Jury are conducted in the Court. 16 V. c. 119, s. 8.

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

**48.** If a new trial be not moved for within ten days after the verdict rendered, the Judge may proceed to make such Order and Decree on the verdict of the Jury as according to the nature and circumstances of the case may seem just and proper. 16 V. c. 119, s. 8.

The rules of the Court of Chancery to apply.

**49.** The Rules of decision in the County Courts in respect to the matters aforesaid, shall be the same as govern the Court of Chancery, when not otherwise provided for by this Act, so far as such rules are applicable to a Court of Summary Jurisdiction;

Jurisdiction ; and the said County Courts shall possess authority to enforce obedience to their Orders, Judgments and Decrees, in respect to the matters in this Act contained ; and all Sheriffs, Gaolers, Coroners, Constables and other Peace Officers, shall aid, assist and obey the said County Courts respectively, in the exercise of their jurisdiction, when required by any County Court so to do. 16 V. c. 119, s. 9.

Sheriff and other officers to be aiding, &c.

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

Amendments may be made.

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

Orders, &c., how enforced

**52.** The Judge before or upon any hearing or trial, or upon taking any accounts or making any inquiries, shall have the same power to order the parties to produce books, papers and writings as is possessed by the Court of Chancery, and may cause advertisements for Creditors, and next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms or otherwise, as the circumstances may require, and may in such advertisements, appoint a time within which such persons are to come in and prove their claims, and after which time, unless they so come in, they shall be excluded from the benefit of the Order. 16 V. c. 119, s. 12.

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

**53.** No Order, Direction, Verdict, Decree or Judgment, or other proceeding made on the Equity side of any County Court shall be reversed, quashed or vacated for want of form. 16 V. c. 119, s. 13.

Proceedings not to be quashed for want of form.

**54.** Except the Summons at the commencement of the suit, every Summons and every Order, Notice or other proceeding requiring

Summonses, orders, &c., to be served.

requiring service, shall be served ten days at least before the day on which the same is returnable, or intended to be acted upon unless otherwise directed by the Judge. 16 V. c. 119, s. 14.

## Costs

**55.** The costs in every suit or proceeding brought or had on the Equity side of the County Courts, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in default of any special directions the costs shall abide the event of the suit or proceeding. 16 V. c. 119, s. 15.

Affidavits,  
before whom  
sworn.

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

## REMOVAL OF SUITS.

In certain cases  
claims may be  
removed into  
Chancery.

**57.** Any claim entered on the Equity side of a County Court may be removed by either party into the Court of Chancery by Order of that Court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the Order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the Court of Chancery may seem just; but no claim shall be removed, unless the Court of Chancery be of opinion that the nature of the claim renders it a proper one to be withdrawn from the jurisdiction of the County Court, and disposed of in the Court of Chancery, and the said Court of Chancery shall make the necessary regulations for the practice to be observed in proceedings under this section. 16 V. c. 119, s. 17.

Chancery to  
frame general  
rules and or-  
ders;

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

May amend  
the same.

## Their effect.

**59.** There shall be payable on every proceeding under this Act in a County Court, the fee hereafter set down for such proceeding, and such fee shall be received by the Clerk and belong to and be paid over to the Fee Fund, namely: 16 V. c. 119, s. 20. Fees to Fee Fund.

	\$	cts.
Every claim filed.....	0	25
Every Writ of Summons, or other Writ under the Seal of the Court,.....	0	25
Every Order or application for Order,.....	0	25
Every Hearing, <i>one dollar</i> ; to be increased in the discretion of the Judge to a sum not exceeding....	2	0
Every Oath administered in Court, .....	0	20
Every Certificate under Seal of the Court,.....	0	25
Every Sitting in taking an account, or other Sitings, 16 V. c. 119, C.....	1	0

**60.** The Clerk of every County Court shall keep a separate account of the said fees, and shall render an account thereof to the County Attorney, and shall pay over the amount thereof to him, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present General Fee Fund of the County, and the several provisions in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of the County Attorney and Clerks, shall apply to the last mentioned fees under this Act. 16 V. c. 119, s. 20,--20 V. c. 59. How accounts to be kept, &c..

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

**FEEES TO THE CLERK.**

	\$	cts.
Receiving and filing Claim,.....	0	6 $\frac{3}{4}$
Every Writ of Summons, or other Writ, .....	0	20
Filing every separate paper,.....	0	5
Preparing Order, per folio for every folio over three,..	0	26 $\frac{3}{4}$
Taking any Affidavit other than an oath in open Court,	0	20
Every Search,.....	0	10
Recording every final Order or Decree,.....	0	20
Other Orders.....	0	10

Every

	\$	cts.
Every Certificate not exceeding three folios,.....	0	20
Every Special Writ, Writ of Execution or other Special Document, per folio.....	0	13½
Taxing costs, ....	0	20
Every attendance on reference,.....	1	0
Every Verdict taken,.....	0	50

FEEES TO THE SHERIFF.

To Sheriff.	Every Summons or Order served, including Return,..	0	50
	Every Jury sworn,.....	0	50
	Every Execution or Judgment Order received,.....	0	25
	Return thereof, money made or party arrested,.....	0	25
	Necessary mileage actually travelled, per mile.....	0	6½

For any other service, a sum to be fixed by Order of the Judge not exceeding the present allowance by Statute for a similar service. 16 V. c. 119, D.

Attorney and Solicitor.

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

ATTORNEY AND SOLICITOR.

	\$	cts.
Instructions to sue or defend,.....	0	50
Drawing Claim,.....	0	50
Fee on every Writ or Order,.....	0	25
Common Affidavits,.....	0	20
Common Notice or Appointment,.....	0	20
Every necessary Attendance,.....	0	10
Special Affidavits and other Special Documents, per folio,.....	0	13½
Fee on Common Motions,.....	0	25
Copy of every paper when necessary, half the amount allowed for the Original ;		
Bill of Costs,.....	0	20
Postages actually paid.		

COUNSEL.

## COUNSEL.

Fee on Special Applications, Arguments, Hearings, &c., Counsel.  
two dollars, to be increased at the discretion of the Judge to  
five dollars. 16 V. c. 119, E.

**63.** If any suit or proceeding be commenced in the Court of Costs restrain-  
Chancery for any cause or claim which might have been entered ed.  
in a County Court, no costs shall be taxed against the Defendant  
in such suit or proceeding, and the Defendant, if he succeeds  
in the suit, shall be entitled to a Decree against the Plaintiff  
for his costs, as between Attorney and Client, unless the Court  
of Chancery be of opinion that it was a fit cause or claim to  
be withdrawn from a County Court and entered in the Court  
of Chancery. 16 V. c. 119, s. 22.

**64.** The several provisions of law respecting the powers, The Common  
practice and proceedings of the County Courts, under their Law powers  
Common Law Jurisdiction, shall, so far as applicable to an and practice to  
equitable jurisdiction, apply to the said Courts in the exercise apply so far as  
of their Equity Jurisdiction. 16 V. c. 119, s. 23. applicable.

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

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

## 3.—APPEALS FROM THE COUNTY COURTS.

## 1.—TO A SUPERIOR COURT OF COMMON LAW.

**67.** In case any party to a cause on the Common Law side In what cases  
in any of the County Courts is dissatisfied with the decision of an appeal lies  
the Judge upon any point of law arising upon the pleadings, or from the Coun-  
respecting the reception or rejection of Evidence, or with the ty Courts to  
charge to the Jury, or with the decision upon any motion for a one of the Su-  
nonsuit or for a new trial or in arrest of Judgment, or for Judg- perior Courts  
ment *non obstante veredicto*, the Judge at the request of such of Law.  
party, his Counsel or Attorney, shall stay the proceedings for a  
time not exceeding four days, in order to afford the party time to  
execute and perfect the bond required to enable him to appeal  
the case. 8. V. c. 13, ss. 9, 11, 57,—12 V. c. 66, s. 11,—12  
V. c. 63, s. 47.—See c. 64, s. 11.

**68.** In case the party wishing so to appeal gives security to the What securi-  
opposite party by a bond executed by himself and two sureties, ties to be given.  
in

in such sum as the Judge of the Court to be appealed from directs, conditioned to abide by the decision of the cause by the Court to be appealed to, and to pay all sums of money and costs as well of the suit as of the appeal awarded and taxed to the opposite party; and in case the sureties in such bond justify to the amount of the penalty of the said bond by affidavit annexed thereto in like manner as bail are required to justify, and in case such bond and affidavit of justification and also an affidavit of the due execution of the bond are produced to the Judge of the Court appealed from, to remain with the Clerk of such Court until the opinion of the Court appealed to has been given and then to be delivered to the successful party, then, at the request of the party appellant the Judge of the Court appealed from shall certify under his hand to either of the Superior Courts of Common Law named by such appellant, the pleadings in the cause, and all motions, rules or orders made, granted or refused therein, together with his own charge, judgment or decision thereon, and when a trial has been had; the evidence, and all objections and exceptions thereto—whereupon, the matter shall be set down for argument at the next term of the Court appealed to, and that Court shall give such order or direction to the Court below, touching the judgment to be given in the matter as the law requires, and shall also award costs to either party in their discretion, which costs shall be certified to and form part of the judgment of the Court below; and upon receipt of such order, direction and certificate, the Judge of the Court below shall proceed in accordance therewith. 8 V. c. 13, s. 57,—12 V. c. 63, s. 47.

Result to be certified to the Court below.

## 2.—TO CHANCERY.

**69.** Either party may appeal to the Court of Chancery against any Order or Decree made by the Judge of a County Court under the Equity Jurisdiction conferred by this Act; and the Court of Chancery shall make such Order thereupon in respect to costs or otherwise, or for referring back the matter to the Judge before whom the same was first heard, as may be just and proper; But before the County Court Judge is called on to certify to the Court of Chancery, the Order or other matter appealed against, the party appealing shall enter into a recognizance, with sufficient sureties to the satisfaction of the Judge, to pay the sum decreed in case relief be not had on the appeal, or to obey the Order, (or as the case may be;) and when the party appealing appears by Attorney, an affidavit shall be made by the Attorney, that the appeal is not intended for delay as he believes, and that there is, in his opinion, probable cause for reversing the Order or Decree against which the appeal is made; and the Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this section. 16 V. c. 119, s. 18.

An appeal given to Chancery.

A Recognizance to be entered into.

The Court of Chancery may make regulations.

Short Title.

**70.** This Act may be cited as "The County Courts Act." 16 V. c. 119, s. 25.



## C A P. X V I.

## An Act respecting the Surrogate Courts.

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

## SURROGATE COURTS.

**1.** Nothing in this Act shall extend or be construed to extend to make the Surrogate Courts, held under the provisions of this Act, new Courts, or to annul or make void any existing commission or appointment of any Judge of the said Surrogate Courts, who is also a Judge of the County Court, or of any Registrar of a Surrogate Court, but they shall be taken to be to all intents and purposes the same Courts as if they had continued to be held under the provisions of the Surrogate Courts Act 1858, or of the Act thereby repealed; and the said Judges and Registrars shall continue to discharge their respective functions, and all suits and matters pending in the said Courts, when this Act comes in force, shall be continued under the provisions of this Act. 22 V. c. 93, s. 59.

Surrogate Courts not to be deemed new Courts; officers and suits, &c., to continue.

**2.** In and for each County in Upper Canada there shall be a Court of Law and Record to be called "The Surrogate Court" of each respective County, over each of which Courts one Judge shall preside; and there shall also be a Registrar, and such Officers as may be necessary for the exercise of the jurisdiction to the said Courts belonging. 22 V. c. 93, s. 2.

A Surrogate Court established in each County with Judge and Registrar, &c.

## SEALS.

**3.** Each of the said Surrogate Courts shall be provided with a suitable seal to be approved of by the Governor, and the Judges of the said Courts may respectively cause the same from time to time, with the approval of the Governor, to be broken, altered or renewed; and all Probates, Letters of administration, grants, orders, Letters of guardianship and other instruments and exemplifications, and copies thereof respectively, purporting to be sealed with the seal of any Surrogate Court shall in all Courts and in all parts of Canada, be received in evidence without further proof thereof. 22 V. c. 93, s. 7.

Courts to have seals; and exemplifications and copies under such seal to be received in evidence.

## JUDGES OF.

**4.** The Senior Judge of the County Court, in each County, shall be *ex officio* Judge of the Surrogate Court for the County, and in case of the illness or absence of any Judge of a Surrogate Court, the Junior Judge or the Deputy Judge, (if there be one in the County) of the County Court, shall have all the powers and privileges and perform all the duties of the Judge of the Surrogate Court, during such illness or absence, as is

Judges of County Courts to be *ex officio* Judges of Surrogate Courts.

now

now provided for by law in case of the illness or absence of the Judge of the County Court. 22 V. c. 93, s. 60.

#### JUDGE'S OATH.

Judges and Registrars to take oath of office.

5. Every Judge of a Surrogate Court appointed after this Act comes in force, shall, before executing the duties of his office, take the following oath before some one authorized by law to administer the same :

Form of Judge's oath.

" I, \_\_\_\_\_, do solemnly and sincerely promise and swear " that I will duly and faithfully, and according to the best of " my skill and power, execute the office of Judge of the Sur- " rogate Court of the (County or United Counties, as the case " may be) of \_\_\_\_\_. So help me God." 22 V. c. 93, s. 3.

#### REGISTRARS.

Who to be Registrar.

6. On the death, resignation or removal of the Registrar of any Surrogate Court, the Clerk of the County Court shall be *ex officio* Registrar for the County. 22 V. c. 93, s. 60.

#### REGISTRAR'S OATH.

Form of Registrar's oath.

7. Every Registrar of the said Surrogate Courts shall, before he shall be entitled or qualified to act as Registrar under this Act, take the following Oath before the Judge of the Court, or some other person authorized by law to administer the same :

" I, \_\_\_\_\_, do solemnly and sincerely promise and swear " that I will diligently and faithfully execute the office of " Registrar of the Surrogate Court of the (County or United " Counties, as the case may be,) of \_\_\_\_\_, and that I will " not knowingly permit or suffer any alteration, obliteration or " destruction to be made or done by myself or others on any " Wills or testamentary papers, or other documents or papers " committed to my charge. So help me God." 22 V. c. 93, s. 3.

#### JURISDICTION AND POWERS.

Testamentary jurisdiction to be exercised by the Surrogate Courts.

8. All jurisdiction and authority voluntary and contentious in relation to matters and causes testamentary, and in relation to the granting or revoking Probate of wills and letters of administration of the effects of deceased persons having estate or effects in Upper Canada, and all matters arising out of or connected with the grant or revocation of Probate or Administration, shall continue to be exercised in the name of Her Majesty, in the several Surrogate Courts in Upper Canada, and each Surrogate Court shall hold its sittings in the County Town of each respective County. 22 V. c. 93, s. 1.

Sittings of Courts.

Powers and jurisdiction of

9. The said Surrogate Courts respectively shall have full power, jurisdiction and authority : 1. To issue process and hold cognizance

cognizance of all matters relative to the granting of Probates, and committing letters of administration, and to grant Probate of Wills and commit letters of administration of the goods of persons dying intestate, having estate, goods, rights or credits in Upper Canada, and to revoke such Probate of Wills and letters of administration ; 2. To hear and determine all questions, causes and suits in relation to the matters aforesaid, and to all matters and causes testamentary ; and 3. subject to the provisions herein contained, such Courts respectively shall also have the same powers, and the grants and orders of the said Courts shall have the same effect throughout all Upper Canada, and in relation to the personal estate of deceased persons, as the former Court of Probate for Upper Canada, and its grants and orders respectively had in relation to those matters and to causes testamentary within its jurisdiction, and to those effects of deceased persons dying possessed of goods and chattels over twenty dollars in value in two or more Counties in Upper Canada, and all duties which by Statute or otherwise were imposed on or exercised by the said Court of Probate, or the Judge thereof in respect of Probates, Administrations and matters and causes testamentary, and the appointment of Guardians and otherwise, shall be performed by the said several Surrogate Courts and the Judges thereof, within their respective jurisdictions ; but no suits for legacies, or suits for the distribution of residues shall be entertained by any of the said Surrogate Courts. 22. V. c. 93, s. 4.

Surrogate  
Courts.

To have the  
same powers  
as the former  
Court of Pro-  
bate in certain  
matters.

#### SITTINGS.

**10.** In order that certain stated times may be fixed for hearing and determining matters and causes in contentious cases and business of a contentious nature in the said Surrogate Courts respectively, there shall be four Terms or times of Sitting in each year for the purposes aforesaid, which shall severally commence on the First Monday in the months of January, April, July and October, and end on the Saturday of the same week ; and the Judges of the several Courts may appoint one or more days for the giving of Judgment after Term in the same way as is provided by law in respect to County Courts. 22 V. c. 93, s. 5.

Terms or times  
of sitting pres-  
cribed.

Giving judg-  
ment after  
term.

#### EFFECT OF DOMICILE.

**11.** The grant of probate or letters of administration shall belong to the Surrogate Court for the County in which the testator or intestate had at the time of his death his fixed place of abode ; And if the testator or intestate had no fixed place of abode in or resided out of Upper Canada at the time of his death, such grant may be made by the Surrogate Court for any County in which the testator or intestate had personal or real estate at the time of his death ; and probate or letters of administration by whatever Court granted shall, unless revoked, have effect over the personal estate of the deceased in all parts of Upper Canada. 22 V. c. 93, s. 6.

To what partic-  
ular Courts  
the grant of  
Probate or Ad-  
ministration  
shall belong ;  
and effect of  
Probate and  
Administration.

#### ATTENDANCE

## ATTENDANCE OF PARTIES—WITNESSES, &amp;c.

Power to require attendance of parties or witnesses, and to examine them.

**12.** The said Surrogate Courts respectively may require the attendance of any party in person or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; And each of the said Courts may, by writ of subpoena or subpoena *duces tecum* (as the case may be), require such attendance and order any Deeds, evidences or writings, to be produced before itself or otherwise. 22 V. c. 93, s. 8.

As to production of Deeds and Instruments, &c.

## ORDERS AND DECREES HOW ENFORCED.

Powers of Courts to enforce their orders and decrees, to be similar to those vested in County Courts for like purposes.

**13.** Every Surrogate Court shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting or refusing to produce deeds, evidences or writings, or refusing to appear or to be sworn or to make affirmation or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees and judgments made or given by the Court under this Act, or under any other Acts giving jurisdiction to Surrogate Courts and otherwise in relation to the matters to be enquired into and done by or under the orders made under this Act, as are by law vested in the said County Courts, as Courts of law and as Courts having equitable jurisdiction, for such purposes in relation to any suit or matter depending in such Courts. 22 V. c. 93, s. 9.

## PRODUCTION OF INSTRUMENTS PURPORTING TO BE TESTAMENTARY.

Orders and proceedings in respect to the production of Instruments purporting to be testamentary.

**14.** Whether any suit or other proceeding be or be not pending in the Court with respect to any probate or administration, every Surrogate Court may, on motion or petition or otherwise in a summary way, order any person to produce and bring before the Registrar of the Court or otherwise, as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person: and if it be not shown that any such paper or writing is in the possession or under the control of such person, but if it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined before the Registrar or in open Court or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and if so ordered, to produce and bring in such paper

Examination of persons touching such Instruments.

or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the Court, and had made such default; and the costs of any such motion, petition or other proceeding, shall be in the discretion of the Court. 22 V. c. 93, s. 10.

#### WHO TO ADMINISTER OATHS.

**15.** The Judges and Registrars of the said Surrogate Courts respectively, shall have full power to administer oaths in matters and causes testamentary and in all other matters in any of the said Courts; and Commissioners for taking affidavits in either of the Superior Courts of Common Law or in the Court of Chancery in Upper Canada, shall also have full power respectively to administer oaths in all matters and causes testamentary and in all other matters in the said Courts to parties desirous of making affidavit or deposition before them respectively; any person who wilfully gives false evidence, or who wilfully swears or affirms falsely in any affidavit or deposition before any of the said Surrogate Courts, or before any Judge or Registrar thereof, or before any Commissioner as aforesaid, shall be liable to the penalties and consequences of wilful and corrupt perjury. 22 V. c. 93, s. 11.

Judges, Registrars and Commissioners in Q. B. and C. P., to have power to administer oaths.

False swearing to be perjury.

#### FORGERY OF SEALS OR SIGNATURES.

**16.** If any person forges the signature of any Judge or Registrar of a Surrogate Court, or of any Commissioner for taking affidavits as aforesaid, or forges or counterfeits any Seal of a Surrogate Court, or knowingly uses or concurs in using any such forged or counterfeit signature or seal, or tenders in evidence any document with a false or counterfeit signature of such Judge, Registrar or Commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, such person shall be guilty of felony and liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven years. 22 V. c. 93, s. 12.

Penalty for forging or counterfeiting seal or signature of officers, or tendering same in evidence.

#### PRACTICE.

**17.** Unless otherwise provided by this Act or by the Rules or Orders from time to time made under the Surrogate Courts Act 1858, or under this Act, the Practice of the said several Surrogate Courts shall, so far as the circumstances of the case will admit, be according to the Practice in Her Majesty's Court of Probate in England. 22 V. c. 93, s. 13.

Practice of the Courts, general rule as to.

**18.** The general rules and orders made by the Judges appointed in pursuance of the fourteenth section of the Surrogate Courts Act, 1858, are hereby continued, and the Judges so appointed

Existing rules and orders continued.

appointed shall continue and possess the same powers as before this Act takes effect, and may from time to time repeal, amend, add to or alter any existing general rules and orders as to them seem fit, and may exercise the powers in the next ensuing section, and in the seventy-first section of this Act. 22 V. c. 93, s. 14.

#### RULES OR ORDERS REGULATING PROCEDURE, &c.

Rules and orders may be made for regulating the procedure of the Courts, and by whom.

**19.** The Governor at any time after this Act takes effect may appoint one of the Judges of the Superior Courts of Common Law at Toronto, one of the Judges of the Court of Chancery, and one County Court Judge in Upper Canada, with power to the said Judges or any two of them from time to time to make other Rules and Orders: 1. For regulating the Procedure and Practice of the said Surrogate Courts and in relation to their jurisdiction and proceedings under this Act,—and 2. For regulating the duties of the Surrogate Clerk,—the duties of the several Surrogate Court Registrars and other officers of such Courts,—and 3. For determining what shall be deemed contentious and what non contentious business,—and 4. (Subject to the express provisions of this Act) for regulating the manner of appealing from the decisions of the said Surrogate Courts, and generally for carrying the provisions of this Act into full and beneficial effect. 22 V. c. 93, s. 14.

#### EVIDENCE IN CONTENTIOUS MATTERS.

Mode of taking evidence in contentious matters.

When affidavits may be used.

Subject to *virâ voce* examination.

**20.** Subject to the regulations to be established by such Rules and Orders as aforesaid, the witnesses, and where necessary, the parties in all contentious matters where their attendance can be had, shall be examined orally by or before the Judge of the Surrogate Court in open Court; and subject to any such regulations as aforesaid, the parties may verify their respective cases by affidavit; but the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open Court as aforesaid, and after such cross-examination, may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed. 22 V. c. 93, s. 15.

#### COMMISSIONS TO EXAMINE WITNESSES.

Courts may issue commissions for the examination of witnesses, as in County Courts.

**21.** Where a witness in any such matter is without the limits of Upper Canada, or where by reason of his illness or otherwise the Court does not think fit to enforce the attendance of the witness in open Court, any of the said Surrogate Courts may order a Commission to issue for the examination of such witness on oath upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court may order the examination of such witness on oath upon interrogatories or otherwise before any person to be named in such order for the purpose. 22 V. c. 93, s. 16.

**22.** All the powers given to the County Courts by the Act respecting Witnesses and Evidence, for enabling the said Courts to issue Commissions and give orders for the examination of witnesses in actions depending in such Courts and to enforce such examination; and all the provisions of the County Courts Act and of the Common Law Procedure Act for enforcing examinations, or otherwise applicable thereto and to the witnesses examined, shall extend and be applicable to the said several Surrogate Courts, and to the examinations of witnesses under the Commissions and Orders of the said Courts, and to the witnesses examined as if such Courts were County Courts, and the matter before them respectively were an action pending in a County Court. 22 V. c. 93, s. 16.

Provisions of certain acts to apply.

#### RULES OF EVIDENCE.

**23.** The Rules of evidence observed in the Superior Courts of Common Law, shall be applicable to and observed in the trial of all questions of fact in the said several Surrogate Courts. 22 V. c. 93, s. 17.

Rules of evidence in Common Law Courts to be observed.

#### POWERS TO TRY BY JURY.

**24.** The said several Surrogate Courts may cause any question of fact arising in any proceeding under this Act, to be tried by a Jury, before the Judge of the Court; and upon order being made allowing a trial by Jury, such trial shall take place at some ensuing sittings of the County Court for the County, and be conducted in the same manner as other trials by Jury in the County Courts, and the parties shall be entitled to their right of challenge, and for all purposes of, or auxiliary to the trial of questions of fact by a Jury before the Judge of a Surrogate Court, and in respect of new trials, the said Surrogate Courts and the Judges thereof respectively, shall have the same jurisdiction, power and authority in all respects as belong to the County Court, and the Judges thereof for like purposes. 22 V. c. 93, s. 18.

Courts may cause questions of fact to be tried by a jury at a County Court sitting, and in like manner as in County Courts.

**25.** When any such question is ordered to be tried by a Jury before the Judge of a Surrogate Court, the question shall be reduced into writing in such form as the Court directs, and at the trial the Jury shall be sworn to try the said question, and a true verdict give thereon according to the evidence; and upon every such trial, the Judge of the Surrogate Court shall have the same powers, jurisdiction and authority as belong to the Judge of a County Court sitting for the trial of issues in fact. 22 V. c. 93, s. 19.

Question to be reduced to writing, jury to be sworn to try it, and Judges to have like authority on trial as County Court Judges.

#### APPEALS TO CHANCERY.

**26.** Any person considering himself aggrieved by any order, sentence, judgment or decree of any Surrogate Court, or being

Persons considering themselves aggrieved.

selves aggrieved by any judgment, &c., may appeal to Chancery.

Appeals not to lie in certain cases.

being dissatisfied with the determination of the Judge thereof in point of law in any matter or cause under this Act, may, within fifteen days next after such Order, Sentence, Judgment, Decree or Determination, appeal therefrom to the Court of Chancery, in such manner and subject to such regulations as may be provided for by the Rules and Orders made under the Surrogate Courts Act, 1856, or under this Act, and the said Court of Chancery shall hear and determine such Appeals; but no such Appeal shall be had or lie unless the value of the goods, chattels, rights or credits to be affected by such order, sentence, judgment, decree or determination, exceeds two hundred dollars. 22 V. c. 93, s. 20.

#### REFERENCE TO A SUPERIOR COURT.

In cases of contention, the matter may, by consent, be referred for adjudication to one of the Superior Courts.

**27.** In every case in which there is contention as to the grant of Probate or Administration, and the parties in such case thereto agree, such contention shall be referred to and determined by either of Her Majesty's Superior Courts of Law or by the Court of Chancery, on a case to be prepared, and the Surrogate Court having jurisdiction in such matter shall not grant Probate or Administration until such contention be terminated and disposed of by judgment, decree or otherwise. 22 V. c. 93, s. 21.

#### REMOVAL TO THE COURT OF CHANCERY.

In certain cases of contention, matter to be referred to Chancery.

**28.** Any cause or proceeding in the said Surrogate Courts in which any contention arises as to the grant of Probate or administration, or in which any disputed question may be raised (as to law or facts), relating to matters and causes testamentary, shall be removable by any party to such cause or proceeding into the Court of Chancery by order of a Judge of the said Court to be obtained on a summary application supported by affidavit, of which reasonable notice shall be given to the other parties concerned. 22 V. c. 93, s. 22.

Terms as to costs.

Certain cases not to be so removed.

**29.** The Judge making such order may impose such terms as to payment or security for costs or otherwise as to him may seem fit; but no cause or proceeding shall be so removed unless it be of such a nature and of such importance as to render it proper that the same should be withdrawn from the jurisdiction of the Surrogate Court and disposed of by the Court of Chancery, nor unless the personal estate of the deceased exceeds two thousands dollars in value. 22 V. c. 93, s. 22.

Powers of the Court of Chancery and transmission of final order to Surrogate Court.

**30.** Upon any cause or proceeding being so removed as aforesaid, the Court of Chancery shall have full power to determine the same, and may cause any question of fact arising therein to be tried by a jury and otherwise deal with the same as with any cause or claim originally entered in the said Court of Chancery; and the final order or decree made by the said Court of Chancery in any cause or proceeding removed



removed as aforesaid, shall, for the guidance of the said Surrogate Court, be transmitted by the Surrogate Clerk to the Registrar of the Surrogate Court from which such cause or proceeding was removed. 22 V. c. 93, s. 22.

#### SURROGATE CLERK.

**31.** There shall be a Clerk appointed to be called the Surrogate Clerk, who shall perform the duties required of the Surrogate Clerk by this Act, as well as the duties that by the Rules and Orders made as hereinbefore mentioned may be required of such Surrogate Clerk, and also such other duties as may be required of him by the Court of Chancery, and such Surrogate Clerk shall be deemed an officer of the said Court of Chancery, and be paid a fixed salary not exceeding one thousand six hundred dollars yearly, and the Governor shall from time to time appoint and at his pleasure remove such Clerk. 22 V. c. 93, s. 23.

Surrogate Clerk to be appointed—his duties.

His salary.

#### PROOFS TO LEAD GRANT.

**32.** On every application to a Surrogate Court for Probate of Will or Letters of Administration where the testator or intestate was resident in Upper Canada at the time of his death, the place of abode of such testator or intestate at the time of his death shall be made to appear by affidavit of the person or some one of the persons applying for the same; and thereupon and upon proof of the Will, or in case of intestacy, upon proof that the deceased died intestate, Probate of the Will or Letters of Administration, (as the case may be,) may be granted under the seal of the Surrogate Court to which such application has been so made; and such Probate or Letters of Administration shall have effect over the personal estate of the deceased in all parts of Upper Canada. 22 V. c. 93, s. 24.

Proof, &c., requisite for obtaining grant of Probate or administration where deceased resided in U. C.

Effect of such Probate or administration.

**33.** On every application for Probate of a Will or Letters of Administration where the testator or intestate had no fixed place of abode in or resided out of Upper Canada at the time of his death, the same shall be made to appear by affidavit of the person or some one of the persons applying for such Probate or Administration, and that the deceased died leaving personal or real property within the County in the Surrogate Court of which such application is made, and that notice of the application has been published at least three times successively in the *Canada Gazette*; and thereupon and upon proof of the Will, or in case of intestacy, upon proof that the deceased died intestate, Probate of the Will or Letters of Administration, as the case may be, may be granted under the Seal of such Surrogate Court; and such Probate or Letters of Administration shall have effect over the personal estate of the deceased in all parts of Upper Canada. 22 V. c. 93, s. 25.

Where testator, &c., had no fixed place of abode in or resided out of U. C., upon what proof Probate or Administration shall be granted, &c.

Its effect.

**34.** The affidavit as to the place of abode and personal property of a testator or intestate under the previous sections, Affidavit grounding application for for

grant to be conclusive for exercise of jurisdiction, unless shewn to be incorrect.

for the purpose of giving a particular Court jurisdiction, shall be conclusive for the purpose of authorizing the exercise of such jurisdiction; and no grant of Probate or Administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the particular County at the time of his death, or had not personal or real estate therein at the time of his death; and every Probate and Administration granted by a Surrogate Court shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit as is hereby required; but in case it be made to appear to the Judge of any Surrogate Court before whom any matter is pending under this Act, that the place of abode of the testator or intestate, or the situation of his property has not been correctly stated in the affidavit, such Judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he may think just. 22 V. c. 93, s. 26.

But the Judge may stay proceedings in case of incorrect statement.

#### PROOF WHEN APPLICANT NOT NEXT OF KIN.

Proof, &c., requisite for obtaining grant to party not next of kin to intestate.

**35.** In case application be made for Letters of Administration by any person not entitled to the same as next of kin to the deceased, the next of kin or others having or pretending interest in the personal estate of the deceased resident in Upper Canada, shall be cited or summoned to see the proceedings, and to shew cause, if any they have, why the Administration should not be granted to the person applying therefor; and if neither the next of kin nor any person of the kindred of the deceased happen to reside in Upper Canada, then a copy of such citation or summons shall be served or published in such manner as may be provided for by any rules or orders in that behalf. 22 V. c. 93, s. 27.

Temporary administration in certain cases.

**36.** If the next of kin, usually residing in Upper Canada and regularly entitled to administer, happens to be absent from Upper Canada, the Surrogate Court having jurisdiction in the matter, may in its discretion, grant a temporary Administration, and appoint the applicant, or such other person as the Court thinks fit, to be Administrator of the personal estate of such deceased person for a limited time, or to be revoked upon the return of such nearest of kin as aforesaid. 22 V. c. 93, s. 27.

Security to be given.

**37.** The Administrator so appointed shall give such securities as the Court directs, and shall have all the rights and powers of a general Administrator, and shall be subject to the immediate control of the Court. 22 V. c. 93, s. 27.

#### NOTICE OF APPLICATIONS.

As to transmission of notice of

**38.** In case of an application to any Surrogate Court for the grant of Probate or Administration, notice thereof shall, by the

the Registrar of the Court, by letter post paid be transmitted to the Surrogate Clerk by the next post after such application, and such notice shall specify the name and description or addition, if any, of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit or affidavits made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by any rules or orders in that behalf. 22 V. c. 93, s. 28.

application for grants of Probate, &c., to Surrogate Clerk by Registrars.

**39.** Unless upon special order or decree of such Surrogate Court no Probate or Administration shall be granted in pursuance of such application until such Registrar has received a certificate, under the hand of the Surrogate Clerk, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said Surrogate Clerk shall forward as soon as may be to such Registrar. 22 V. c. 93, s. 28.

Proceedings to be stayed till certificate received from Surrogate Clerk.

**40.** All notices in respect of applications in the several Surrogate Courts shall be filed and kept by the said Surrogate Clerk. 22 V. c. 93, s. 28

Surrogate Clerk to file notices.

**41.** The Surrogate Clerk shall, with reference to every such notice, examine all notices of such applications received from the several other Surrogate Court Registrars, so far as it may appear necessary, to ascertain whether or no application for Probate or Administration in respect of the goods of the same deceased person has been made in more than one Surrogate Court, and he shall communicate with the Surrogate Court Registrars as occasion may require in relation to such applications. 22 V. c. 93, s. 28.

And examine all notices, &c.

**42.** In case it appears by the certificate of the Surrogate Clerk that application for Probate or Administration has been made to two or more Surrogate Courts, the Judges of such Courts respectively shall stay proceedings therein, leaving the parties to apply to one of the Judges of the said Court of Chancery to give such direction in the matter as to him may seem necessary. 22 V. c. 93, s. 28.

Proceedings if application has been made to more than one Surrogate Court.

To be decided in Chancery.

**43.** On application made to any one of such Judges, he shall enquire into the matter in a summary way, and adjudge and determine what Surrogate Court has jurisdiction, and shall proceed in the matter. 22 V. c. 93, s. 28.

Decree of Chancellor as to what Court shall have jurisdiction.

**44.** The Judge of the Court of Chancery may order costs to be paid by any of the applicants and the order shall be enforced by the Court of Chancery. 22 V. c. 93, s. 28.

The Judge in Chancery shall determine as to costs.

**45.** The determination of such Judge shall be final and conclusive, and so soon as may be after such determination made, the

His decision to be final.

the Surrogate Clerk shall transmit a certified copy thereof to the Registrars of the several Surrogate Courts wherein such applications as aforesaid have been made. 22 V. c. 93, s. 28.

## CAVEATS.

As to caveats where to be lodged and proceedings in respect to.

**46.** Caveats against the grant of probate or administration may be lodged with the Surrogate Clerk or with the Registrar of any Surrogate Court, and subject to any rules or orders under this Act, the practice and procedure under such Caveats shall as near as may be correspond with the practice and procedure under Caveats now in use in Her Majesty's Court of Probate in England. 22 V. c. 93, s. 29.

To be transmitted to the proper Surrogate Courts.

**47.** Immediately on a Caveat being lodged in any Surrogate Court, the Registrar of such Court shall send a copy thereof to the Surrogate Clerk to be entered among the Caveats lodged with him, and upon notice of application by the Registrar of a Surrogate Court under the thirty-eighth section being received, the Surrogate Clerk shall forward to such Registrar so soon as may be, notice of any Caveat that may have been so lodged as aforesaid touching such application, and such notice shall accompany or be embodied with the certificate mentioned in the thirty-ninth section. 22 V. c. 93, s. 29.

## REGISTRAR TO TRANSMIT MONTHLY LISTS TO SURROGATE CLERK.

Registrars to transmit to Surrogate Clerk list of Probates, &c.

**48.** On the first Tuesday of every month, or oftener if required by any rule or order made under this Act, every Registrar of a Surrogate Court shall transmit by mail to the Surrogate Clerk, a list in such form and containing such particulars as may from time to time be required by such rules and orders, of the grants of Probates and administration made by such Surrogate Court up to the last preceding Saturday, and not included in any previous return, and also a copy certified by such Registrar to be a correct copy of every will to which any such Probate or administration relates, and such Registrars shall in like manner make return of every revocation of a Probate or administration. 22 V. c. 93, s. 30.

## CARE OF TESTAMENTARY AND OTHER PAPERS.

Registrars to preserve testamentary instruments, papers, &c.

**49.** The Registrar of every Surrogate Court shall file and preserve all original wills and testamentary instruments of which Probate or letters of administration with the will annexed may be granted in such Surrogate Court, and all other papers used in any matter in such Court subject to such regulations as may from time to time be made by any rules or orders under this Act in relation to the due preservation thereof, and the convenient inspection of the same. 22 V. c. 93, s. 31.

## WILLS OF REAL ESTATE PROVED IN SOLEMN FORM.

**50.** Unless in the several cases following, the will affects only personal estate, where proceedings are taken under this Act for proving a will in solemn form, or for revoking the Probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, the heir or heirs at law, devisees or other persons having or pretending interest in the real estate affected by the will, may, subject to the provisions of this Act and to the rules and orders under this Act, be cited to see proceedings or be otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties subject to such rules and orders and to the discretion of the Court, but nothing herein contained shall make it necessary to cite the heirs at law, or other person having or pretending interest in the real estate of a deceased person unless the Court should, with reference to the circumstances of the case, direct the same to be done. 22 V. c. 93, s. 32.

Where a will affecting real estate is proved in solemn form, or is the subject of contentious proceedings, heirs, &c., may be cited, but not necessarily so, save on order of Court.

## PROBATE PRIMA FACIE PROOF OF WILL.

**51.** In any Action at Law or Suit in Equity where according to the existing law it would be necessary to produce and prove an original will in order to establish a Devise or other testamentary disposition of or affecting real estate, the party intending to establish in proof such Devise or other testamentary disposition, may give to the opposite party ten days at least before the trial or other proceeding in which the said proof may be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition, the probate of the will or letters of administration with the Will annexed, or a copy thereof, stamped with the seal of the Surrogate Court granting the same; and in every case such Probate or Letters of Administration or copy thereof, respectively, stamped as aforesaid, shall be sufficient evidence of such will, and of its validity and contents notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid, in a contentious cause or matter as herein provided, unless the party receiving such notice do, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition. 22 V. c. 93, s. 33.

In actions concerning real estate, Probate, &c., to be *prima facie* evidence of will, &c., after certain notice, save where its validity is put in issue.

## COSTS OF PROVING ORIGINAL WILLS.

**52.** In every case in which in any such action or suit the original will is produced and proved, the Court or Judge before whom such evidence is given may direct by which of the parties the costs thereof shall be paid. 22 V. c. 93, s. 34.

As to costs of proving a will in any action, &c.

## COPIES OF.

Official copy of the whole or part of a will may be obtained.

**53.** An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the Registrar of the Surrogate Court where the will has been proved or the administration granted, on payment of such fees as shall be fixed for the same by the Rules and Orders under this Act. 22 V. c. 93, s. 35.

## ADMINISTRATION PENDENTE LITE.

Administration *pendente lite* may be granted.

**54.** Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any Probate or any grant of administration, the Court, in which such suit is pending, may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court and act under its direction; and the Court may direct that such administrator shall receive out of the personal estate of the deceased such reasonable remuneration as the Court thinks fit. 22 V. c. 93, s. 36.

Rights and powers of the administrator.

## ADMINISTRATION WITH WILL ANNEXED.

Administration with the will annexed, practice as to, &c.

**55.** Where administration is granted with the Will annexed, bond shall be given to the Judge of the Court as in other cases and with like effect, and except otherwise provided for by this Act or the rules or orders from time to time made as hereinbefore mentioned, the practice and procedure in respect to such administrations and in respect to such bonds and the assignment thereof shall, so far as the circumstances of the case will admit, be according to the practice in such cases in Her Majesty's Court of Probate in England. 22 V. c. 93, s. 37.

## POWER AS TO APPOINTMENT OF ADMINISTRATOR.

General power as to appointment of administrator under special circumstances.

**56.** In case a person has died or dies wholly intestate as to his personal estate, or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or in case the executor was at the time of the death of such person resident out of Upper Canada, and it appears to the Court to be necessary or convenient in any such case by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased or of any part of such personal estate other than the person who if this Act had not been passed would by law have been entitled to a grant of administration to such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the

Discretionary power of Court

the

the person who if this Act had not passed would by law have been entitled to a grant thereof, but the Court in its discretion may appoint such person as the Court thinks fit upon his giving such security (if any) as the Court directs, and every such administration may be as limited as the Court thinks fit. 22 V. c. 93, s. 38.

as to who shall be appointed.

**57.** After any grant of administration no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased as to the personal estate comprised in or affected by such grant of administration until such administration has been recalled or revoked. 22 V. c. 93, s. 39.

After grant of administration, no person to act as executor.

#### REVOCATION OF TEMPORARY GRANTS.

**58.** In case before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which has been made consequent thereupon, and the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct. 22 V. c. 93, s. 40.

Revocation of temporary grants of administration not to prejudice actions or suits.

#### VALIDITY OF PAYMENTS UNDER REVOKED GRANTS.

**59.** In case any probate or administration be revoked under this Act, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration may be afterwards granted might have lawfully made. 22 V. c. 93, s. 41.

Payments under Probates or Administration afterwards revoked to be valid.

**60.** All persons and corporations making or permitting to be made any payment or transfer *bonâ fide* upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration. 22 V. c. 93, s. 42.

Persons, &c., making payment upon Probate granted, to be indemnified, &c.

#### EXECUTOR RENOUNCING.

**61.** Where any person after the commencement of this Act renounces probate of the Will of which he is appointed executor

Right of Executor renoun-

cing Probate,  
to cease absc-  
lutely.

executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may without any further renunciation go, devolve and be committed in like manner as if such person had not been appointed executor. 22 V. c. 93, s. 43.

#### SECURITIES.

Repeal of cer-  
tain provisions  
requiring sure-  
ties to Adminis-  
tration bonds.

**62.** So much of an Act passed in the twenty-first year of King Henry the Eighth, chapter five, and of an Act passed in the twenty-second and twenty-third years of King Charles the Second, chapter ten, and of an Act passed in the first year of King James the Second, chapter seventeen, as requires any surety, bond or other security to be taken from a person to whom administration may be committed, shall henceforth cease to extend to or be in force in Upper Canada. 22 V. c. 93, s. 44.

Persons receiv-  
ing grants of  
Administration  
to give bonds,  
&c.

**63.** Every person to whom any grant of administration may be committed shall give bond to the Judge of the Surrogate Court, from which such grant is made, to enure for the benefit of the Judge of such Court for the time being (or in case of the separation of Counties, to enure for the benefit of any Judge of a Surrogate Court to be named by the Court of Chancery for that purpose) with one or more surety or sureties as may be required by the Judge of such Surrogate Court, conditioned for the due collecting, getting in and administering the personal estate of the deceased, and the bond shall be in the form prescribed by the Rules and Orders referred to in the eighteenth section of this Act, and in cases not provided for by such Rules and Orders, such bond shall be in such form as the Judge of the Surrogate Court shall by special order direct. 22 V. c. 93, s. 45.

Penalty in  
bonds, &c.,  
and as to divid-  
ing liabilities of  
sureties.

**64.** Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased have been sworn, unless the Judge in any case thinks fit to direct (as he may do) that the same shall be reduced, and the Judge may also direct that more bonds than one may be given so as to limit the liability of any surety to such amount as the Judge thinks reasonable. 22 V. c. 93, s. 46.

#### ASSIGNMENT OF BONDS.

Power of Sur-  
rogate Courts  
as to assign-  
ment of bonds.

**65.** The Judge of every Surrogate Court, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, may order the Registrar of the Court to assign the same to some person to be named in such order, and such person, his executors or administrators shall thereupon be entitled to sue on the said bond in his own name both at law and in equity, as if the same had been originally given to him, instead of  
to



to the Judge of the Court, and shall be entitled to recover thereon, as Trustee, for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond, and all bonds heretofore given or taken in any Surrogate Court, and now in force, may in like manner be assigned under the authority of the Judge of a Surrogate Court, and the assignee shall be entitled to sue and recover thereon in his own name, and the same may be enforced in the same way and to the same extent as bonds given under this Act. 22 V. c. 93, s. 47.

#### COMPENSATION TO EXECUTORS, &c.

**66.** The Judge of any Surrogate Court may allow to the executor or trustee or administrator acting under Will or Letters of Administration, a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the Executorship, Trusteeship or administration of the Estate and effects vested in him under any Will or Letters of Administration, and in administering, disposing of and arranging and settling the same, and generally in arranging and settling the affairs of the estate, and therefor may make an order or orders from time to time, and the same shall be allowed to an Executor, Trustee or Administrator in passing his accounts. 22 V. c. 93, s. 47.

Judge may order an allowance to be made to Executor or Administrator out of the estate, for his trouble.

#### FEEES TO FEE FUND.

**67.** The fees mentioned in the Schedule to this Act marked A shall be payable on proceedings under this Act and shall be collected by the Surrogate Clerk and Registrars of Surrogate Courts respectively, and shall belong to and form part of the general fee fund for local Courts and be applied towards payment of money authorized to be disbursed under this Act, and if such fee fund be not sufficient for the payment of the same, the Governor may issue his warrant on the Receiver General for the deficiency; and the amount of such warrant shall be charged on the Consolidated Revenue Fund of this Province. 22 V. c. 93, s. 48.

As to fees to be taken by officers on account of Fee Fund.

**68.** The Surrogate Clerk and Registrars of Surrogate Courts respectively shall keep an account of such fees and shall render an account of and pay over the amount of such fees in like manner as Clerks of County Courts are required to do in respect to collections for the fee fund in each county and under the same securities, liabilities and conditions, and the existing provisions of law in relation to receiving, accounting for and paying over fees and to the responsibilities and duties of County Court Clerks, shall extend and apply to the said Surrogate Clerk and Registrars of Surrogate Courts respectively, as fully as if the same had been herein contained and re-enacted, and this enactment shall also extend and apply to County Attorneys, and the County Attorney for the United Counties of York and Peel shall be the receiver of fees from the Surrogate Clerk at Toronto. 22 V. c. 93, s. 48.

Accounts to be kept by Surrogate Clerk and Registrars.

Certain enactments respecting County Court Clerks extended to Surrogate Clerk, Registrars, &c.

And also to County Attorneys.

## FEES TO JUDGES.

As to fees to be taken by Judges, &c., to their own use.

**69.** The Judges of the several Surrogate Courts may demand and take to their own use the fees mentioned in the Schedule to this Act marked B, and such fees shall be collected by the Registrars of the said Courts on or before each proceeding and paid over to the said Judges, and annual returns of such fees up to the thirty-first day of December in each year shall be made by such Registrars on or before the first day of February in each year. 22 V. c. 93, s. 49.

## FEES TO OFFICERS.

Fees to officers.

**70.** The Registrars and Officers of the said Surrogate Courts and Attorneys and Barristers respectively practising therein, shall be entitled to take for the performance of duties and services under this Act, such fees as shall be fixed under the provision hereinafter contained. 22 V. c. 93, s. 49.

## JUDGES TO FIX TARIFF.

Judges may, under sect. 19, alter the amount of fees as fixed under sect. 14 of the S. C. Act, 1853.

**71.** The table of fees fixed by the Judges appointed in pursuance of the fourteenth section of the Surrogate Courts Act, 1853, to be taken by the Registrars and officers of the Surrogate Courts, and by Attorneys and Barristers practising therein in respect to business under that Act, and the fees to be payable in respect of searches, inspection and copies of and extracts from records, wills and other documents in the custody of or under the control of the said Surrogate Courts respectively, are hereby continued, and the said Judges, or any two of them, may from time to time, add to, reduce, alter or amend such table as they see fit; and no other fees than those specified and allowed in such tables of fees shall be taken or received by such Registrars, Officers, Attorneys and Barristers respectively. 22 V. c. 93, s. 50.

No other fees to be taken.

## TAXATION OF COSTS.

As to taxation of costs.

**72.** The bill of any Attorney for any fees, charges or disbursements in respect of any business transacted in a Surrogate Court, whether contentious or otherwise, or any matter connected therewith, shall as well between Attorney and Client as between party and party be subject to taxation in such Surrogate Court, and the mode in which such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders made under this Act, and the certificate of the Registrar of the amount at which such bill is taxed shall be subject to appeal to the Judge of the Court. 22 V. c. 93, s. 51.

## REGISTRAR'S OFFICE.

Registrar to have office, if

**73.** The Registrar of every Surrogate Court shall hold his office in the Court House of the County, and a room therein shall

shall be provided for that purpose, and in the event of there being no room in the Court House, every such Registrar shall, until such room be provided, hold his office at such place as the Judge of the Court shall direct, and the office of every Registrar shall be a depository for all wills of living persons given to such Registrar for safe keeping, and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as may from time to time be directed by rules or orders in that behalf made under this Act. 22 V. c. 93, s. 52.

room, in Court House, and his office to be a depository for the wills of living persons.

#### PROBATES AND GRANTS OF ADMINISTRATION CONFIRMED.

**74.** All grants of probate or administration made before the commencement of this Act which may be void or voidable by reason only that the Courts from which respectively the same were obtained, had not jurisdiction to make such grants, shall be valid as if the same had been obtained from Courts entitled to make such grants; but no such grants of probate or administration shall be made valid by this Act, in case the same, before the first September, one thousand eight hundred and fifty-eight, had been revoked or determined by any Court of competent jurisdiction to be void; nor shall this Act prejudice or affect any proceeding then pending, in which the validity of any such probate or administration was in question. 22 V. c. 93, s. 53.

Existing grants of Probate or Administration void or voidable, because obtained from wrong Court, declared valid.

**75.** In case the result of any such pending proceeding invalidates the same, such probate or administration shall not be rendered valid by this Act, and if such proceeding abates or becomes defective by reason of the death of any party, any person who but for this Act would have any right by reason of the invalidity of such probate or administration, shall retain such right, and may commence proceedings for enforcing the same within six months after the death of such party. 22 V. c. 93, s. 53.

Exception.

**76.** Any affidavit or bond, which before the first September, one thousand eight hundred and fifty-eight, had been received and allowed in the Court of Probate or in any Surrogate Court, taken before a Commissioner for taking affidavits in either of the Superior Courts of Common Law, shall be valid and effectual to all intents and purposes. 22 V. c. 93, s. 53.

And affidavits, &c., heretofore taken before Commissioners in the Superior Courts of Law, good.

#### EFFECT OF PAST PROBATES AND GRANTS.

**77.** Legal grants of Probate and Administration made before the first September, one thousand eight hundred and fifty-eight, and grants of probate and administration made legal by this Act or the Surrogate Courts Act, 1858, shall have the same force and effect as if they had been granted under this Act. 22 V. c. 93, s. 54.

As to effect of grants of Probate or Administration before 1st. Sept., 1858.

In case *bonū notabilia* not within the jurisdiction.

**78.** In case any probate or administration had been granted before the first September, one thousand eight hundred and fifty-eight, and the deceased had personal estate in Upper Canada not within the limits of the jurisdiction of the Court, by which such probate or administration was granted, or otherwise not within the operation of the grant, the Court to which, under this Act, an original application for probate or administration might be made, may grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and the grant shall be limited accordingly. 22 V. c. 93, s. 54.

PAPERS TO BE PLACED IN COURT OF CHANCERY.

Judge of former Probate Court and others to hand over wills, papers, &c., to Court of Chancery.

**79.** All books, records, wills, grants, probates, letters of administration, administration bonds, notes of administration, Court books, deeds, processes, Acts, proceedings, writs, documents and every other instrument, relating exclusively or principally to matters and causes testamentary, deposited in the Court of Chancery, by the Judge of the Court of Probate, the Registrar thereof, and every other person who had the custody of books, documents and papers, of or belonging to that Court, pursuant to the fifty-fifth section of the Surrogate Courts Act, 1858, shall remain so deposited, so as to be easy of reference under the control and direction of the Court. 22 V. c. 93, s. 55.

PENDING SUITS.

Original suits, &c., pending in Court of Probate transferred to Surrogate Court of York and Peel.

**80.** All original suits and matters which on the first day of September, one thousand eight hundred and fifty-eight, were pending in the Court of Probate and which were by the Surrogate Courts Act, 1858, transferred with all proceedings therein to the present Surrogate Court for the Counties of York and Peel, shall there be dealt with and decided according to the rules and practice of such Surrogate Court, and such Court shall possess full power and authority for the determination thereof. 22 V. c. 93, s. 56.

APPEALS TO FORMER PROBATE COURT TRANSFERRED TO CHANCERY.

Suits by way of appeal in Court of Probate transferred to Chancery.

**81.** All suits by way of appeal from the Surrogate Court, which, on the first September, one thousand eight hundred and fifty-eight, were pending in the Court of Probate, and were, by the Surrogate Courts Act, 1858, transferred with all proceedings therein to the Court of Chancery, shall there be dealt with and decided according to the practice of the said Court, as shall also all cases then in process of appeal to the said Court of Probate. 22 V. c. 93, s. 57.

BONDS TAKEN IN PROBATE COURT ASSIGNABLE.

Bonds taken in Court of Pro-

**82.** The Court of Chancery may order all bonds taken in the Court of Probate on the grant of administration and in force

force on the first of September, one thousand eight hundred and fifty-eight, to be assigned, and the same may be enforced in the name of the assignee under the authority of the said Court of Chancery, in the same way as provided for in case of assignment of bonds in the Surrogate Court. 22 V. c. 93, s. 58.

bate may be assigned by order of Chancery.

#### NUNCUPATIVE WILLS.

**83.** No nuncupative Will, made after this Act comes in force, shall be good, provided that any Soldier, being in actual Military Service, or any Mariner or Seaman, being at sea, may dispose of his personal estate in such manner as he may now do according to the Laws of England. 22 V. c. 93, s. 61.

Nuncupative will not good, except in certain cases.

#### GENERAL POWERS OF SURROGATE JUDGES.

**84.** The powers of the Judges appointed under the eighteenth and nineteenth sections of this Act, shall extend and apply to the making from time to time of Rules and Orders for regulating, simplifying and expediting proceedings in the Surrogate Courts, and fixing and regulating the fees to be taken as aforesaid, under any Act or the provisions of any Act of the Parliament of Upper Canada, or of this Province, giving powers or jurisdiction to the said Surrogate Courts or to the Judges thereof. 22 V. c. 93, s. 65.

Procedure in other matters of jurisdiction to be regulated by rules made under sect. 18 and 19.

#### GRATUITY TO FORMER JUDGES.

**85.** Whereas the Judge of the Court of Probate and also the Judges of the several Surrogate Courts, who are not Judges of the County Courts, have been superseded, and it is just to make some provision for them; therefore, Secker Brough, Esquire, the former Judge of the said Court of Probate, shall be entitled to receive a gratuity not exceeding the amount of fees received by him for the last preceding five years of his service; and each Judge of a Surrogate Court who has been superseded, shall be entitled to receive a gratuity not exceeding the amount of fees received by him for the last preceding five years of his service, or if he had not held office for that time, to a gratuity equal to the amount of fees received by him for such time not exceeding three years; and the said several sums shall be paid out of the general Fee Fund at such times and in such manner as the Governor may direct; but if the said Secker Brough, Esquire, be hereafter appointed to any office under the Government of this Province, the salary and emoluments whereof amount to double the sum of such annuity, the same shall thenceforward cease and wholly determine. 22 V. c. 93, s. 66.

Allowances to Judges of Probate or Surrogate Courts who have been superseded.

#### INTERPRETATION.

**86.** In the construction of this Act, unless the context shall be inconsistent with the meaning hereby assigned—

Interpretation.

“ will ” shall comprehend “ testament,” and all other testamentary instruments of which probate may now be granted—“ administration ” shall comprehend all letters of administration of the effects of deceased persons whether with or without the will annexed, and whether granted for general, special or limited purposes,—“ matters and causes testamentary ” shall comprehend all matters and causes relating to the grant and revocation of Probate of wills or letters of administration,—“ common form business ” shall mean the business of obtaining Probate or administration where there is no contention as to the right thereto, including the passing of Probates and administration through a Surrogate Court when the contest is terminated, and all business of a non-contentious nature to be taken in a Surrogate Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of Probate or administration,—“ County ” shall comprehend two or more Counties united for Judicial purposes, and the Rules of construction laid down by the Interpretation Act of Canada shall be applicable to this Act. 22 V. c. 93, s. 67.

SHORT TITLE.

Short Title of this Act.

**S7.** In citing this Act in any instrument or document of proceeding, it shall be sufficient to use the expression “ the Surrogate Courts Act.” 22 V. c. 93, s. 70.

SCHEDULE A.

*Fees to belong to and to be paid over to fee fund.*

TO BE RECEIVED BY REGISTRARS.		\$	cts.
On every application for Probate or administration or for guardianship (including notice thereof to Surrogate Clerk, but not postage).....	0		50
On certificate of Surrogate Clerk upon such application (including transmission to Registrar, but not postage).....	0		50
On every instrument or process with Seal of Court, Entry and notification of Caveat, not including postage.....	0		50
On every Grant of Probate or Administration, as follows, viz:			
Where property devolving is under \$1,200,	1		00
Where property devolving is from \$1,200 to \$4,000.....	2		00
Where property devolving is above \$8,000,	3		00
On every final Judgment in contentious or disputed case.....	1		00
On deposit of wills for safe custody, each.....	0		50

TO BE RECEIVED BY SURROGATE CLERK.

	\$	cts.
On every search for grant of Probate, administration, guardianship or other matter in clerk's office (other than searches on applications of registrars).....	0	50
On every certificate of search or extract..... (if exceeding three folios, per folio 10 cents.)	0	50
On every order made on application to a Judge in Chancery and transmission of same, exclusive of postage,	0	50
On entry of every appeal.....	0	50
On every decree on appeal and transmission, exclusive of postages.....	2	0
On entry of Caveat.....	0	50
<i>Fees to belong and to be paid over to the fund to provide for the accommodation of the Superior Courts of Law and Equity.</i>		
On every Certificate issued by the Surrogate Clerk in Chancery.....	0	50
On every order made on application to a Judge in Chancery.....	0	25
On entering every appeal.....	0	50
On every Decree or Order on Appeal. 22 V. c. 31, (1859.)	1	0

SCHEDULE B.

*Fees allowed to Judge.*

On every grant of Probate or administration where property devolving is under \$1200, the sum of \$2; from \$1200 to \$4000, the sum of \$3; where above \$8000, the sum of \$7; on every appointment of a guardian, \$2; on every order, 50 cents; on every special attendance, or for purpose of audit, \$1; for every days sittings in contentious or disputed cases, \$2; together with 20 cents per folio on evidence, if taken, before Judge.

C A P. X V I I.

An Act relating to the Court of General Quarter Sessions of the Peace.

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

COMMISSIONS OF THE PEACE.

1. The authority under which Commissions of the Peace have been issued and the authority under which the Courts of General Quarter Sessions of the Peace have been holden and are now held in Upper Canada, and all matters and things done by, or by virtue of the same, shall be so far as relates to the authority under which such Commissions were issued and such Courts have been holden, good and valid. 41 G. 3, c. 6, s. 1.

Former Commissions and Courts confirmed.

For purposes of outlawry, Quarter Sessions substituted for County Courts in England.

2. The Courts of General Quarter Sessions of the Peace in the several Counties of Upper Canada, shall be in the place and stead of the County Courts of England, as far as respects any purpose of outlawry, or any proceedings therein. 55 G. 3, c. 2, s. 2.

WHEN COURTS TO BE HELD.

When to be held.

3. The Courts of General Quarter Sessions of the Peace in and for the several Counties, shall be held on the second Tuesday in the months of March, June, September and December in each year. 20 V. c. 58, s. 16.

PLACE OF HOLDING.

Where to be held.

4. The Court of General Quarter Sessions of the Peace shall be held in the County Town of the County, but in time of war or other exigency, the Governor may, by Proclamation under the Great Seal, authorize the holding the Court at some other place in the County. 7 W. 4, c. 11, ss. 2, 4.

WHO TO BE CHAIRMAN.

Who to be Chairman.

5. The Judge of the County Court of every County, and in case of his death or absence, the Junior or the Deputy Judge (as the case may be) officiating in the Office of County Court Judge, shall preside as Chairman at the General Quarter Sessions of the Peace for the County, but in case of the absence from sickness or other unavoidable cause, of the Judge of the County Court and of the Junior and the Deputy Judge thereof, if such there be, the Justices present shall elect another Chairman *pro tempore*. 8 V. c. 13, s. 3,—16 V. c. 20, s. 2,—20 V. c. 58, s. 14.

RESCINDING ORDERS OF COURT.

No order by Magistrates to be rescinded unless at least same number be present.

6. Whenever any order has been passed or recorded by any number of Magistrates in any County in Upper Canada, the same shall not be rescinded unless at least the same number be present. 7 W. 4, c. 18, s. 4.

READING COMMISSION.

Reading the Commissions dispensed with.

7. It shall not be necessary in opening any Court of Quarter Sessions, to read the commission of the Peace, or any other commission issued for the County for which such Court is held; but such Court shall have the same powers and authorities, and proceed in the same manner, as if such commission had been read. 18 V. c. 92, s. 39.

DELIVERY OF GAOL.

The Court not required to deliver the Gaol.

8. It shall not be necessary for any Court of Quarter Sessions to deliver the Gaol of all prisoners who may be confined upon charges of simple larceny, but the Court may leave any such cases to be tried at the next Court of Oyer and Terminer and General Gaol Delivery, if by reason of the difficulty or importance of the case, or for any other cause, it appears to them proper so to do. 7 W. 4, c. 4, s. 5.

CLERK



CLERK OF THE PEACE.

9. No person shall after this Act takes effect be appointed a Clerk of the Peace for any County who is not a Barrister at law of not less than three years' standing at the Upper Canada Bar; and every Clerk of the Peace so appointed shall be *ex officio* County Attorney for the County of which he is Clerk of the Peace. 20 V. c. 59, s. 9. Clerk of the Peace.

CONSTABLES.

10. The Court of General Quarter Sessions of the Peace, at their sittings in the month of March in each year, shall nominate and appoint a High Constable for their respective Counties, and a sufficient number of Persons in each Township, Incorporated Village, Police Village and Place within their respective Counties, not being Cities or Incorporated Towns, to serve the Office of Constable therein, and each of such High Constable and Constables respectively, before entering upon his office, shall take the following oath which any Justice of the Peace may administer: Court to appoint High Constable, and Constables.

“ You shall well and truly serve our Sovereign Lady the Queen in the office of \_\_\_\_\_, for the \_\_\_\_\_ of \_\_\_\_\_, for the year ensuing according to the best of your skill and knowledge. So help you God. Oath of.

“ Sworn before me \_\_\_\_\_, at \_\_\_\_\_, in \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred \_\_\_\_\_ and \_\_\_\_\_

A. B., J. P.”

20 V. c. 58, s. 16,--33 G. 3, c. 2, s. 10.

C A P. X V I I I.

An Act respecting Insolvent Debtors Courts.

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

PETITION AND CESSIO BONORUM.

1. In case any person indebted:

1. Gives notice according to the form (No. 1) to one fourth in number and value of his creditors, and causes such notice to be inserted twice in the *Canada Gazette* and twice in some newspapers circulating within the County wherein he resides and had resided for the then last preceding twelve months; and Insolvent debtors may apply for relief through the Judges of the County Courts.

- Petition to Judge of County Court.** 2. In case such person presents to the Judge or acting Judge of the County Court of such County, a Petition for protection from process in the form (No. 2), and sets forth therein any proposal he has to make for the payment of his debts in whole or in part ; and
- Schedule.** 3. In case he annexes to such petition a full and true Schedule of his debts, with the names of his creditors and the dates of contracting the debts, and the security (if any) given for the same, and also the nature and amount of his property, with the debts owing to him, their dates, the names of his debtors, and the nature of the securities (if any) which he has received for such debts ; and
- To be verified by affidavit.** 4. In case such petition and Schedule be verified by an affidavit of the petitioner in the form (No. 3) sworn before any Judge of a Court of record or of the Court of Chancery in Upper Canada, or before a Commissioner for taking affidavits in any of such Courts, or before any Clerk or Officer of any such Courts otherwise authorized to administer oaths ; and
- To be annexed together.** 5. In case such affidavit be annexed to such petition and Schedule at the time of filing the same ;
- On filing the whole, Protection may be granted.** Then on the filing thereof, such Judge or acting Judge may give a protection to the petitioner from all process whatever, either against his person or his property of any description, and such protection shall continue in force, and all process be stayed accordingly until the appearance of the petitioner as hereinafter provided. 7 V. c. 10 s. 69, and *Forms Nos. 1, 2, 3,—S V. c. 48, ss. 1, 2.*
- If petition not in due form, to be dismissed.** 2. If the petition and affidavit be not in the form prescribed, the petition shall be dismissed. 8 V. c. 48, s. 2.
- When the Judges may allow Schedules to be amended.** 3. In case a debt of, or a claim upon, or balance due from a petitioner has been specified in his Schedule sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any culpable negligence or fraud or evil intention on the part of the petitioner, the Judge shall allow the Schedule to be amended in that behalf ; and in every case in which an amendment of the Schedule is allowed, the petitioner shall be entitled to every benefit and protection of this Act ; and the creditor in that behalf shall be entitled to the benefit of all the provisions made for creditors by this Act, in respect of the actual amount of such debt, claim or balance, and neither more nor less than the same. 8 V. c. 48, s. 36.
- If a petitioner dies, the proceedings to continue as if living.** 4. If any petitioner dies after filing his Petition, the Judge may proceed in the matter of the petition for the discovery and distribution of his property as if the petitioner were living. 8 V. c. 48, s. 13.

5. Any prisoner in execution upon a judgment obtained for the recovery of a debt, may be a petitioner for protection from process under this Act, and every such petitioner, to whom an *interim* order for protection has been given, shall not only be protected from process as provided by this Act, but also from being detained in prison in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his Schedule.

Any prisoner in execution may petition under this Act, subject to certain exceptions.

6. If any such petitioner, being a prisoner in execution, be detained in prison in execution upon any such judgment, the Judge may order any Officer who has the petitioner in custody by virtue of such execution, to discharge him out of custody as to such execution, without exacting any fee, and such Officer is hereby indemnified for so doing, and no Sheriff, Gaoler, or other person whatsoever shall be liable to any action as for the escape of any such prisoner by reason of such his discharge; and such petitioner so discharged shall, until the making of the final order, be protected by such *interim* order from all process for such time as the said Judge, by such *interim* order or any renewal thereof, thinks fit to appoint, in the same manner as if such petitioner had not been a prisoner in execution; but after the time allowed by any such *interim* order or any renewal thereof, has elapsed, the petitioner shall not, by such discharge, be protected from being again taken in execution upon the judgment, and the judgment shall remain in full force and effect, notwithstanding such discharge. 8 V. c. 48, s. 11.

Any prisoner in execution may petition under this Act, subject to certain exceptions.

7. Whenever any such petitioner is a prisoner under any Process, Attachment, Execution, Commitment or Sentence, and is not entitled to his discharge in manner aforesaid, the Judge may, by Warrant under his hand, directed to the person in whose custody the petitioner is confined, cause him to be brought before such Judge for examination, at any sitting of the Court, either public or private, and the expense of bringing the petitioner shall be paid out of his estate, and such person shall be indemnified by the Warrant of the Judge for bringing up the petitioner. 8 V. c. 48, s. 12.

When the petitioner a prisoner, the judge may direct him to be brought up.

8. Notwithstanding any protection granted under this Act, the petitioner may be arrested or held to bail under the authority of a Judge's order for that purpose in cases in which a Judge's order was necessary to authorize an arrest on civil process before the first day of September, one thousand eight hundred and fifty eight. 8 V. c. 48, s. 3,—22 V. c. 96.

The protection not to prevent the petitioner from being held to bail by Judge's order.

9. Upon the presentation of any such petition and upon granting a protection thereupon, the Judge shall appoint an Official Assignee in whom all the estate and effects of the petitioner shall forthwith become vested, and such Official Assignee shall forthwith take possession of so much thereof as can be

When protection granted, the Judge shall appoint official assignee in whom Estate shall vest, &c.

be reasonably obtained and possessed without suit, and the said Official Assignee shall hold and stand possessed of the same in the manner and for the purposes hereinafter mentioned. 8 V. c. 48, s. 1.

Property in possession of the petitioner as reputed owner, to vest in assignee.

**10.** If at the time of filing his petition, any petitioner has by the consent and permission of the true owner thereof, in his possession, order, or disposition, any goods or chattels whereof the petitioner is reputed owner, or whereof he has taken upon him the sale or disposition as owner, the same shall be deemed the property of the petitioner, so as to become vested in the Assignee or Assignees for the time being of his estate and effects. 8 V. c. 48, s. 22.

The Judge may order any stock held by petitioner to be transferred to assignee.

**11.** If any petitioner at the time of filing his petition, or at any time before he becomes entitled to his final Order, has any Government stocks, funds, or annuities, or any of the stock or shares of, or in any public company in Upper Canada, standing in his own name, and in his own right, the Judge may order all persons whose act or conduct is thereto necessary, to transfer the same into the name of such Assignee or Assignees as aforesaid; and all persons whose act or consent is so necessary, are hereby indemnified for all things done or permitted, pursuant to such order. 8 V. c. 48, s. 20.

Wearing apparel, &c., to a certain amount, exempted from this Act.

**12.** The petitioner's wearing apparel, bedding, and other necessaries of himself and his family, and his working tools and implements, not exceeding in the whole the value of eighty dollars, may be excepted in his petition from the operation of this Act, and in such case shall be excluded from its operation; but such excepted articles, with the values thereof respectively, to be appraised if the Judge thinks fit and ascertained in such manner as he directs, must be fully and truly described by the petitioner in his Schedule, otherwise the exception thereof shall be of no force. 8 V. c. 48, s. 14.

No distress for rent after petition filed to avail for more than one year's rent previously accrued.

**13.** After the filing of any petition for protection no distress for rent made and levied upon the goods or effects of the petitioner, shall be available for more than one year's rent accrued prior to the filing thereof, but the landlord, or party to whom the rent is due, may be a creditor for the overplus of the rent due, and for which the distress is not available, and shall be entitled to all the provisions made for creditors by this Act. 8 V. c. 48, s. 23.

Power to search for concealed property of petitioners.

**14.** Except as herein otherwise directed, in all cases in which it is made to appear to the satisfaction of the Judge that there is reason to suspect and believe that property of the petitioner is concealed in any house or other place not belonging to such petitioner, such Judge shall grant a Search Warrant to the Sheriff of the County, and the Sheriff, or his Deputy or other officer employed by him, shall execute the warrant, according

according to the tenor thereof, and the Sheriff, Deputy or other officer executing the same, shall be entitled to the protection allowed by law in the execution of a Search Warrant for property reputed to be stolen and concealed. 7 V. c. 10, s. 49,—8 V. c. 48, s. 10.

**15.** The Judge may compel the attendance of and examine the petitioner and his wife, and every person known or suspected to have any of the property of the petitioner in possession, or who is supposed to be indebted to the petitioner, and any person whom the said Judge believes capable of giving any information concerning the person, trade, business or calling, dealings or property of the petitioner, or any information material to the full disclosure of his dealings, and may enforce both obedience to such examination, and the production of books, deeds, papers, writings, and other documents, in like manner as might be done in a Superior Court of Law or Equity. 8 V. c. 48, s. 10.

A Judge may compel attendance of petitioner.

**16.** The Judge to whom any petition is presented shall, from time to time, make such orders as he deems right, touching the notice to be given to creditors, of meetings and examination, and the publication of the notice. 8 V. c. 48, s. 4.

The Judge to make order respecting notice of meeting to creditors, &c.

**17.** A majority in number and value of the creditors who, by themselves or their Attorneys duly authorized by Letters of Attorney in that behalf, attend at a meeting for the choice of a creditor's Assignee, or at an adjournment thereof, shall, in the presence of a Judge, choose a creditor's Assignee; but if the Judge deems the person so chosen unfit to be such Assignee, he may reject him and he may remove any Assignee, and thereupon another Assignee shall be appointed by him or be chosen by the creditors (as the case may require) in the manner in this Act provided. 8 V. c. 48, s. 4.

A majority of creditors may choose a creditor's assignee.

**18.** In all matters wherein creditors vote, or wherein the assent or dissent of creditors is exercised in pursuance of, or in carrying into effect this Act, every creditor shall be accounted a creditor in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens, appears to be the balance due; and all disputes concerning any such matters or amount, shall, upon application made, be examined into by the Judge, who shall determine the same; but the amount, in respect of which, any such creditor votes in any such matter shall not be conclusive of the amount of his debt for any ulterior purposes of this Act. 8 V. c. 48, s. 19.

A creditor entitled to vote only upon the amount appearing due to him.

**19.** All sums of money payable by way of annuity or otherwise at any future time, by virtue of any bond, covenant, or other securities

Sums payable on annuities to securities

be debts within this Act.

The value of which the Judge shall ascertain.

securities of any nature, shall be deemed debts within the meaning of this Act; and every person who would be a creditor of any petitioner for protection from Process for such sums of money, if the same were presently due, shall be admissible as a creditor of the petitioner for the value and no more of such sums of money so payable as aforesaid, which value the Judge shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sums of money, deducting therefrom such diminution in the value thereof as has been caused by the lapse of time between the grant thereof to the time of filing the petition; and such creditor shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this Act, without prejudice, nevertheless, to the respective securities of such creditor, excepting as respects the effect of the final Order which may be obtained by the petitioner under the provisions of this Act. 8 V. c. 48, s. 32.

If an assignee does not accept within six days, another shall be appointed.

**20.** If any assignee so chosen (or appointed) does not, within six days after notice thereof, signify his acceptance (in writing) and deliver the same to such Judge, his election (or appointment) shall be void, and the Judge shall from time to time proceed to appoint until the acceptance be duly signified. 7 V. c. 10, s. 29.

Assignees accepting to be appointed by an Instrument.

**21.** As soon as such acceptance is signified to the Judge as aforesaid, he shall, by an instrument under his hand and seal, declare the choice or appointment of such Assignees and their acceptance; and the said instrument shall be executed in duplicate, one of which shall be lodged in the office wherein the other papers in the case are hereinafter required to be finally deposited, and the other shall be delivered to the Assignees; and either of such duplicates, purporting to be under such hand and seal, shall be received in all Courts in this Province as *prima facie* evidence that the same was executed on the day on which it purports to bear date, that the assignees named therein were duly chosen and appointed, and accepted the office, and that they are authorized to bring and defend actions and suits in that character. 7 V. c. 10, s. 30,—8 V. c. 48, s. 25.

Copies admissible in evidence.

Until assignee chosen by creditors, the official assignee to be the sole assignee.

**22.** Until an Assignee is chosen by the creditors of any petitioner, the Official Assignee nominated by the Judge may act, and shall be the sole Assignee of the petitioner's property, and, if the Judge so orders, may sell or otherwise dispose of such property or any part thereof, and make such allowance out of the property for the support of the petitioner and his family, as the Judge directs. 8 V. c. 48, s. 15.

If official assignee resigns,

**23.** The property vested in any Official Assignee alone or jointly with any Assignee chosen by the Creditors, shall not, if such Official Assignee resigns or is removed from his office, remain

remain in such Official Assignee alone or jointly with the Assignee so chosen, nor in the heirs, executors, or administrators of such Official Assignee, nor in the surviving Assignee alone, in case of the death of such Official Assignee, but all such property shall in every such case go to and be vested in the successor in office of such Official Assignee alone, or jointly with the Assignee chosen by the creditors (if any), as the case may be. 8 V. c. 48, s. 15.

**24.** Whenever any petition is dismissed, all sales and dispositions of property and payments duly made, and all other acts theretofore done by any Assignee or any person acting under his authority, or by any messenger or other person under the authority of the Judge, according to the provisions of this Act, shall be good and valid, but the property of the petitioner shall otherwise in such case revert to such petitioner; And no suit shall be commenced or prosecuted against such Assignee, messenger, or other person acting as aforesaid, except to recover property of the petitioner detained after an Order made by the Judge for the delivery thereof and a demand made thereupon. 8 V. c. 48, s. 15.

If petition dismissed, sales by assignee to be nevertheless valid, &c.

**25.** The Judge authorized to act in the matter of any petition may direct remuneration to the Official Assignee for his services in the matter of such petition, but such remuneration shall in no case exceed the rate of forty dollars per centum on the sum received as the proceeds of the property of the petitioner. 8 V. c. 48, s. 42.

Remuneration of official assignee.

**26.** A Judge shall, on the day appointed for that purpose, examine upon oath the petitioner and any creditor who attends the examination or any witness whom the petitioner or any creditor calls, and such Judge may summon to be examined before him any debtor or creditor of such petitioner or any other person whose evidence appears necessary for the foregoing enquiry. 8 V. c. 48, s. 4.

The Judge to examine the petitioner or creditors or witnesses upon oath, &c.

**27.** The Judge may, by Warrant under his hand and seal, commit to prison, for such time as he thinks fit, not exceeding one month, any petitioner who prevaricates or makes any false statement before him. 8 V. c. 48, s. 7.

The Judge may commit a petitioner for prevarication.

**28.** The Judge may, by writing under his hand, summon any witness or person other than the petitioner to be examined before him on oath or affirmation to be taken before him, respecting the examination of the petitioner or any other matters that may arise under any such petition, and may enforce the attendance of and compel such witness or person to answer by the like means and to the same extent as may be done in the case of a contumacious witness in the Superior Courts of Common Law. 8 V. c. 48, ss. 1, 7,—7 V. c. 10, s. 36.

The Judge may summon witnesses, &c.

And enforce attendance and compel answer.

The Judge may renew order for protection.

**29.** The Judge may, at the first examination of the petitioner, and afterwards from time to time, renew the order for protection, until the final order for protection and distribution. 8 V. c. 48, s. 6.

If the petitioner's debts were contracted by fraud, breach of trust or by other culpable misconduct, the Judge shall not make final order.

**30.** In case on the day for the first examination of the petitioner, or at any adjournment thereof, it appears to the Judge that the debts of the petitioner, or any of them, were contracted by any manner of fraud or breach of trust, or by any prosecution whereby he had been convicted of any offence, or without his having at the time a reasonable or probable expectation of being able to pay such debt or debts, or that such debts, or any of them, were contracted by reason of a judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious suing out a *fiat* of Bankruptcy, or malicious trespass, or that the petitioner has parted with any of his property since the presenting of his petition, the Judge shall not in any such case name any day for making such final Order, or renew such *interim* Order. 8 V. c. 48, s. 31.

And if petitioner was a prisoner, he shall be remanded.

**31.** In every such case wherein the petitioner has been a prisoner in execution and discharged out of custody by order of the Judge under the provision herein in that behalf contained, the petitioner shall be remanded by an Order from the Judge to his former custody.

If all appears clear, the Judge may give notice that on a day named he will make a final order, *Nisi*.

**32.** If none of the matters aforesaid so appear, and the Judge is satisfied that the petitioner has made a full discovery of his estate, effects, debts and credits, the Judge may cause notice to be given that on a certain day to be therein named, he will proceed to make a final Order, unless cause be shewn to the contrary. 8 V. c. 48, s. 31.

Final order may be adjourned *sine die*.

**33.** The Judge may, at the time appointed for making the final Order or at any adjournment thereof, adjourn the consideration of such final Order *sine die*. 8 V. c. 48, s. 33.

If no day named for final order, Judge may make order for the protection of the petitioner, &c.

**34.** If for any of the causes aforesaid, no day be named for making the final Order, or if the consideration of such final Order be adjourned *sine die*, or if such final Order be refused, then, after the expiration of such time subsequent to the filing of the petition, as, the Judge, having regard to all the circumstances of the insolvency and the conduct of the petitioner as an insolvent debtor before and after his insolvency, thinks just, and after hearing the petitioner or any of his creditors, or his or their Counsel or Attorneys, the Judge may make an Order to protect the petitioner from being taken or detained under any Process whatever for or in respect of the several debts and sums of money at the time of filing his petition due, or claimed to be due, from the said petitioner to the several persons named in



in his Schedule as creditors, or as claiming to be creditors, for the same respectively, or for which such persons should have given credit to the petitioner before the time of filing his petition and which were not then payable, and as to the claims of all other persons not known to the petitioner at the time of making such Order, who may be endorsers or holders of any negotiable security set forth in the said Schedule. 8 V. c. 48, s. 34.

**35.** If it appears to the Judge—1. that the allegations in the petition and the matters in the Schedules are true,—and 2. that the debts of the petitioner were not contracted by any manner of fraud or breach of trust,—and 3. that he has not been convicted of any offence,—and 4. that such debts were not contracted without his having at the time reasonable assurance of being able to pay his debts,—and 5. that such debts were not incurred by reason of any judgment or proceeding for breach of the Revenue Laws, or of any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault and battery, malicious arrest, malicious suing out a *fiat* in Bankruptcy, or malicious trespass,—and 6. if it also appears that the petitioner has made a full discovery of his estate, effects, debts and credits, and has not parted with any of his property since the presenting of his petition, the Judge may cause notice to be given, that, on a certain day to be named therein, he will, unless cause be shewn to the contrary, proceed to make an order in the form No. 4, which order shall be called a final order, and shall be for the protection of the person of the petitioner from all Process, and for the vesting of his estate and effects in the Official Assignee named by such Judge, together with an Assignee chosen by the majority in number and value of the creditors who attended before the Judge on the day appointed by him for that purpose, or for the carrying into effect any proposal which the petitioner may have set forth in his petition as hereinbefore provided. 8 V. c. 48, s. 4.

On being satisfied that the petitioner's debts were contracted without fraud, &c., the Judge may grant a final order of protection.

**36.** The Judge without further notice may from time to time adjourn the consideration of such final Order, and he may in such final Order direct some allowance to be made for the support of the petitioner out of his estate and effects. 8 V. c. 48, s. 4.

And may from time to time adjourn the same.

**37.** The final Order, under the provisions of this Act, shall protect the person of the petitioner from being taken or detained under any Process whatever in respect of the several debts and sums of money at the time of filing his petition due or claimed to be due from such petitioner to the several persons named in the Schedule as creditors or as claiming to be creditors for the same respectively, or for which such persons gave credit to the petitioner before the time of filing such petition and which were not then payable, or in respect of the claims of any other persons not known to the petitioner at the time of making

Effect of final order.

making

Form and contents of final order.

making the final Order who may be endorsees or holders of any negotiable securities set forth in such Schedule; and every such final Order may be made without specifying therein any such debts or sums of money, or claims as aforesaid. 8 V. c. 48, s. 29.

If petitioner in prison in execution, the Judge may order his discharge.

**38.** If any petitioner, being a prisoner in execution at the time of filing his petition, is detained in prison for any debt or claim in respect of which he is protected from process by his final Order, the Judge may order any Officer who has such petitioner in custody by virtue of such execution, to discharge such petitioner without exacting any fee, and such Officer is hereby indemnified for so doing. 8 V. c. 48, s. 30.

If petitioner arrested for debt, the Judge may order his discharge.

**39.** If the petitioner has been taken or detained under any process whatever, for any debt or claim in respect of which he is protected from process by such Order as last aforesaid, the Judge may order the Officer who has such petitioner in custody to discharge such petitioner therefrom without exacting any fee, and such Officer is hereby indemnified for obeying such order. 8 V. c. 48, s. 35.

Final order may be pleaded in Bar.

**40.** If any suit or action be brought against any petitioner for or in respect of any debt contracted before the date of filing his petition, it shall be a sufficient plea in bar of the said suit or action, that a petition was duly presented and a final Order for protection and distribution made by a Judge duly authorized, whereof the production of the Order signed by the Judge, with proof of his handwriting, shall be sufficient evidence. 8 V. c. 48, s. 24.

After final order the Judge may, under certain circumstances and after due notice, &c., rescind the same.

**41.** In case at any time after the final order has been made, a Creditor or the Official or other Assignee gives one month's notice to the petitioner either by personal service, or if he cannot be found, by service at the place of his residence mentioned in his notice of petition, that such Creditor intends to apply by motion to the Judge, or in case of his death, resignation or removal, to the Judge appointed to succeed him, that the final order be rescinded as far as relates to the protection of the petitioner's person from process, and as far as relates to the effect of such order in bar of actions; and in case such notice has been published twice in the *Canada Gazette* and twice in the same paper in which the notice of the petition was given, or in some other paper circulating in the same County, and in the event of a Creditor being the applicant if he has served the Official and other Assignee with one month's notice to attend the said Judge, the said Judge, shall hear the matter of such motion and any evidence in support of it, and what the petitioner has to allege against it, and any evidence against it, and shall examine the petitioner if he desires to be examined, or if the Judge thinks fit,—then in case the Judge sees reason to believe that the petitioner had not before the making of such final order made a full disclosure

disclosure of his estate, effects and debts, or since the making of such order had not given notice to the Assignees of any property after acquired by him, the Judge shall make such rescinding order as is hereinbefore mentioned; and the said Judge, in case he refuses to make a rescinding order, may order the petitioner's costs of the application to be paid by the creditor who made the motion, or by the assignee chosen by the creditors in case he made the motion, but not out of the Petitioner's estate and effects. 8 V. c. 48, s. 26.

**42.** After the issue of the final order, the whole estate present, and subject to the provisions hereinafter contained, the future estate as well real as personal, and all the effects, and all the credits of the Petitioner, shall, without any deed or conveyance, become absolutely vested in the Official Assignee and the Assignee chosen by the creditors, which Assignees shall hold the same for the purposes of this Act, and may sue and be sued respecting the same. 8 V. c. 48, s. 8.

Property and credits of petitioner to vest in assignees.

**43.** No other estate, real or personal, effects or credits of any such petitioner other than those of which he was possessed or entitled to at the date of the final order, shall, unless otherwise ordered as hereinafter provided, be liable to or applicable in satisfaction of the debts hereinbefore mentioned. 8 V. c. 48, s. 8.

Effects of petitioner on the date of the final order alone liable for his debts, unless otherwise ordered.

**44.** The Assignees may, at any time after the final order, claim and demand from the petitioner any estate and effects acquired by him after such order has been made, and all such estate and effects, of what kind soever and wheresoever situate, shall be absolutely vested in such Assignees upon their filing a copy of their claim after being served upon the petitioner personally, or by leaving it at the place of residence mentioned in his notice of petition, and they shall hold the same in like manner as they held the estate and effects of the petitioner transferred by force of the final order, as hereinbefore provided. 8 V. c. 48, s. 9.

Under what circumstances property acquired by petitioner after final order, to vest in assignees.

**45.** No Assignee shall take possession of any estate or effects which the Insolvent acquired or became possessed of after the final order herein mentioned was made, except by an order of the Judge for that purpose, and then only to the extent and at the time and in the manner directed by such order, and after giving such notices and doing such acts as by the orders and regulations, made under the authority of this Act, are required and directed in that behalf. 8 V. c. 48, s. 9.

If so ordered by a Judge.

**46.** In case any such Assignee has died or been lawfully removed and a new Assignee has been duly appointed, all estate, real and personal, and such effects and credits as were or remained vested in such deceased

Power of assignees over the same.

or

or removed Assignee shall, without any deed or conveyance, vest in the new Assignee, either alone or jointly with the existing Assignees, as the case may require, and every such Assignee shall be deemed an Officer of the Court in which the petition is filed, and shall be liable as such to the control thereof; but the property of the Petitioner shall in every case be possessed and received by the Official Assignee alone, unless otherwise ordered by the Judge. 8 V. c. 48, s. 8.

The Court of Chancery may make orders for securing the property of petitioners.

**47.** The Chancellor and Vice-Chancellors of Upper Canada, may, from time to time, make such orders, rules and regulations for the security of the property of the Petitioner, as they may judge reasonable and proper. 8 V. c. 48, s. 8.

Powers of petitioner over his estate to vest in the assignees.

**48.** All powers vested in any Petitioner whose estate has, under the provisions of this Act, been vested in an Assignee or Assignees, which such Petitioner might legally execute for his own benefit, are hereby vested in such Assignee or Assignees, to be by such Assignee or Assignees executed for the benefit of the creditors of such Petitioner under this Act, in such manner as such Petitioner might have executed the same. 8 V. c. 48, s. 16.

The assignees may sue in their own or in the petitioner's name, &c.

**49.** The Assignee or Assignees of the Petitioner may, from time to time, as there may be occasion, sue in his or their own name or names, for the recovery and enforcing of any property or rights of such Petitioner, but in trust for the creditors of the Petitioner under this Act, and may give such discharge as may be requisite to any person indebted to such Petitioner, and may make compositions with any debtors or accountants to the Petitioner where the same appear necessary, and may take such reasonable part of any such debts as can upon such composition be gotten, in full discharge of such debts and accounts, and may submit to arbitration any difference or dispute between the Assignee or Assignees and any person or persons for or on account or by reason of any matter or thing relating to the property of the Petitioner. 8 V. c. 48, s. 18.

And may make composition with debtors.

Circumstances necessary to justify a composition or arbitration.

**50.** No such composition or submission or arbitration shall be made nor shall any suit in equity be commenced by any such Assignee or Assignees, without the approbation of the Judge nor without the consent in writing of the major part in value of the creditors of the Petitioner, expressed at a meeting held pursuant to a notice thereof, published in the *Canada Gazette*, at least fourteen days before the meeting, and also in some newspaper usually circulated in the neighbourhood of the place where the Petitioner had his last usual residence before the filing of his petition. 8 V. c. 48, s. 18.

Death of assignee not to

**51.** Whenever any Assignee dies, resigns or is removed, or a new Assignee is duly appointed, no action at law or suit in

in equity shall be thereby abated, but the Court in which any action or suit is depending may, upon the suggestion of such death, resignation or removal and new appointment (if any,) allow the name or names of the surviving or new Assignee to be substituted in the place of the former, and such action or suit shall be prosecuted in the name or names of the said surviving or new Assignee in the same manner as if he had originally commenced the same. 8 V. c. 48, s. 21.

interfere with suits then pending.

**52.** If at the expiration of twelve months from the filing of a petition, there remains any outstanding debts or other property, due or belonging to the estate of the petitioner which cannot, in the opinion of the Judge, be collected and received without unreasonable or inconvenient delay, the Assignees, under the direction of the Judge, may sell and assign such debts and other property in such manner as may be ordered by the Judge. 8 V. c. 48, s. 38.

Debts due to petitioners may be sold after expiration of 12 months.

**53.** In case the petitioner is entitled to any lease or agreement for a lease, and his Assignee or Assignees accept the same and the benefit thereof as part of the petitioner's property, the petitioner shall not be liable to pay any rent accruing after the filing of his petition nor be in any manner sued after such acceptance in respect of any subsequent non-observance or non-performance of the conditions, covenants or agreements therein contained. 8 V. c. 48, s. 17.

If assignees accept leases of petitioners, the petitioner not to remain liable.

**54.** In case the said Assignee or Assignees, upon being required so to do, decline to determine whether he or they will or will not accept such lease or agreement for a lease, the lessor or person agreeing to make the lease, his heirs, executors, administrators or assigns, may apply to the Judge praying that such Assignee or Assignees may either accept the same or deliver up such lease or agreement for a lease and the possession of the premises demised or intended to be demised; and the Judge shall thereupon make such order as under all the circumstances of the case seems meet and just, and such order shall be binding on all parties. 8 V. c. 48, s. 17.

If assignees decline accepting a lease, what course the lessor or contractor may adopt.

**55.** Where a conveyance or assignment of any real or personal property of a petitioner requires to be registered, enrolled, or recorded in any Registry or other office in Upper Canada, the certificate of the appointment of an Assignee or Assignees, as provided by the twenty-first Section of this Act, shall be registered in the Registry Office or place wherein such conveyance or assignment requires to be registered, enrolled, or recorded. 8 V. c. 48, s. 8.

When registration necessary upon the transfer of property real or personal, the instrument mentioned in section 21 to be registered in lieu of a conveyance.

**56.** The registry hereby directed shall have the like effect to all intents and purposes as the registry, enrollment or recording of such conveyance or assignment as last aforesaid would have had; and unless the certificate of such appointment be registered as aforesaid within two months from the date

Effect of such registration and consequences of neglect.

date of such appointment, the title of any purchaser of any such property as last aforesaid for valuable consideration, who has duly registered, enrolled, or recorded his purchase deed previous to the registry hereby directed, shall not be invalidated by reason of the appointment of an Assignee or Assignees as aforesaid, or of the vesting of such property in him or them consequent thereupon. S V. c. 48, s. 8.

Any transfer by petitioner in contemplation of insolvency or after filing petition, to be void.

**57.** If the petitioner, in contemplation of his becoming insolvent, or being in insolvent circumstances, and either before or after the filing of his petition, voluntarily conveys, assigns, transfers, charges, delivers, or makes over any estate, real or personal, or any security for money, bond, bill, note, money, goods or effects whatsoever, to any creditor or to any person in trust for or to, or for the use, benefit or advantage of any creditor, or to any person who is or may be liable as surety for the petitioner, every such conveyance, assignment, transfer, charge, delivery and making over, shall be deemed fraudulent and void, as against any Assignee or Assignees of the estate and effects of the petitioner, appointed under the provisions of this Act; but no such conveyance, assignment, transfer, charge, delivery or making over, shall be deemed fraudulent and void, if made by the petitioner more than three months before the filing of the petition and not with the view and intention of petitioning the Court for protection from Process. S V. c. 48, s. 27.

Effect of a confession of judgment by a petitioner, &c.

**58.** In all cases where any petitioner, whose estate has been vested in an Assignee or Assignees, under the provisions of this Act, has given any Warrant of Attorney to confess judgment, or any *Cognovit actionem*, or Bill of Sale, whether for a valuable consideration or otherwise, no person shall, after the filing of the petition of such petitioner, avail himself of any execution, issued upon any judgment obtained upon such Warrant of Attorney or *Cognovit actionem*, either by seizing or selling the property of the petitioner, or any part thereof, or by selling any of such property theretofore seized, or any part thereof, or avail himself of such Bill of Sale; but any person to whom any sum of money is due in respect of any such Warrant of Attorney, *Cognovit actionem*, or Bill of Sale, may be a creditor for the amount under this Act. S V. c. 48, s. 28.

When dividends shall be declared and made.

**59.** Whenever, after an Audit, there appears to the Judge to be in the hands of the Official Assignee any balance wherewith a dividend may be made, proceedings shall be had forthwith, under the direction of the Judge, for making such dividend, and also, when it appears necessary, for correcting and ascertaining the list of creditors entitled to receive the same. S V. c. 48, s. 37.

Notice to be given of sit-

**60.** Notice of any sitting of the Court ordered to be held for such ascertaining of debts, or for an Audit, or for declaring a dividend

dividend thereupon, or for all such purposes, shall be given for such time and in such manner as the Judge from time to time directs. 8 V. c. 48, s. 37.

tings for declaring dividends, audit, &c.

**61.** Such dividend shall be made amongst the creditors of the petitioner, whose debts are admitted in his Schedule, sworn to by the petitioner, and amongst such other creditors (if any) who prove their debts in pursuance of an Order of the Judge made in that behalf, in proportion to the amount of the debts so admitted or so admitted and proved, as the case may be. 8 V. c. 48, s. 37.

Who entitled to share in dividends.

**62.** If the petitioner, or any creditor or assignee, objects in whole or in part to any debt tendered to be so proved as aforesaid, or to any debt mentioned in the Schedule of the petitioner, or if any person whose demand is stated in such Schedule but is not admitted therein to the extent of such demand, claims to be admitted as a creditor to the extent of such demand or for more thereof than is so admitted, the said objections and claims shall, upon application duly made, be examined into by the Judge, and the decision of the Judge thereupon shall be conclusive with respect to the title of such creditor or creditors to his or their share of such dividend. 8 V. c. 48, s. 37.

If disputed, the Judge to decide.

**63.** If in any case it appears expedient, the Judge may, at any time, by such notice as he directs in that behalf, cause all or any of the creditors to prove their debts in such manner as he may require, and the Judge may decide upon such debts and the right to receive dividends thereupon, and do all things requisite thereto, as aforesaid. 8 V. c. 48, s. 37.

The Judge may require creditors to prove their debts.

**64.** The Judge of every County Court may from time to time make such orders, rules and regulations as he thinks fit, for the better carrying this Act into execution, and particularly for regulating and appointing the duties of the Official Assignees and of the other Assignees, the auditing of their accounts, the collecting of the debts, and the realizing of the estate and effects of the petitioner, and the notification of the time of hearing petitions or motions in the *Canada Gazette* or otherwise. 8 V. c. 48, s. 39.

County Court Judges may make rules and orders for effecting the objects of this Act.

**65.** The Judge may enforce the performance of any order, rule or regulation made in conformity to the next preceding clause, and in his discretion, may fine or imprison, or both fine and imprison for any wilful non-observance of the same, and may, by attachment, compel the payment of any costs which he is authorized to order, in the same manner, and as fully as he could do acting as a judge in the County Court. 8 V. c. 48, s. 40.

And may enforce rules and orders and, if need be, fine and imprison, &c.

**66.** Her Majesty's Superior Courts of Common Law may from time to time regulate and establish a Table of Costs for any matter to be done under this Act, and the table of costs already

The Superior Courts may make Table of Costs.

already provided by rule of the Court of Queen's Bench shall continue unless altered under the provisions of this Section. (See *Rule Q. B., Hilary Term, 9 V.*)—8 V. c. 48, s. 41.

Petitions or copies receivable in evidence being first certified by the Judge.

**67.** Any petition and any proceeding in the matter of such petition purporting to be signed by any such Judge, or a copy of such petition or other proceeding purporting to be so signed, shall, in all cases, be receivable as evidence of such proceedings having respectively taken place. 8 V. c. 48, s. 43.

Effect of final order in certain special cases.

**68.** In the case of any person who was a trader within the meaning of the Act relating to Bankrupts seven Victoria chapter ten, before the passing thereof, and who was excluded from its operation by reason of his having before that time failed in his business under such circumstances that had the failure taken place after the passing of the said Act, he could have availed himself of the provisions thereof while in force, the final order shall, in addition to its other effects, operate as a discharge of all debts due up to the day of his filing his petition as fully and to the same extent as if such trader had obtained a certificate under the said Act relating to bankrupts; But since the expiration of the said Act, (except as continued for special purposes) this Act shall not entitle any such trader now to file a petition, and avail himself of this section, unless he could have filed a petition under the Statute eighth Victoria chapter forty-eight, and have availed himself of the fifth section thereof had that Act not been repealed. 8 V. c. 48, s. 5.

Certain Traders within the meaning of the former Bankrupt Act, entitled to the benefit of this Act.

**69.** All traders within the meaning of the Bankrupt Act, passed in the seventh year of Her Majesty's Reign, intituled, *An Act to repeal an Ordinance of Lower Canada, intituled, an Ordinance concerning Bankrupts and the administration and distribution of their estate and effects, and to make provision for the same object throughout the province of Canada*, who, while that Act was in full force in Upper Canada, did, at the request of some of their creditors testified by their being parties thereto, execute *bonâ fide* and without fraud, assignments of all their property for the benefit of their creditors or such of them as might choose to come into such assignments, may avail themselves of the benefit of this Act on their taking the steps and proceedings herein set forth for obtaining their discharge. 14, 15 V. c. 116, s. 1.

Effect of final order in such cases.

**70.** As to such persons, the order called the final order shall, in addition to its effect, as mentioned in the thirty-fifth section of this Act, operate as a discharge of all debts due up to the date of the assignment in each case respectively as fully and completely and to the same extent as if such Traders respectively had obtained a certificate under the Bankrupt Act hereinbefore mentioned. 14, 15 V. c. 116, s. 2.

Forms.

**71.** The following are the forms referred to in the foregoing sections of this Act:

(No.



(No. 1.)

## FORM OF NOTICE.

I, A. B., at present, and for \_\_\_\_\_ months past, residing at \_\_\_\_\_, in the Township of \_\_\_\_\_, in the County of \_\_\_\_\_, and being (*here set forth the description of the Debtor and his profession or calling, if any,*) do hereby give notice that I intend to present a Petition to \_\_\_\_\_, Judge of the County Court for the County of \_\_\_\_\_, praying to be examined touching my debts, estate and effects, and to be protected from all Process, upon making a full disclosure and surrender of such estate and effects for payment of my just and lawful debts; and I hereby further give notice, that the time when the matter of the said Petition will be heard is to be advertised in the *Canada Gazette*, and in the newspaper, one month at the least after the date hereof.

As witness, my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

(No. 2.)

## FORM OF PETITION FOR PROTECTION FROM PROCESS.

To the Judge of the County Court of the County of \_\_\_\_\_

The humble Petition of (*insert at full length the name, address and quality of the Petitioner, and also the trade or business, (or if more than one, the trades or businesses,) which he carries, or has carried on, during his twelve months' residence within the County of the Court.*)

SHEWETH :

1. That your Petitioner has resided twelve months within the County of this Honorable Court, that is to say, (*insert the places and periods of residence*);

2. That your Petitioner has become indebted to divers creditors, whose names are inserted in the Schedule A, (*or, as the case may be,*) to this Petition annexed, and that he is unable to pay his debts in full;

3. That your Petitioner has examined the said Schedule, and that such Schedule contains a full and true account of your Petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as nearly as such dates can be stated, the nature of the debts, claims and securities (*if any,*) given for the same, and that there is reasonable ground in his belief for disputing so much of the debts as are thereby mentioned as disputed; and also a true account of the nature and amount

amount of his property, and an inventory of the same, and of the debts owing to him with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the security (*if any,*) which he has for such debts; and that the said Schedule also contains a balance-sheet of so much of his receipts and expenditure as is required by this Honorable Court in that behalf, and doth fully and truly describe the wearing apparel, bedding and other necessaries of your Petitioner and his family, and his working tools and implements;

4. That your Petitioner has not parted with or changed any of his property (except for the necessary support of himself and his family, and the necessary expenses (not exceeding dollars) of this his Petition, or in the ordinary course of trade,) at any time within three months of the date of filing this his Petition, or at any time with a view to this Petition;

5. That your Petitioner is desirous that his estate should be administered under the protection and direction of this Honorable Court, and that he verily believes such estate is of the value of dollars at the least, unencumbered, and beyond the value of his wearing apparel and other matter, which your Petitioner is authorized to except by law, and that the same is available for the benefit of his creditors;

6. That your Petitioner submits to this Honorable Court the proposal for the payment of his debts contained in the said Schedule. (*Omit this paragraph if no special proposal;*)

7. That your Petitioner is ready and willing to be examined from time to time touching his estate and effects, and to make a full and true disclosure and discovery of the same;

8. Your Petitioner, therefore, prays such relief in the premises as, by the Statute for the relief of Insolvent Debtors, may be adjudged by this Honorable Court.

And your Petitioner shall ever pray, &c., &c.

Signed by the said Petitioner, on the \_\_\_\_\_ day  
of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, in the  
presence of \_\_\_\_\_, Attorney or Agent in the  
matter of the said Petition.

(No. 3.)

AFFIDAVIT VERIFYING PETITION AND SCHEDULE.

A. B., of \_\_\_\_\_, the Petitioner named in the Petition hereunto annexed (*if the Petitioner affirm, alter accordingly,*) maketh oath and saith—That the several allegations in the said Petition,

Petition, and the several matters contained in the Schedule hereunto annexed, are true.

Sworn, &c.

(No. 4.)

FINAL ORDER FOR PROTECTION FROM PROCESS.

In the Insolvent Court for the County of

In the matter of the Petition of \_\_\_\_\_, of \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, an Insolvent Debtor;

Be it remembered that the said \_\_\_\_\_, having presented his Petition for protection from process to this Honorable Court, and such Petition having been duly filed in Court, and the said Petitioner having duly appeared and been examined touching his debts, estate and effects; and it appearing that the said \_\_\_\_\_, by virtue of the Statute in that case made and provided, is entitled to the protection of his person from being taken or detained under any Process whatever in respect of the several debts and claims hereinafter mentioned, a final Order is hereby made to protect the person of the said

\_\_\_\_\_ from being taken or detained under any Process whatever in respect of the several debts or sums of money due or claimed to be due after the time of filing his Petition from the said Petitioner, to the several persons named in his Schedule as creditors or as claiming to be creditors for the same respectively, or for which such persons had given credit to the said Petitioner before the time of filing his Petition and which were not then payable and as to the claims of all other persons not known to the said Petitioner, at the time of making this Order who may be endorsees or holders of any negotiable security set forth in his said Schedule; and it is hereby directed, that the proposal of the said Petitioner, set forth in his Petition, for the payment of his debts, be carried into effect in the following manner, that is to say: (*here state particularly the manner in which the same is to be carried into effect.*)

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_.

(Signed,)

Judge of the County Court  
of the County of \_\_\_\_\_.

## C A P . X I X

## An Act respecting the Division Courts.

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

## INTERPRETATION.

Interpretation  
of certain  
words.

**1.** In construing this Act, the word " County " shall include any two or more Counties united for judicial purposes, and in any form or proceeding, the words " United Counties " shall be introduced according to the circumstances rendering the same necessary, the words " Judge " " the Judge " or " County Judge " shall mean the Senior or the acting Judge of the County Court of the particular County in which the Division Courts are respectively situated. 13, 14 V. c. 53, s. 111.

## THE COURTS.

Continuing  
clause.

**2.** The Division Courts, and the limits and extent thereof existing at the time this Act takes effect, shall continue until altered by law; all proceedings heretofore duly had shall remain valid, and all suits and proceedings heretofore commenced shall be continued and completed under this Act; and all rules and orders made under the provisions of any former Division Court Act, and in force when this Act takes effect, shall continue in force subject to the provisions of this Act. 13, 14 V. c. 53, ss. 1, 2.

Number of  
Courts in  
Counties and  
Cities.

**3.** There shall not be less than three, nor more than twelve Division Courts in each County or Union of Counties; of which there shall be one Division Court in each City and County Town. 13, 14 V. c. 53, s. 3.

Each Court to  
have a Seal.

**4.** Every Court shall have a Seal, with which every Process of the Court shall be sealed or stamped, and such Seal shall be paid for out of the Fee Fund. 13, 14 V. c. 53, s. 86.

Not Courts of  
Record.

**5.** The said Division Courts shall not be held to constitute Courts of Record. 13, 14 V. c. 53, s. 23.

Time and  
place of hold-  
ing Courts.

**6.** A Court shall be holden in each Division once in every two months, or oftener in the discretion of the Senior or the acting County Judge; and the Judge may appoint and from time to time alter the times and places within such Divisions, when and at which such Courts shall be holden. 13, 14 V. c. 53, s. 3.

The Governor  
may, in certain

**7.** If the Magistrates of any County in Quarter Sessions assembled, certify to the Governor that in any Division of the County,

County, from the amount of business, remoteness or inaccessibility, it is expedient that the Court should not be held so often as once in every two months, the Governor in Council may order the Court to be held at such periods as to him seems meet, and may revoke the order at pleasure, but a Court shall be held in the Division at least once in every six months. 13, 14 V. c. 53, s. 109.

cases, regulate holding of Courts.

8. The Justices of the Peace in each County in General Quarter Sessions assembled, may, subject to the restrictions in this Act contained, appoint, and from time to time alter the number, limits and extent of every Division, and shall number the Divisions, beginning at number one; but a less number of Justices shall not alter or rescind any Resolution or Order made by a greater number at any previous session. 13, 14 V. c. 53, s. 4.

Quarter Sessions may alter number and limits of Division.

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

Designation of Court.

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

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

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

On alteration of Divisions, Judge to direct in what Court proceedings to be continued.

12. In case a Junior County be separated from a Union of Counties, or the proceedings of any of the Division Courts of a Senior County be transferred to any other Division Court within the County upon the order of the judge, the Clerks or other officers of such Division Courts who hold any writs or documents appertaining to any such Courts or the business thereof, shall deliver up the same to such persons as the Judge directs,

Clerks and officers to deliver papers to such persons as Judge directs.

directs, and any person refusing to deliver up the same shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents under the provisions of the forty-eighth section of this Act. 16 V. c. 177, s. 18.

After separation of Junior from Senior County, proceedings in certain cases to be continued in Senior County.

**13.** If after the separation of a Junior County from a Union of Counties, the territorial limits of any of the Division Courts of the former Union are partly within the Junior and partly within the Senior County, all proceedings commenced in such Division Courts of the former Union shall be continued to completion in the Court where the proceedings were originally commenced, or in such other Division Court of the Senior County as the Judge thereof directs; and the Clerks and other Officers of the said Division Courts of such Senior County in possession of any writs or documents appertaining to any such Court or to the business thereof, shall deliver over the same to the Clerk of such Division Court of such County as the Judge thereof directs. 16 V. c. 177, s. 19.

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

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

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

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

#### THE JUDGE.

County Court Judges to preside.

**16.** The County Court Judges shall preside over the Division Courts in their respective Counties. 13, 14 V. c. 53, s. 7.

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

**17.** In case of the illness or unavoidable absence of the County Judge, the County Judge of the Court of any other County may hold the Court, or the first mentioned Judge may appoint some Barrister of the Bar of Upper Canada to act as his Deputy; and the person so appointed shall, as Judge of the Division Court, during the time of his appointment, have all the powers and privileges, and be subject to all the duties vested in or imposed by law on the Judge by whom he has been appointed. 13, 14 V. c. 53, s. 8.

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

**19.** No such appointment shall be continued for more than one month without a renewal of the like notice, and in case the Governor disapproves of such appointment, he may annul the same. 13, 14 V. c. 53, s. 8. Appointment, how long to continue.

**20.** In case the Judge or the acting Judge, from illness or any casualty, does not arrive in time or is not able to open the Court on the day appointed for that purpose, the Clerk or Deputy Clerk of the Court, shall, after eight o'clock in the afternoon, by proclamation adjourn the Court to an earlier hour on the following day, and so from day to day adjourning over any Sunday or legal holiday, until the Judge or acting Judge arrives to open the Court, or until he receives other direction from the Judge or acting Judge. 13, 14 V. c. 53, s. 8. Clerks or Deputy Clerks may adjourn Court if Judge does not arrive in time.

#### THE CLERKS AND BAILIFFS, &C.

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

**22.** No County Court Clerk, practising Barrister or Solicitor shall be appointed Clerk. 13, 14 V. c. 53, ss. 9, 110,—See 12 V. c. 66, s. 12. Who disqualified.

**23.** The Judge shall from time to time appoint and may at his pleasure remove any Clerk or Bailiff. 13, 14 V. c. 53, s. 9. Judge to appoint and remove Clerks and Bailiffs.

#### SECURITIES TO BE GIVEN BY DIVISION COURT CLERKS AND BAILIFFS.

**24.** Every Division Court Clerk and Bailiff shall give security by entering into a Bond to Her Majesty, with as many sureties, in such sums, and in such form as the Governor directs, for the due accounting for and payment of all fees, fines and moneys received by them respectively, by virtue of their respective offices, and also for the due performance of their several duties. 16 V. c. 177, s. 12. Clerks and Bailiffs to give security by bond to the Crown.

**25.** Every Clerk and Bailiff of a Division Court shall, by a covenant according to the form A, or in words to the same effect, give security, with so many sureties, being Freeholders and residents within the County, and in such sums as the County Judge may direct, and shall under his hand approve and declare sufficient. 13, 14 V. c. 53, s. 22, & Sch. C. Clerks and Bailiffs of Division Courts to give security.

Before Clerk or Bailiff enters on his duties, covenant to be filed with Clerk of the Peace.

**26.** Before any such Clerk or Bailiff enters upon the duties of his office, the covenant of himself and sureties, approved as aforesaid, shall be filed in the office of the Clerk of the Peace in the County in which the Division Court is situate, and for filing and granting a certificate thereof he may demand from such Clerk or Bailiff the sum of one dollar. 13, 14 V. c. 53, s. 22, & Sch. C.

To be available to suitors, &c.

**27.** Such covenant shall be available to, and may be sued upon in any Court of competent jurisdiction by any person suffering damages by the default, breach of duty, or misconduct of any such Clerk or Bailiff. 13, 14 V. c. 53, s. 22, & Sch. C.

Certified copy of covenant to be received as evidence.

**28.** A copy of every such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without further proof. 13, 14 V. c. 53, s. 22, & Sch. C.

If surety dies, a new surety to be furnished.

**29.** If any surety in any such covenant dies, becomes resident out of Upper Canada, or insolvent, the County Judge shall notify the Clerk or Bailiff for whom such person became surety, of such death, departure or insolvency, and such Clerk or Bailiff shall, within one month after being so notified, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his office of Clerk or Bailiff. 13, 14 V. c. 53, s. 22, & Sch. C.

Securities heretofore given to continue in force.

**30.** Nothing hereinbefore contained shall discharge or exonerate any of the parties to such former covenant from their liability on account of any matter done or omitted before the renewal of the covenant as aforesaid. 13, 14 V. c. 53, s. 22.

Existing securities continued.

**31.** The bonds and covenants given by Clerks and Bailiffs, before the passing of this Act, shall continue in force and have the same effect as if given under this Act. 13, 14 V. c. 53, s. 22,—16 V. c. 177, s. 12.

Clerks and Bailiffs to be paid by fees.

**32.** The Clerks and Bailiffs shall be paid by fees, as by this Act allowed. 13, 14 V. c. 53, s. 12.

#### CLERKS' DUTIES.

When Clerk may appoint Deputy.

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



**34.** The Clerk shall issue all Summonses, which Summonses shall be by him filled up and shall be without blanks either in date or otherwise at the time of delivery for service; he shall also furnish copies of the same with the notice thereon, according to the form prescribed by any rule respecting the practice and proceedings of the Division Courts. 13, 14 V. c. 53, ss. 13, 40.

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

**35.** The plaintiff or defendant respectively shall furnish the Clerk with the particulars of the Plaintiff's claim or demand, or of the Defendant's set-off (*as the case may be*), and the Clerk shall annex the Plaintiff's particulars to the Summons, and he shall furnish copies thereof, or of the Defendant's set-off to the proper person to serve the same. 13, 14 V. c. 53, ss. 13, 40.

Parties to furnish their claims to the Clerk.

**36.** The Clerk shall also issue all Warrants, Precepts and Writs of Execution filled up and without blanks,—he shall tax costs subject to the revision of the Judge,—register all orders and judgments of the Court, and keep an account of all Court fees and fines payable or paid into Court, and of all Suitor's moneys paid into and out of Court, and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, and shall at all times be accessible to the Judge, who shall examine the same quarterly or oftener and compare the accounts hereinafter mentioned with such book, and shall certify on each such account that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the County Attorney. 13, 14 V. c. 53, ss. 13, 40.

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

**37.** The Clerk, at the periods from time to time appointed by the Governor, shall submit his said accounts to be audited or settled by the County Attorney. 13, 14 V. c. 53, s. 13.

Clerks to submit accounts to County Attorneys.

**38.** The Clerk of every Division Court shall, from time to time, as often as required so to do by the County Attorney of his County, and at least once in every three months, deliver to him, verified by the affidavit of such Clerk sworn before the Judge or a Justice of the Peace of the County, a full account in writing of the fees received in his Court; And a like account of all fines levied by the Court, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may make out of any such fine, in pursuance of the power hereinafter given. 13, 14 V. c. 53, s. 15,—20 V. c. 59, s. 13. *See s. 99, post.*

Clerks of County and Division Courts to deliver to County Attorney a verified account of Fees.

**39.** The fees from time to time received by such Clerks respectively, and payable to the General Fee Fund, shall be by them paid over from time to time to the County Attorney, and

Fee Fund moneys to be paid to County Attorney.

at

at least once in every three months, and shall form part of a fund, to be called the General Fee Fund, and shall be applied towards the payment of the salaries of the Judges of such Courts. 13, 14 V. c. 53, s. 15,—20 V. c. 59, s. 13.

Clerk of Division Court to furnish Judge with a verified account of moneys paid in and out of Court.

**40.** The Clerk of each Division Court, when required by the Judge shall, from time to time, furnish him with a like account verified by the oath of the Clerk sworn before the Judge or a Justice of the Peace, of the moneys received into and paid out of the Court, by any suitors or other parties under any orders, decrees or process of the Court, and of the balance in Court, belonging to any such suitors or parties. 13, 14 V. c. 53, s. 15.

Division Court Clerks to furnish the Judge with semi-annual accounts of fees and emoluments.

**41.** The Clerk of every Division Court shall, half yearly at least, furnish to the Judge of his Court a detailed statement of all Fees and Emoluments of his Court; which statement shall be sworn to before such Judge, and it shall be the duty of such Judge to require such statement and to file the same with the County Attorney. 13, 14 V. c. 53, s. 110.

Clerk to keep a record of Writs and Judgments.

**42.** The Clerk shall cause a note of all summonses, orders, judgments, executions and returns thereto, to be from time to time fairly entered in a book to be kept in his Office; and shall sign his name on every page of such book; and such signed entries, or a copy thereof certified as a true copy by the Clerk, shall be admitted in all Courts and places as evidence of such entries, and of the proceedings referred to thereby, without any further proof. 13, 14 V. c. 53, s. 49.

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

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

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

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

#### DISPOSAL OF MONEYS PAID INTO COURT.

Unclaimed moneys to be carried to credit of Fee Fund.

**45.** All sums of money which have been paid into Court to the use of any Suitor thereof, and which have remained unclaimed for the period of six years after the same were paid into Court or to the Officers thereof, and all sums of money when this Act takes effect or afterwards in the hands of the Clerk or Bailiff, paid into Court, or to the Officers thereof, to the use of any Suitor shall, if unclaimed for the period

period of six years after the same were so paid, be applicable as part of the General Fee Fund of the Division Courts, and be carried to the account of such Fund and paid over by the Clerk or Officer holding the same to the County Attorney of his County, and no person shall be entitled to claim any sum which has remained unclaimed for Six years. 16 V. c. 177, s. 13.

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

Claims of persons under disability not to be prejudiced.

#### DISPOSAL OF BOOKS AND PAPERS WHEN CLERK CHANGED.

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

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

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

Penalty on person wrongfully holding moneys, books or papers.

#### FEES OF CLERKS AND BAILIFFS.

**49.** The Fees of the Clerks and Bailiffs of the Courts shall be those set down in the table of fees, B, and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks. 13, 14 V. c. 53, s. 14,—18 V. c. 125, s. 5, & *Sch.*

Fees of Clerks and Bailiffs.

**50.** The fees upon every proceeding shall, on or before such proceeding, be paid in the first instance by the Plaintiff, or other party at whose instance the same takes place. 13, 14 V. c. 53, s. 30,—16 V. c. 177, s. 3.

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

How enforced  
if not paid

**51.** If the fees are not paid in the first instance by the Plaintiff or party on whose behalf such proceeding is to be had, the payment thereof may by order of the Judge be enforced by execution in like manner as a judgment of the Court, by such ways and means as any debt or damages ordered to be paid by the Court can be recovered. 16 V. c. 177, s. 3.

Bailiff's fees to  
be paid to Clerk  
before execu-  
tion issues.

**52.** At the time of the issue of the execution, the Bailiff's fees thereon shall be paid to the Clerk, and shall by him be paid over to the Bailiff, upon the return of the execution, and not before, but if the Bailiff should not become entitled to any part or should be entitled to a part only of such fees, the whole or surplus shall on demand be by the Clerk repaid to the Plaintiff or party from whom the fees were received. 13, 14 V. c. 53, s. 14.

Bailiff to forfeit  
fees if he ne-  
glect to return  
Writ.

**53.** If the Bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the Clerk, who shall keep a special account thereof, and account for and pay over the same to the County Attorney of the County to form part of the General Fee Fund. 13, 14 V. c. 53, s. 14.

And such fees  
to go to Fee  
Fund.

#### JURISDICTION.

Cases in which  
Court has no  
jurisdiction.

**54.** The Division Courts shall not have jurisdiction in any of the following cases :

1. Actions for any gambling debt ; or
2. For spirituous or malt liquors drunk in a tavern or ale-house ; or
3. On notes of hand given wholly or partly in consideration thereof ;
4. Actions of ejectment or actions in which the right or title to any corporeal or incorporeal hereditaments ; or any toll, custom or franchise comes in question ; or
5. In which the validity of any devise, bequest or limitation under any will or settlement may be disputed ; or
6. For malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage ;
7. Actions against a justice of the Peace for any thing done by him in the execution of his office if he objects thereto. 13, 14 V. c. 53, s. 23,—16 V. c. 177, s. 1,—16 V. c. 180, s. 9.

**55.** The Judge of every Division Court may hold plea of, and may hear and determine in a summary way, for or against persons, bodies corporate or otherwise :

Cases in which the Court has jurisdiction.

1. All personal actions where the debt or damages claimed do not exceed forty dollars ; and

2. All claims and demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed one hundred dollars, and except in cases in which a jury is legally demanded by a party as hereinafter provided, he shall be sole judge in all actions brought in such Division Courts, and shall determine all questions of law and fact in relation thereto, and he may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience, and every such order, judgment and decree, shall be final and conclusive between the parties. 13, 14 V. c. 53, ss. 30, 84.

**56.** Upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the Judge, after the day has passed on which the goods or commodities ought to have been delivered or the labour or other thing performed, may give judgment for the amount in money as if the contract had been so originally expressed. 16 V. c. 177, s. 1,—13, 14 V. c. 53, s. 23.

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

**57.** No privilege shall be allowed to any person to exempt him from suing and being sued in a Division Court, and any Executor or Administrator may sue or be sued therein, and the judgment and execution shall be such as in like cases would be given or issued in the Superior Courts. 13, 14 V. c. 53, ss. 23, 80.

No privilege to exempt parties from jurisdiction of Court.

**58.** A minor may sue in a Division Court for any sum not exceeding one hundred dollars, due to him for wages, in the same manner as if he were of full age. 13, 14 V. c. 53, s. 27.

Minors may prosecute for wages.

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

Causes of action not to be divided.

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

Judgment to be full discharge.

Causes may be removed to Superior Court by *certiorari* in certain cases.

**61.** In case the debt or damages claimed in any suit brought in a Division Court amounts to forty dollars and upwards, and in case it appears to any of the Judges of the Superior Courts of Common Law, that the case is a fit one to be tried in one of the said Superior Courts, and in case any Judge thereof grants leave for that purpose, such suit may by writ of *certiorari* be removed from the Division Court into either of the said Superior Courts upon such terms as to payment of costs or other terms as the Judge making the order thinks fit. 13, 14 V. c. 53, s. 85.

PROCESS AND PROCEDURE.

Board of Judges to frame rules continued.

**62.** The existing appointments of County Judges with authority to frame general rules respecting the practice and proceedings of the Division Courts, shall continue until superseded or revoked by the Governor. 16 V. c. 177, s. 10,—20 V. c. 58, s. 8.

The Governor may appoint five County Judges to frame rules, &c.

**63.** The Governor may from time to time appoint and authorize five of the County Judges to frame general rules and forms concerning the practice and proceedings of the Division Courts, and the execution of the Process of such Courts, with power also to frame rules and orders in relation to the provisions of this Act, or of any future Act respecting such Courts, as to which doubts have arisen or may arise, or as to which there have been, or may be conflicting decisions in any of such Courts.

Who shall certify rules to the Chief Justice to be laid before the Judges.

**64.** The County Judges appointed as in the last section provided, or any three of them, shall, under their hands, certify to the Chief Justice of Upper Canada, all rules and forms made after this Act takes effect, and the Chief Justice shall submit the same to the Judges of the Superior Courts of Common Law at Toronto, or to any four of them.

Such rules to be approved of by the Judges ;

**65.** The Judges of the Superior Courts (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas shall be one) may approve of, disallow, or amend any such rules or forms.

And have force of a Statute.

**66.** The rules and forms so approved of shall have the same force and effect as if they had been made and included in this Act.

The Judges to transmit copies to the Governor, &c.

**67.** The Judges who make any rules and forms approved of as aforesaid, shall forward copies thereof to the Governor, and the Governor shall lay the same before each House of the Legislature.

Expenses of provided for.

**68.** The Governor may by warrant direct the Receiver General, to pay out of the General Fee Fund, the contingent expenses connected with the framing, approval and printing of such rules.

**69.** In any case not expressly provided for by this Act or by existing rules, or by rules made under this Act, the County Judges may, in their discretion, adopt and apply the general principles of practice in the Superior Courts of Common Law, to actions and proceedings in the Division Courts.

Practice of the Superior Courts to be followed in unprovided cases.

**70.** All rules and forms legally made and approved under the former "Upper Canada Division Court Acts," and in force when this Act takes effect, shall, as far as applicable, remain in force until otherwise ordered. 16 V. c. 177, s. 10,—20 V. c. 58, s. 8.

Former rules continued.

**71.** Any suit may be entered and tried in the Court holden for the Division in which the cause of action arose or in which the Defendant or any one of several Defendants resides or carries on business at the time the action is brought, notwithstanding that the Defendant or Defendants may at such time reside in a County or Division or Counties or Divisions different from the one in which the cause of action arose 16 V. c. 177, s. 8,—18 V. c. 125, s. 1.

In what Courts suits may be entered and tried.

**72.** The places fixed for holding the sittings of the Courts and the Offices of the Clerks thereof, being in some instances situated at an inconvenient distance from the place of residence of certain parties residing in such Divisions, while a Court is held in an adjacent Division, in the same, or in an adjoining County more convenient for such parties, and it being desirable that procedure in the Division Courts should be made easy and inexpensive to suitors; therefore, in case any person desires to bring an action in a Division other than that in which the cause of action has arisen, or in which the Defendant resides, any County Judge may by special order authorize a suit to be entered and tried in the Court of any Division in his County adjacent to the Division in which the Defendant or one of several Defendants resides, whether such Defendant or Defendants reside in the County of the Judge granting the order or in an adjoining County. 13, 14 V. c. 53, s. 25,—16 V. c. 177, ss. 8, 9,—18 V. c. 125, s. 1.

When suits may be brought in other than the regular Divisions.

**73.** In cases where no such special order has been obtained, the Clerk of any Division Court shall, when required, forward all summonses to the Clerk of any other Division Court for service, and the Clerk of any Division Court shall receive any summonses sent to him by any other Division Court Clerk for service, and he shall hand the same to the Bailiff for service, and when returned, shall receive the same from the Bailiff and return them to the Clerk from whom he received them, and every Clerk shall enter all such proceedings in a book to be by him kept for that purpose. 13, 14 V. c. 53, s. 25,—16 V. c. 177, s. 29,—18 V. c. 125, s. 3.

Where no special order, Clerk to forward Summonses.

**74.** The Plaintiff shall enter with the Clerk a copy and if necessary copies of his account, claim or demand in writing in detail

Plaintiff to enter copy of his

claims with  
Clerk.

detail (and in cases of tort, particulars of his demand) which shall be numbered according to the order in which the same are entered and thereupon a Summons shall be issued, bearing the number of the account, claim or demand on the margin thereof, and corresponding in substance with the form or in such other form as may be prescribed by any rule respecting the practice and proceedings of the Division Courts, according to the nature of the account, claim or demand, and on the trial of the cause no evidence shall be given by the Plaintiff of any cause of action except such as is contained in the account, claim or demand so entered. 13, 14 V. c. 53, ss. 24, 42.

Service of sum-  
mons to be ten  
days.

**75.** The summons with a copy of the account or of the particulars of the claim or demand attached, shall be served ten days at least before the return day thereof.

When service  
to be 15 days  
and when 20  
days.

**76.** In case none of the Defendants reside in the County in which the action is brought, but one of them resides in an adjoining County, the summons shall be served fifteen days, and in case none of the Defendants reside in the County within which the action is brought, or in an adjoining County, the summons shall be served twenty days at least before the return day thereof. 16 V. c. 177, s. 29,—18 V. c. 125, s. 1.

When service  
to be personal  
or otherwise.

**77.** In case the amount of the account, claim or demand exceeds eight dollars, the service shall be personal on the Defendant, and in case the amount does not exceed eight dollars, the service may be on the Defendant, his wife or servant, or some grown person being an inmate of the Defendant's dwelling house, or usual place of abode, trading or dealing. 13, 14 V. c. 53, s. 24.

Postages.

**78.** The postages of papers required to be served out of the Division, and sent by Mail for service, shall be costs in the cause. 13, 14 V. c. 53, s. 88, *middle part*.

Bailiffs to serve  
Writs.

**79.** The Bailiffs shall serve and execute all summonses, orders, warrants, precepts and writs delivered to them by the Clerk for service, whether Bailiffs of the Court out of which the same issued or not, and shall so soon as served return the same to the Clerk of the Court of which they are respectively Bailiffs; But they shall not be required to travel beyond the limits of their Division, or be allowed to charge mileage for any distance travelled beyond the limits of the County in which the Court of which they are respectively Bailiffs is situated. 13, 14 V. c. 53, s. 13,—16 V. c. 177, s. 29,—18 V. c. 125, s. 2.

Clerk to pre-  
pare affidavits  
of service, &c.

**80.** The Clerk shall prepare affidavits of service of all Summonses issued out of his Court, or sent to him for service, stating how the same were served, the day of service and the distance the Bailiff necessarily travelled to effect service, and the affidavits shall be annexed to or endorsed on the Summonses respectively; but the Judge may require the Bailiff to be sworn in  
his



his presence and to answer such questions as may be put to him touching any service or mileage. 16 V. c. 177, s. 31.

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

One of several partners may be sued in certain cases.

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

Bailiff may seize property of Firm on certificate of Judge.

**§3.** Every Clerk or Bailiff may sue and be sued for any debt due to or by him, as the case may be, separately or jointly with any other person in the Court of any next adjoining Division in the same County, in the same manner, to all intents and purposes, as if the cause of action had arisen within such next adjoining Division, or the Defendant or Defendants were resident therein, and no Clerk or Bailiff shall bring any suit in the Division Court of which he is such Clerk or Bailiff. 13, 14 V. c. 53, s. 62.

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

**§4.** On the day named in the summons the Defendant shall in person, or by some person on his behalf, appear in the Court to answer, and on answer being made the Judge shall, without further pleading or formal joinder of issue, proceed, in a summary way to try the cause and give judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may nonsuit the Plaintiff; and the Plaintiff may, before verdict in Jury cases, and before judgment pronounced in other cases, insist on being nonsuited. 13, 14 V. c. 53, ss. 41, 84.

Judge may summarily dispose of cause or non-suit plaintiff.

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

Proceedings in case defendant does not appear.

Judge may adjourn hearing of cause.

**86.** In case the Judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence, or for any other cause which the Judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet. 16 V. c. 177, s. 26,—13, 14 V. c. 53, s. 45,—18 V. c. 125, s. 1, *the end.*

TENDER OR PAYMENT OF MONEY INTO COURT.

Plea of tender and payment of money into Court.

**87.** If the Defendant in any action of debt or contract brought against him in any Division Court, desires to plead a tender before action brought, of a sum of money in full satisfaction of the Plaintiff's claim, he may do so on filing his plea with the Clerk of the Court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into Court the amount of the money mentioned in such plea, and notice of such plea and payment shall be forthwith communicated by the Clerk of the said Court to the Plaintiff by post (on receiving the necessary postage,) or by sending the same to his usual place of abode or business. 16 V. c. 177, s. 27.

Amount to be paid to plaintiff, &c.

**88.** The said sum of money shall be paid to the Plaintiff, less one dollar, to be paid over to the Defendant for his trouble, in case the Plaintiff do not further prosecute his suit, and all proceedings in the said action shall be stayed, unless the Plaintiff, within three days after the receipt of notice of such payment, signify to the Clerk of the said Court his intention to proceed for his demand, notwithstanding such plea, and in such case the action shall proceed accordingly. 16 V. c. 177, s. 27.

The rule as to costs in such cases.

**89.** If the decision thereon be for the Defendant, the Plaintiff shall pay the Defendant his costs, charges and expenses, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the Plaintiff in the same manner as any other money payable by a Judgment of the said Court; but, if the decision be in favor of the Plaintiff, the full amount of the money paid into Court as aforesaid shall be applied to the satisfaction of his claim, and a Judgment may be pronounced against the Defendant for the balance due and the costs of suit according to the usual practice of the Court in other cases. 16 V. c. 177, s. 27.

Defendant may pay money into Court.

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

**91.** The Clerk having received the necessary postage, shall forthwith send notice of such payment to the Plaintiff by post or otherwise to his usual place of abode or of business, and the sum so paid shall be paid to the Plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice, the Plaintiff signify to the Clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only. 13, 14 V. c. 53, s. 46.

Clerk to give notice of payment into Court.

**92.** If the Plaintiff recovers no further sum in the action than the sum paid into Court, the Plaintiff shall pay the Defendant all costs, charges and expenses incurred by him in the action after such payment, and such costs, charges and expenses shall be duly taxed, and be recovered by the defendant by the same means as any other sum ordered to be paid by the Court. 13, 14 V. c. 53, s. 46.

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

#### SET-OFF AND STATUTORY DEFENCE.

**93.** In case the Defendant or Defendants desire to avail themselves of the law of set-off, or of the Statute of Limitations or of any defence under any other Statute having force of law in Upper Canada, they, or one of them, shall, at least six days before the trial or hearing, give notice thereof in writing to the Plaintiff, or leave the same for him at his usual place of abode if within the Division, or, if living without the Division, shall deliver the same to the Clerk of the Court in which the action is to be tried, and in case of a set-off, the particulars thereof shall accompany the notice. 13, 14 V. c. 53, s. 43,—16 V. c. 177, s. 29,—18 V. c. 125, s. 1.

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

**94.** No evidence of set-off shall be given by the Defendant except such as contained in the particulars of set-off delivered. 13, 14 V. c. 53, s. 42.

No evidence of set-off allowed.

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

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

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

Set-off to be a full discharge.

#### SUBPCENAS.

**97.** Any of the parties to a suit may obtain, from the Clerk of any Division Court in the County, a subpoena with or without

Parties may obtain subpoena without

penas from  
Clerk.

without a clause for the production of books, papers and writings, requiring any witness, resident within the County or served with the subpoena therein, to attend at a specified Court or place before the Judge, or any arbitrator appointed by him under the provision hereinafter contained, and the Clerk, when requested by any party to a suit, or his agent, shall give copies of such subpoena. 13, 14 V. c. 53, s. 48,—16 V. c. 177, s. 5,—18 V. c. 125, s. 3.

Services of  
subpœna, by  
whom made.

**98.** Any number of names may be inserted in the subpoena, and service thereof may be made by any literate person, and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit sworn before any County Judge or the Clerk of any Division Court, or before any person authorized to take affidavits in any of the Superior Courts, and proof of service may be received by the several Judges of the said Courts, either orally or by affidavit. 16 V. c. 177, ss. 5, 33,—13, 14 V. c. 53, s. 48.

Penalty for  
disobeying  
subpœna or  
refusing to be  
sworn.

**99.** Every person served with a copy of a subpoena either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects without sufficient cause to obey the subpoena, and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, shall pay such fine not exceeding eight dollars, as the Judge may impose, and shall, by verbal or written order of the Judge, be, in addition, liable to imprisonment for any time not exceeding ten days; and such fine shall be levied and collected with costs, in the same manner as fines imposed on Jurymen for non-attendance, and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the General Fee Fund. 13, 14 V. c. 53, s. 48.

Parties may  
obtain subpoenas  
from Superior  
Courts.

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

#### EVIDENCE AND EXAMINATION OF PARTIES AND WITNESSES.

Parties to  
cause, may be  
subpœnaed as  
witnesses.

**101.** On the hearing or trial of any action or in any other proceeding, the parties thereto and all other persons may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath (or affirmation) to be administered

administered by the proper officer of the Court; Provided always that no party to the suit shall be summoned or examined, except at the instance of the opposite party or of the Judge. 13, 14 V. c. 53, s. 81.

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

Judge may require either party to give evidence.

**103.** In any suit for a debt or demand, not being for Tort, and not exceeding twenty dollars, the Judge, on being satisfied of their general correctness, may receive the Plaintiffs' books as testimony, or in case of a defence of set-off or of payment, so far as the same extends to twenty dollars, may receive the Defendants' books, and such Judge may also receive as testimony the affidavit or affirmation of any party or witness in the suit resident without the limits of his County, but before pronouncing judgment, the Judge may require any such witness or any party in a cause to answer upon oath or affirmation any interrogatories that may be filed in the suit. 13, 14 V. c. 53, ss. 31, 72,—16 V. c. 177, s. 28.

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

#### AFFIDAVITS.

**104.** All affidavits to be used in any of the Division Courts or before any of the Judges thereof, may be sworn before any County Judge or before the Clerk or Deputy Clerk of any Division Court, or before any Judge, or Commissioner for taking affidavits in any of the Superior Courts. 13, 14 V. c. 53, ss. 11, 88,—16 V. c. 177, s. 33.

Affidavit may be sworn before Judge, Clerk or Commissioner.

**105.** In case any person in any examination, wilfully and corruptly gives false evidence, or wilfully swears (or affirms) falsely in any matter where an oath, affidavit or affirmation is required or allowed in this Act, he shall be liable to the penalties of wilful and corrupt perjury. 13, 14 V. c. 53, s. 47,—16 V. c. 177, s. 5, latter part.

Wilfully giving false evidence,—perjury.

#### JUDGE'S DECISION.

**106.** The Judge, in any case heard before him, shall, openly in Court and as soon as may be after the hearing, pronounce his

Judge may give judgment ins-

instant, or postpone judgment.

his decision, but if he is not prepared to pronounce a decision instant, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the Clerk's Office; and the Clerk shall then read the decision to the parties or their agents if present, and he shall forthwith enter the judgment, and such judgment shall be as effectual as if rendered in Court at the trial. 13, 14 V. c. 53, s. 39.

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

**107.** The Judge may order the time or times and the proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day on which the summons was served, and at the request of the party entitled thereto, he may order the same to be paid into Court, and the Judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shewn, may grant a new trial upon such terms as he thinks reasonable and in the mean time may stay proceedings. 13, 14 V. c. 53, ss. 50, 72, 84,—16 V. c. 177, ss. 11, 28.

Execution not to be postponed for more than 50 days.

**108.** Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same, but in case it at any time appears to the satisfaction of the Judge, by affidavit or affirmation or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the Judge may suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as he thinks fit, and so from time to time until it appears by the like proof that such temporary cause of disability has ceased. 16 V. c. 177, s. 28,—13, 14 V. c. 53, ss. 50, 98.

#### ARBITRATION.

Judge may order cause to be referred to arbitration.

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

Only revocable with Judge's assent.

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

Award to be entered as judgment.

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

Judge may set aside award.

**112.** The Judge on application to him within fourteen days after the entry of such award, may if he thinks fit, set aside the award,

award, or may with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid. 16 V. c. 177, s. 4.

**113.** Any of such Arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such Arbitrator. 16 V. c. 177, s. 5. Arbitrators may also administer oaths.

#### COSTS AND WHERE RESTRAINED.

**114.** The costs of any action or proceeding not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in cases where the Plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the Defendant such costs and such further sum of moneys, by way of satisfaction for his trouble and attendance as he thinks proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court. 13, 14 V. c. 53, s. 83. Judge may apportion costs.

**115.** No costs shall be recoverable in any suit brought in any Court for the recovery of any sum awarded by judgment in a Division Court, without the order of the Judge of the Court in which such suit is brought, on sufficient cause shewn. 13, 14 V. c. 53, s. 52. Costs not recoverable in Superior Court in actions upon judgments of Division Courts.

**116.** In case any suit be brought in any of Her Majesty's Superior or other Courts of Record in respect of any grievances committed by any Clerk, Bailiff or Officer of a Division Court, under colour or pretence of the process of such Court, and the Jury upon the trial find no greater damages for the Plaintiff than ten dollars, the Plaintiff shall not have costs unless the Judge certifies in Court upon the back of the record, that the action was fit to be brought in such Court of Record. 13, 14 V. c. 53, s. 108. Plaintiff not to have costs where verdict not over ten dollars without certificate.

#### CLERKS AND BAILIFFS MAY TAKE CONFESSIONS.

**117.** Any Bailiff or Clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same, which confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of such Bailiff or Clerk, judgment may be entered thereon. Clerks and Bailiffs may take confessions.

**118.** Such oath or affidavit shall state that the party making it has not received, and that he will not receive any thing from the Affidavit required in such cases.

the Plaintiff or Defendant, or any other person, except his lawful fees, for taking such confession or acknowledgment, and that he has no interest in the demand sought to be recovered. 13, 14 V. c. 53, s. 54.

JURY CASES.

When a jury may be had.

**119.** Either party may require a jury, in actions of Tort where the amount sought to be recovered exceeds ten dollars, and in all other actions where such amount exceeds twenty dollars. 13, 14 V. c. 53, ss. 30, 32.

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

**120.** In case the Plaintiff requires a jury to be summoned to try the action, he shall give notice thereof in writing to the Clerk at the time of entering his account, demand or claim, and shall at the same time pay to the Clerk the proper fees for the expenses of such jury, and in case the Defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the Clerk or leave at his office the like notice in writing, and shall at the same time pay the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned according to the provisions hereinafter contained. 13, 14 V. c. 53, ss. 32, 33.

Who may be jurors.

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

Jurors, how selected and summoned.

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

Collector to furnish Clerk with list of jurors.

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



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

Jurors to be summoned for each Court.

**125.** Either of the parties to a cause shall be entitled to his lawful challenge against any of the jurors in like manner as in other Courts. 13, 14 V. c. 53, s. 35.

Parties entitled to challenge.

**126.** Any juryman who, after being duly summoned for that purpose, willfully neglects or refuses to attend the Court in obedience to the summons, shall be liable to a fine in the discretion of the Judge, not exceeding four dollars, which fine shall be levied and collected with costs, by the same process as any debt or judgment recovered in the said Court, and shall form part of the general fee fund. 13, 14 V. c. 53, s. 35.

Penalty on jurors disobeying summons.

**127.** Service as a juror at any Division Court shall not exempt such juror from serving as a juror in any Court of Record or in the Court of Chancery; and no person shall be compelled to serve as a Juror in any Division Court who is by law exempted from serving as a Petty Juror in the Superior Courts. 13, 14 V. c. 53, s. 35,—16 V. c. 177, s. 21.

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

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

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

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

Judge may fine Collector for breach of duty.

Judge's order for payment by Collector, how enforced.

Judge's list and  
Jury list.

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

Five jurors to  
be empannelled,  
&c.

**131.** Five Jurors shall be empannelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and the verdict of every Jury shall be unanimous. 13, 14 V. c. 53, s. 37.

Verdict to be  
unanimous.

Judge may order  
jury to be  
empannelled to  
try any dis-  
puted fact.

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

Judge may dis-  
charge jury not  
agreeing, &c.

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

#### JUDGMENTS AND EXECUTIONS.

##### CROSS-JUDGMENTS.

Cross-judg-  
ments may be  
set-off.

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

Where money  
not paid, pur-  
suant to order,  
execution to  
issue.

**135.** In case the Judge makes an order for the payment of money, and in case of default of payment of the whole or of any part thereof, the party in whose favor such order has been made, may sue out execution against the goods and chattels of the party in default; and thereupon the Clerk, at the request of the party prosecuting the order, shall issue under the seal of the Court

a *Fieri Facias* to one of the Bailiffs of the Court, who by virtue thereof shall levy by distress and sale of the goods and chattels of such party, being within the County within which the Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as have been so ordered, and remain due, and shall pay the same over to the said Clerk. 13, 14 V. c. 53, s. 53.

**136.** No writ in the nature of a Writ of *Fieri Facias* or Attachment shall be executed out of the limits of the County over which the Judge of the Court from which such writ issues has jurisdiction. 18 V. c. 125, s. 1, *middle part*.

Writs of *Fieri Facias* where to be executed.

**137.** In case any person against whom a judgment has been entered up removes to another County without satisfying the judgment, the County Judge of the County to which such party has removed may, upon the production of a copy of the judgment duly certified by the Judge of the County in which the judgment has been entered, order an execution for the debt and costs, awarded by the judgment, to issue against such party. 13, 14 V. c. 53, s. 55.

If defendant remove to another County, execution obtainable in such County.

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

If defendant, before sale, pay to Clerk or Bailiff of Court out of which execution issued, execution to be superseded.

**139.** The Clerk of any Division Court shall, upon the application of any Plaintiff or Defendant, (or his agent,) having an unsatisfied judgment in his favor in such Court, prepare a transcript of the entry of such Judgment, and shall send the same to the Clerk of any other Division Court in any other County, with a certificate at the foot thereof signed by the Clerk who gives the same, and sealed with the seal of the Court of which he is Clerk, and addressed to the Clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon such Judgment and the date at which the same was recovered; and the Clerk to whom such certificate is addressed shall, on the receipt of such transcript and certificate, enter the transcript in a Book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may be taken for the enforcing and collecting the judgment in such last mentioned Division Court, by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court. 18 V. c. 125, s. 3.

Clerk of any Court in which judgment entered to prepare transcript thereof, to transmit to any other Division Court.

**140.** In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favor the

Renewal of judgment in the

case of death of party to judgment.

the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to such Division Court in that behalf. 13, 14 V. c. 53, s. 73.

Execution, when dated and returnable.

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

If execution returned *nulla bona*, parties may obtain transcript.

**142.** In case an execution be returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of forty dollars, the Plaintiff or Defendant may obtain a transcript of the judgment from the Clerk, under his hand and sealed with the seal of the Court, which transcript shall set forth :

1. The proceedings in the cause ;
2. The date of issuing execution against goods and chattels ; and
3. The Bailiff's return of *nulla bona* thereon, as to the whole or a part. 13, 14 V. c. 53, s. 57.

Upon filing transcript in office of County Court Clerk, judgment to be judgment of that Court.

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

1. The names of the Plaintiff and Defendant ;
2. The amount of the judgment ;
3. The amount remaining unsatisfied thereon ; and
4. The date of filing ;

for which services the Clerk of the County Court shall be entitled to demand and receive from the person filing the same the sum of fifty cents. 13, 14 V. c. 53, s. 57.

County Court Clerk's book to be accessible.

**144.** Such book shall at all reasonable hours be accessible to any person desirous of examining the same, upon the payment to the Clerk of ten cents. 13, 14 V. c. 53, s. 57.

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

Parties may prosecute judgment in County Court.

**146.** Any party who has obtained judgment in a Division Court exceeding forty dollars, may at any time after fourteen days from the day of giving judgment, obtain from the Clerk a certificate of such judgment in the form used in the Superior Courts in like cases, as near as circumstances will permit, which certificate shall, on the request of the party obtaining the same, be registered in the same manner and on payment of the same fees to the Registrar as are paid upon certificates of the judgments of the Superior Courts, and such registry shall bind the lands of the debtor to the same extent as they would have been bound had such judgment been rendered in any of the Superior Courts. 13, 14 V. c. 53, s. 58.

Certificate of judgment may be obtained for Registry.

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

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

If Bailiffs neglect their duty in relation to execution.

**148.** If any Bailiff neglects to return any execution within three days after the return day thereof, or makes a false return thereto, the party who sued out such writ may maintain an action in any Court having competent jurisdiction against such Bailiff and his sureties on the covenant entered into by them, and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the Judge or Jury the Plaintiff under the circumstances is justly entitled to recover. 13, 14 V. c. 53, s. 59.

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

**149.** If a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon, and in case of the departure or removal of such Bailiff from the limits of the County, the action may be commenced and carried on against his sureties alone, or against any one or more of them.

Execution may issue instantly, and if Bailiff has removed, his sureties nevertheless liable.

The interest of a mortgagor in goods mortgaged may be sold in execution.

**150.** On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom the same is directed, may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. 20 V. c. 3, s. 11,—and see 12 V. c. 73, s. 1.

What may be seized under execution against goods and chattels.

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

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

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

Defendant in original cause not to discharge suit.

**153.** The Defendant in the original cause shall not discharge such suit in any way without the consent of the Plaintiff or of the Judge. 13, 14, V. c. 53, s. 90.

The party wishing to enforce must secure costs.

**154.** The party who desires to enforce payment of any security seized or taken as aforesaid, shall first pay or secure all costs that may attend the proceeding; and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the Plaintiff's demand, and the overplus, if any, shall be forthwith paid to the Defendant in the original suit, under the direction of the Judge. 13, 14 V. c. 53, s. 90.

Overplus.

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

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

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

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

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

Bailiff and other officer not to purchase goods seized.

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

Judge may order an execution to issue before regular day.

#### JUDGMENTS IN COURTS OF REQUESTS CONTINUED.

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

Judgments in the former Courts of Requests provided for.

#### EXAMINATION OF JUDGMENT DEBTORS.

**160.** Any party having an unsatisfied judgment or order in any Division Court, for the payment of any debt, damages or costs, may procure from the Court wherein the judgment has been obtained, if the Defendant resides or carries on his business within the County in which the Division is situate, or from any Division Court in any other County into which the Judgment may have been removed under the one hundred and thirty-ninth section of this Act and within the limits of which Division Court the Defendant resides or carries on his business, a summons in the form prescribed by any rule respecting the practice and proceedings of the Division Courts, and such

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

Summons may be served either personally upon the person to whom the same is directed, or by leaving a copy thereof at the house of the party to be served or at his usual or last place of abode, or with some grown person there dwelling, requiring him to appear at a time and place therein expressed, to answer such things as are named therein, and if the Defendant appears in pursuance thereof, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has, of discharging the said debt, damages or liability, and as to the disposal he has made of any property. 13, 14 V. c. 53, s. 91,—16 V. c. 177, s. 30,—22 V. c. 33, s. 20, 1859.

And witnesses,  
&c.

**161.** The person obtaining such summons and all witnesses whom the Judge thinks requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid. 16 V. c. 177, s. 30,—13, 14 V. c. 53, s. 91,—22 V. c. 33, s. 22.

The Examination to be in Judge's Chamber.

**162.** The examination shall be held in the Judge's chamber, unless the Judge shall otherwise direct. 22 V. c. 33, s. 23, 1859.

The costs provided for.

**163.** The costs of such summons and of all proceedings thereon, shall be deemed costs in the cause, unless the Judge otherwise directs. 16 V. c. 177, s. 30,—13, 14 V. c. 53, s. 91.

Party examined and discharged not to be again summoned, except, &c.

**164.** In case a party has, after his examination, been discharged by the Judge, no further summons shall issue out of the same Division Court at the suit of the same or any other creditor, without an affidavit satisfying the Judge upon facts not before the Court upon such examination, that the party had not then made a full disclosure of his estate, effects and debts, or an affidavit satisfying the Judge that since such examination the party has acquired the means of paying. 22 V. c. 33, s. 23, 1859.

Consequence of neglect or refusal to attend.

**165.** If the party so summoned—1. Does not attend as required by the summons, or allege a sufficient reason for not attending; or 2. If he attends and refuses to be sworn or to declare any of the things aforesaid; or 3. If he does not make answer touching the same to the satisfaction of the Judge; or 4. If it appear to the Judge either by the examination of the party or by other evidence, (a) that the party obtained credit from the plaintiff or incurred the debt or liability under false pretences, or (b) by means of fraud or breach of trust, or (c) that he wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or (d) has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or



5. If it appears to the satisfaction of the Judge that the party had when summoned, or since the judgment was obtained against him, has had sufficient means and ability to pay the debt or damages, or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered, whether before or after the return of the summons,—the Judge may, if he thinks fit, order such party to be committed to the Common Gaol of the County in which the party so summoned resides or carries on his business, for any period not exceeding forty days. 16 V. c. 177, s. 30,—13, 14 V. c. 53, s. 92.

**166.** A party failing to attend according to the requirements of any such summons as aforesaid, shall not be liable to be committed to Gaol for the default, unless the Judge is satisfied that such non-attendance is wilful, or that the party has failed to attend after being twice so summoned, and if at the hearing it appears to the Judge, upon the examination of the party or otherwise, that he ought not to have been so summoned, or if at such hearing the Judgment creditor does not appear, the Judge shall award the party summoned a sum of money by way or compensation for his trouble and attendance, to be recovered against the Judgment Creditor in the same manner as any other Judgment of the Court. 22 V. c. 33, s. 21, 1859.

In what cases only the party summoned may be committed for non attendance: costs allowed him in certain cases.

**167.** Whenever any order of commitment as aforesaid has been made, the Clerk of the Court shall issue, under the seal of the Court, a warrant of commitment directed to the Bailiff of any Division Court within the County, and such Bailiff may by virtue of such warrant take the person against whom the order has been made. 13, 14 V. c. 53, s. 95.

Commitment in case of refusal.

**168.** All Constables and other Peace Officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the Gaol of the County in which such warrant has been issued, shall receive and keep the Defendant therein until discharged under the provisions of this Act or otherwise by due course of law. 13, 14 V. c. 53, s. 95.

Constables, &c., to execute Warrants.

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

When debtor in custody shall be discharged.

**170.** The Judge, before whom such summons is heard may, if he thinks fit, rescind or alter any order for payment previously made against any Defendant so summoned before him, and

Judges may make order and may alter and modify the same.

and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just. 13, 14 V. c. 53, s. 93.

Parties may be examined when.

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

Party committed not to be discharged for insolvency.

**172.** No protection, order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any Defendant from any order of commitment as aforesaid. 13, 14 V. c. 53, s. 95, *the end*.

Debt not to be extinguished.

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

#### CLAIMS BY LANDLORDS OR OTHERS TO GOODS SEIZED.

Interpretation of certain words.

**174.** The word "landlord" shall include the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, coparcenary or tenancy in common, shall include any one of the persons entitled to such reversion; and the word "agent," shall mean any person usually employed by the landlord in the letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord. 16 V. c. 177, s. 15.

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

**175.** In case a claim be made to or in respect of any goods or chattels, property or security, taken in execution or attached under the process of any Division Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process issued, then, subject to the provisions of the "Act respecting absconding Debtors," the Clerk of the Court, upon application of the officer charged with the execution of such process may, whether before or after the action has been brought against such officer, issue a summons calling before the Court out of which such process issued, or before the Court holden for the Division in which  
the

the seizure under such process was made, as well the party who issued such process as the party making such claim, and thereupon any action which has been brought in any of Her Majesty's Superior Courts of Record, or in a Local or Inferior Court in respect of such claim, shall be stayed, and the Court in which such action has been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels or property or security were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court, and the County Judge having jurisdiction in such Division Court shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him seems fit, and such order shall be enforced in like manner as an order made in any suit brought in such Division Court, and shall be final and conclusive between the parties. 13, 14 V. c. 53, s. 102,—16 V. c. 177, s. 7,—19 V. c. 43, s. 56.

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

#### RIGHTS OF LANDLORDS PROTECTED.

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

Provisions in relation to rents due to landlords

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

How the Bailiff is to proceed.

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

Fees of Bailiff in such cases.

If replevin  
made.

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

When land-  
lord's claim to  
rent is to be  
first paid.

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

#### PENAL CLAUSES.

Forgery of  
seal—process,  
&c.

**181.** Every person who forges the seal or any process of the Court, or who serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a process of the Court, knowing the same to be false, or who knowingly acts or professes to act under any false color of process of the Court, shall be guilty of felony. 13, 14 V. c. 53, s. 86.

#### CONTEMPT OF COURT.

Contempt of  
Court.

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

#### BAILIFFS TO BE CONSTABLES.

Bailiff to ex-  
ercise duty of  
Constable dur-  
ing holding of  
Court.

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

## IF BAILIFF ASSAULTED.

**184.** If any Officer or Bailiff, (or his Deputy or Assistant,) <sup>If Bailiff assaulted.</sup> be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the Court, or before a Justice of the Peace of the County or City, and to be imprisoned for any term not exceeding three months—and the Bailiff of the Court, or any peace officer, may in any such case take the offender into Custody (with or without warrant) and bring him before such Court or Justice accordingly. 13, 14 V. c. 53, s. 100.

## MISCONDUCT OF CLERKS, BAILIFFS, &amp;C.

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

## EXTORTION.

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

## FINES HOW ENFORCED.

**187.** In case a Division Court imposes any fine under authority of this Act, the same may be enforced upon the order of the Judge, <sup>Fines how enforced by</sup>

Division  
Courts.

Judge, in like manner as a judgment for any sum adjudged therein, and shall be accounted for as herein provided. 13, 14 V. c. 53, s. 82.

How enforced  
by Justices of  
the Peace.

**188.** In all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, such Justice may, with or without information in writing, summon before him the party complained against, and thereupon hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same. 13, 14 V. c. 53, s. 104.

#### FORM OF CONVICTION.

Form of con-  
viction.

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

Be it remembered, That on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, A. B., is convicted before \_\_\_\_\_ one (or two, as the case may be,) of Her Majesty's Justices of the Peace for the County of \_\_\_\_\_, or before \_\_\_\_\_, a County Judge of the County of \_\_\_\_\_, acting under the Division Courts Act, of having (note the offence); and I, (or we) \_\_\_\_\_, the said \_\_\_\_\_, do adjudge the said \_\_\_\_\_ to forfeit and pay for the same the sum of \_\_\_\_\_, or to be committed to the Common Gaol of the County of \_\_\_\_\_ for the space of \_\_\_\_\_:

Given under \_\_\_\_\_ hand and seal, the day and year aforesaid.

#### DISPOSAL OF FINES.

Fines how  
disposed of.

**190.** The moneys arising from any penalty, forfeiture or fine imposed by this Act, not directed to be otherwise applied, shall be paid to the Clerk of the Court which imposed the same, and shall be paid by him to the County Attorney of the County, to be accounted for as part of the Fee Fund. 13, 14 V. c. 53, s. 103.

#### JUDGMENTS NOT TO BE REVERSED FOR WANT OF FORM.

Judgments not  
to be reversed  
for want of  
form.

**191.** No order, verdict, judgment, or other proceeding had or made concerning any matter or thing under this Act, shall be quashed or vacated for any matter of form. 13, 14 V. c. 53, s. 106.

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

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

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

Not to be trespassers *ab initio*.

**193.** Any action or prosecution against any person for any thing done in pursuance of this Act, shall be commenced within six months after the fact was committed, and shall be laid and tried in the County where the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the Defendant, one month at least before the commencement of the action. 13, 14 V. c. 53, s. 107.

Limitation of actions for things done under this Act.

**194.** If tender of sufficient amends be made before action brought, or if the Defendant after action brought, pays a sufficient sum of money into Court with costs, the Plaintiff shall not recover, and in any such action the Defendant may plead the general issue, and give any special matter in evidence under that plea. 13, 14 V. c. 53, s. 107. *And see the Act to protect Justices of the Peace and other officers from Vexatious Actions.*

Defendant may tender amends and plead the general issue, &c.

PROTECTION OF BAILIFF—COPY OF WARRANT, &c.

**195.** No action shall be brought against the Bailiff of a Division Court or against any person acting by his order and in his aid, for any thing done in obedience to any warrant under the hand of the Clerk and seal of the Court until a written demand, signed by the person intending to bring the action, of the perusal, and a copy of such Warrant has by such person, his attorney or agent, been served upon, or left at the residence of such Bailiff, and the perusal and copy have been neglected or refused for the space of six days after such demand. 16 V. c. 177, s. 14.

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

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

Bailiff entitled to verdict on production of warrant.

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

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

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

**198.** In any such action the Defendant may plead the general issue, and give the special matter in evidence at any trial to be had thereon. 16 V. c. 111, s. 14.

#### ABSCONDING DEBTORS.

Absconding debtors.

**199.** In case any person, being indebted in a sum not exceeding one hundred dollars, nor less than four dollars, for any debt or damages arising upon any contract, express or implied, or upon any judgment—1. absconds from this Province, leaving personal property liable to seizure under execution for debt in any County in Upper Canada, or 2. attempts to remove such personal property, either out of Upper Canada or from one County to another therein, or 3. keeps concealed in any County of Upper Canada to avoid service of process; and in case any creditor of such person, his servant or agent makes and produces an affidavit or affirmation to the purport of the form prescribed by any rule respecting the practice and proceedings of the Division Courts, (and the Clerk of any Division Court of the County wherein the debtor was last domiciled, or where the debt was contracted, may administer such affidavit or affirmation,) and in case the said affidavit or affirmation be filed with such Clerk, then such Clerk, upon the application of such creditor, his servant or agent, shall issue a warrant under the hand and seal of such Clerk, in the form C, directed to the Bailiff of the Division Court within whose Division the same is issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such County, liable to seizure under execution for debt, or a sufficient portion thereof, to secure the sum mentioned in the warrant, with the costs of the action, and to return the warrant forthwith to the Court out of which the same issued. 13, 14 V. c. 53, s. 64.

When Justice of the Peace may issue Attachments, &c.

**200.** The Judge, or a Justice of the Peace for the County, may take the affidavit in the last preceding section mentioned, and upon the same being filed with such Judge or Justice, the Judge or Justice may issue a warrant under his hand and seal in the form C, and such Judge or Justice shall forthwith transmit the affidavit to the Clerk of the Division Court within whose Division the same was made or taken, to be by him filed and kept among the papers in the cause. 13, 14 V. c. 53, s. 64.



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

Bailiff or Constable to seize and make inventory.

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

Proceedings may be continued in Court out of which attachment issued.

**203.** When proceedings have been commenced in any case before the issue of an Attachment, such proceedings may be continued to judgment and execution in the Division Court within which the proceedings were commenced. 13, 14 V. c. 53, s. 64.

Proceedings commenced before attachment to continue.

**204.** The property seized upon any warrant of Attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, or in case such property was perishable, and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. 13, 14 V. c. 53, s. 64.

Property attached may be sold under execution.

**205.** No Plaintiff shall divide any cause of action into two or more suits for the purpose of bringing the same within the provision of the preceding sections, but any Plaintiff having a cause of action above the value of one hundred dollars, and not exceeding two hundred dollars, for which an Attachment might be issued if the same were not above the value of one hundred dollars may abandon the excess, and upon proving his case, may recover to an amount not exceeding one hundred dollars, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. 13, 14 V. c. 53, s. 64.—See s. 26.

Plaintiff not to divide cause of action.

**206.** In case several Attachments issue against any party then subject to the provisions contained in the seventeenth section of the Act respecting absconding debtors, the proceeds of the goods and chattels attached shall not be paid over to the attaching creditor or creditors according to priority, but shall be ratably distributed among such of the creditors suing out such Attachments as obtain judgment against the debtor, in proportion to the amount really due upon such judgments; and no distribution shall take place until reasonable time, in the opinion of the Judge, has been allowed to the several creditors to proceed to judgment. 13, 14 V. c. 53, s. 65.

If several attachments issued.

If goods insufficient.

**207.** When the goods and chattels are insufficient to satisfy the claims of all the attaching creditors, no such creditor shall be allowed to share, unless he sued out his Attachment, and within one month next after the issue of the first Attachment, gave notice thereof to the Clerk of the Court out of which the first Attachment issued, or in which it was made returnable. 13, 14 V. c. 53, s. 65.

Clerk to take charge of goods attached.

**208** All property seized under the provisions of the preceding sections, shall be forthwith handed over to the custody and possession of the Clerk of the Court out of which the warrant of Attachment issued, or into which it was made returnable, and such Clerk shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same. 13, 14 V. c. 53, s. 66.

On what terms goods attached may be restored.

**209.** In case any person against whose estate or effects any such Attachment has issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the Attachment, and files in the Court to which the Attachment has been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk, binding the obligors, jointly and severally, in double the amount claimed, with condition that the debtor (naming him,) will, in the event of the claim being proved and judgment recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or produce such property whenever thereunto required to satisfy such judgment, such Clerk may supersede the Attachment, and the property attached shall then be restored. 13, 14 V. c. 53, s. 67.

If the debtor does not appear.

**210.** If within one month from the seizure as aforesaid, the party against whom the Attachment issued, or some one on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been obtained upon the claim or claims, and the property seized upon the Attachment or Attachments, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof, according to law, or if the property has been previously sold as perishable under the provisions hereinafter made, enough of the proceeds thereof may be applied to satisfy the judgment and costs. 13, 14 V. c. 53, s. 68.

If summoned personally.

**211.** When the property of any person has been seized under any warrant of Attachment as aforesaid, and a summons had been personally served on such person before seizure, then the trial of the cause shall be proceeded with, as if no such warrant of Attachment had been issued, and after judgment execution shall forthwith issue, unless otherwise ordered by the Judge. 13, 14 V. c. 53, s. 68.

**212.** Subject to the provisions contained in the fifteenth and seventeenth sections of the Act respecting absconding debtors, in order to proceed in the recovery of any debt due by the person against whose property an Attachment issues, where process has not been previously served, the same may be served either personally or by leaving a copy at the last place of abode, trade or dealing of the Defendant, with any person there dwelling, or by leaving the same at the said dwelling, if no person be there found; and in every case, all subsequent proceedings may be conducted according to the usual course of practice in the Division Courts; and if it appears to the satisfaction of the Judge on the trial, upon affidavit, or other sufficient proof, that the creditor who sued out an Attachment, had not reasonable or probable cause for taking such proceedings, the Judge shall order that no costs be allowed to such Creditor or Plaintiff, and no costs in such case shall be recovered in the cause. 13, 14 V. c. 53, s. 69.

Proceedings against debtors to the party who absconded.

**213.** Subject to the provisions contained in the fifteenth and seventeenth sections of the Act respecting Absconding Debtors, in case any horses, cattle, sheep or other perishable goods have been taken upon an Attachment, the Clerk of the Court who has the custody or keeping thereof (the same having been first appraised) in the manner in the two hundred and first section of this Act mentioned, may, at the request of the Plaintiff who sued out the warrant of Attachment, expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the Clerk of the said Court, and at two other public places within his Division, of the time and place of such sale, if the articles seized will admit of being so long kept, otherwise he may sell the same at his discretion. 13, 14 V. c. 53, s. 70.

Perishable goods, how disposed of.

**214.** It shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable goods, until the party who sued out the warrant of Attachment has given a bond to the Defendant therein, with good and sufficient sureties in double the amount of the appraised value of such goods, conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages incurred in consequence of such seizure and sale, in case judgment be not obtained for the party who sued out such Attachment, and the bond shall be filed with the papers in the cause. 13, 14 V. c. 53, s. 70.

Creditor to give bond to indemnify the officer, and to be filed.

**215.** The residue, after satisfying such judgments as aforesaid, with the costs thereupon, shall be delivered to the Defendant, or to his agent, or to any person in whose custody the goods were found, whereupon the responsibility of the Clerk, as respects such property, shall cease. 13, 14 V. c. 53, s. 71.

Residue how disposed of.

May be sued in  
the Division  
Court.

**216.** Any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the County wherein the same was executed, and proceedings may be thereupon carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of one hundred dollars. 13, 14 V. c. 53, s. 70.

Judge may de-  
liver up.

**217.** Every such bond shall be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled, as the case may require. 13, 14 V. c. 53, s. 70.

#### PENDING PROCEEDINGS CONTINUED.

Pending pro-  
ceedings pro-  
vided for.

**218.** All proceedings, commenced before this Act takes effect, shall be valid to all intents and purposes, and may be continued, executed and enforced under this Act against all persons liable thereto, in the same manner as if the same had been commenced under the authority of this Act. 13, 14 V. c. 53, s. 112,—16 V. c. 177, s. 32.

#### SHORT TITLE OF THIS ACT.

Short Title of  
Act.

**219.** In citing, pleading or otherwise referring to this Act, and any other Acts hereafter passed respecting the said Division Courts, it shall be sufficient to use the expression "The Division Courts Act," or words of equivalent import, which words shall be understood to include and refer to such and so much of the said Act or Acts, as may be then in force touching or concerning, or in any wise relating to such Courts. 16 V. c. 177, s. 32.

**220.** The following are the Forms and Table of fees referred to in the foregoing sections :

#### FORM A.—See s. 25.

#### COVENANT BY CLERK OR BAILIFF.

Know all men by these presents, that we J. B., Clerk (*or* Bailiff, *as the case may be*) of the [ ] Division Court in the County of \_\_\_\_\_, S. S., of \_\_\_\_\_, in the said County of \_\_\_\_\_, (*Esquire*), and P. M., of \_\_\_\_\_, in the said County of \_\_\_\_\_, (*Gentleman*), do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., Clerk (*or* Bailiff) of the said Division Court (*as the case may be*), shall duly pay over to such person or persons entitled to the same, all such moneys as he shall receive by virtue of the said Office of Clerk (*or* Bailiff, *as the case may be*), and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (*or* Bailiff) by law, and shall not misconduct

misconduct himself in the said Office to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said J. B. in the whole,                   \$—  
 Against the said S. S.....                                 —  
 Against the said P. M.....                                 —

In witness whereof, we have to these presents set our hands and seals, this                                 day of                                 , in the year of Our Lord one thousand eight hundred and                                 .

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

B. (See Sec. 49.)

TABLE OF FEES.

FEE FUND.	Not exceeding \$8.	Exceeding \$8, and not exceeding \$20.	Exceeding \$20, and not exceeding \$40.	Exceeding \$40, and not exceeding \$60.	Exceeding \$60.
	\$ cts.	\$ cts.	\$ cts.	\$ cts.	\$ cts.
Entering account and issuing summons.....	0 7	0 10	0 25	0 40	0 60
Hearing an undefended cause.....	0 10	0 15	0 25	0 60	0 60
Hearing a defended cause to be increased by the Judge, if he sees fit, to a sum not exceeding two dollars, whatever be the amount of the debt, damages, or subject matter of action. 16 V. c. 177, s. 3.....	0 20	0 40	0 75	1 00	1 50
Every order or judgment, (not to be charged when the Defendant has given a confession of judgment,)	0 5	0 10	0 15	0 25	0 40
On every confession of judgment.....	0 5	0 5	0 5	0 10	0 10

TARIFF OF FEES AND ALLOWANCES to be received by Clerks of Division Courts in Upper Canada.

	Not exceed- ing \$20.	Exceeding \$20 and not \$60.	Exceeding \$60.
	\$ cts.	\$ cts.	\$ cts.
Entering every Account and issuing Summons.	0 20	0 30	0 40
Copy of Summons, Particulars of Demand or Set-Off, each.....	0 10	0 15	0 20
Every Summons to Witnesses with any number of names.....	0 10	0 10	0 10
Preparing affidavit, and administering oath to Bailiff of Service of Summons.....	0 15	0 15	0 15*
Entering Bailiff's returns to Summons to Defendant.....	0 5	0 5	0 5
Every copy of Subpoena when made by the Clerk.....	0 5	0 5	0 5
Entering Set-Off or other Defence requiring notice to Plaintiff.....	0 15	0 20	0 20
Adjournment of any Cause.....	0 20	0 20	0 20
Entering every Judgment or Order made at hearing.....	0 15	0 20	0 25
Taking confession of Judgment.....	0 15	0 15	0 15
Every Warrant, Attachment or Execution.....	0 25	0 30	0 40
Every copy of Judgment to another County.....	0 25	0 25	0 25
Transcript or Certificate of Judgment for Registration in the County Registry Office.....	0 25	0 25	0 25
Entering and giving notice of Jury being required.....	0 20	0 25	0 30
Making out Summons to Jury, for each Jurymen.....	0 10	0 10	0 10
For every Affidavit taken, and drawing the same.....	0 20	0 20	0 20
Returns to Treasurer, to be paid out of the Fee Fund, including attendance on the Judge to Audit the same, each, and to be retained from the Fee Fund in his hands.....	4 00	4 00	4 00
Every search on behalf of a person not a party to a Suit, to be paid by the Applicant.....	0 10	0 10	0 10
Every search for a party to a Suit when the proceedings are over a year old.....	0 10	0 10	0 10
Transmitting papers for service to another County or Division, in addition to the necessary Postage on transmission and return.....	0 20	0 20	0 20
Receiving papers from another County or Division for service, entering same in a book, handing the same to the Bailiff, and receiving his return, to be paid when the claim is filed or defence entered.....	0 20	0 20	0 20
For returning a Judge's Jury.....	0 25	0 25	0 25*

\* 16 V. c. 177, s. 11.

TARIFF OF FEES AND ALLOWANCES, &c.—Continued.

	Not exceeding \$8.	Exceeding \$8, and not exceeding \$20.	Exceeding \$20, and not exceeding \$40.	Exceeding \$40, and not exceeding \$60.	Exceeding \$60.
	\$ cts.	\$ cts.	\$ cts.	\$ cs.	\$ cts.
<b>THE BAILIFF'S FEES.</b>					
Service of Summons, or other proceeding, except Subpœna, on each person.....	0 7 <sup>5</sup>	0 10	0 15	0 15	0 20
Service of Subpœna on each Witness.....	0 7 <sup>5</sup>	0 7 <sup>5</sup>	0 7 <sup>5</sup>	0 7 <sup>5</sup>	0 7 <sup>5</sup>
For taking Confession of judgment.....	0 7 <sup>5</sup>	0 10	0 10	0 15	0 20
Drawing and attending to swear to every affidavit of service of Summons, when served out of the Division.....	0 20	0 20	0 20	0 20	0 20
Enforcing every Warrant, Execution or Attachment, against the goods or body.....	0 30	0 30	0 40	0 60	0 75
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, and in going to seize on execution or Attachment where money made or case settled after the levy,.....	0 8	0 8	0 8	0 8	0 8*
For every Jury trial.....		0 10	0 15	0 20	0 30
For carrying delinquent to prison, including all expenses and assistance, per mile, 20cts.					
Every Schedule of property seized, return, including affidavit of appraisal.....		0 50	0 50	0 50	1 0
Every Bond, including affidavit of justification.....		0 50	0 50	0 50	
Every notice of sale not exceeding three, under execution, on attachment, 10cts. each.					
That there be allowed to the Bailiff upon the sale of property under any execution, the sum of two and a half per cent upon the amount realised, and not to apply to any overplus on the said execution.					
—					
<b>JURORS' FEES.</b>					
Each Juror sworn in any cause, out of the money <sup>2</sup> / <sub>3</sub> deposited with the Clerk for Jurors' Fees.....		0 10	0 10	0 10	0 10†
—					
<b>FEES OF APPRAISERS OF GOODS, &amp;c., SEIZED UNDER WARRANT OF ATTACHMENT.</b>					
To each Appraiser, 50cts. per day during the time actually employed in appraising goods, to be paid in first instance by the Plaintiff and allowed in costs of the cause,.....					50cts.‡

C.

\* 18 V. c. 125, s. 5.

† 13, 14 V. c. 53, s. 36.

‡ 13, 14 V. c. 53, s. 64.

§ NOTE.—In the repealed Tariff the item is 4d. equal to 6<sup>2</sup>/<sub>3</sub> cts., but rendered 7 cts. to avoid the fraction.

C. (See Sec. 199.)

County of }  
 (here insert the County.) }

To A. B., Bailiff of the County of \_\_\_\_\_ Division Court of the said  
 County of \_\_\_\_\_ (or to A. B., a Constable of the County  
 of \_\_\_\_\_, as the case may be).

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D., (*naming the debtor,*) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the County of (*here name the County*) or a sufficient portion thereof to secure A. B. (*here name the creditor*) for the sum of (*here state the amount sworn to be due,*) together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon, to the Clerk of the (*here state the number of the Division*) Division Court of the County aforesaid forthwith : and herein fail not.

Witness my hand and seal, the  
 day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

E. F. (L. S.)  
 Judge, Clerk, or Justice of the Peace, (*as the case may be*).

C A P . X X .

An Act respecting the duties of County Attorneys in regard to the General Fee Fund of Local Courts.

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

FEE FUND.

County Attorneys to be Receiver of Fee Fund, and be paid 4 per cent. 20 V. c. 59.

**1.** The County Attorney of every County shall be the Receiver of all Fees and Fee Fund moneys from the Registrars of the Surrogate Courts and from the County Court and Division Court Clerks in respect to the Surrogate Courts, County Courts, Division Courts, and Insolvent Debtors' Court, within his County, and he shall be paid four per cent of the gross produce of such Fees and moneys. 8.V. c. 13, s. 61,—13, 14 V. c. 53, s. 12,—20 V. c. 59, ss. 12, 15,—5, No. 8.

County Attorneys and Clerks of County Courts to give security.

**2.** Every County Attorney and every Clerk of a County Court shall give security for the due performance of his office, and for the due payment of all moneys received by him by virtue thereof, in such sum, and with so many sureties, and in such manner and form as the Governor directs, and the securities heretofore given shall continue in force and have the same



same effect as if given under this Act. 8 V. c. 13, s. 71,—13, 14 V. c. 53, s. 22,—10 V. c. 59, s. 17.

3. Every County Attorney shall, half yearly, on or before the first day of July and the first day of January, render to the Minister of Finance a true account, in writing, of all moneys received, and of all moneys disbursed by him on account of the County and Division Courts during the period comprised in such account, in such form, and with such particulars as the Minister of Finance from time to time requires; and he shall, within ten days after the rendering of the account, pay over the amount of any surplus of such fees to the Receiver General; and in case of default, the amount unpaid shall be deemed a specialty debt to Her Majesty. S. V. c. 13, s. 65,—13, 14 V. c. 53, s. 16.

County Attorney to render semi-annual accounts to Minister of Finance, and pay over moneys to him.

4. The Proper Officer shall, before the first day of February in every year, furnish the Provincial Secretary with a statement for the year then last past of the gross amounts received from the Fee Fund in Upper Canada and of the expenses of the administration of Justice paid out of the same together with the excess or deficiency (as the case may be), distinguishing in such statement the several Cities, Towns, Counties or other Municipalities, from and on account of which such sums were received and paid. 16 V. c. 163, s. 4.

Proper Officer to furnish Provincial Secretary with a Statement of sums received and expended.

5. The fees and Fee Fund moneys accruing to the General Fee Fund shall by the County Attorney be applied to defray the disbursements required on account of the County and Division Courts, and to the payment of the salaries, (and when allowed, the travelling expenses) of the County Court Judges; and in case such fees and moneys prove insufficient to defray such disbursements, salaries and allowances during the period comprised in the said account, the Governor may forthwith issue his warrant on the Receiver General in favour of the County Attorney, for the amount required to make up the deficiency, and the same shall be charged upon the Consolidated Revenue Fund. 8 V. c. 13, s. 66,—13, 14 V. c. 53, s. 17,—20 V. c. 59, s. 16.

If fees do not pay disbursements of Court, Governor may issue warrant on Receiver General for deficiency.

6. The Accounts of the General Fee Fund to be kept by the several County Attorneys, shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law for auditing public accounts. 8 V. c. 13, s. 67,—13, 14 V. c. 53, s. 18.

County Attorney's accounts to be Public Accounts.

7. If any person having resigned or having been removed from the office of County Attorney, or of Clerk of a County or Division Court, neglects after twenty-one days' notice to such person, to account for and pay to the County Attorney for the time being, or to such person as he appoints, all such sums as remain in his hands, the County Attorney for the time being, may

Penalty on County Attorney's and Clerks for not paying over moneys after resignation, removal, &c.

may, in addition to any other proceeding, in his own proper name only, or by his name and description of office, sue for and recover the same from such person and his sureties with costs of suit, in any Court of Record having competent jurisdiction, by action of debt; and may declare as for money had and received to his use as such County Attorney. 13, 14 V. c. 53, s. 19,—20 V. c. 59, s. 12.

Court in which action is brought may refer account to be audited.

8. The Court in which the action is brought may, at the instance of either of the parties, refer any account in dispute, in a summary manner, to be audited by any officer of the Court or other fit person, and he may examine all parties interested in the subject matter upon oath. 13, 14 V. c. 53, s. 19,—20 V. c. 59, s. 12.

Court may make a rule for payment of account on report appearing due.

9. The Court, upon the report of the referee, (unless one party or the other shows good cause to the contrary,) may make a rule either for the payment of such sum as upon the report appears to be due, or for staying the proceedings in the action, upon such terms and conditions as to the Court appear reasonable; or the Court may order judgment to be entered up as by confession for such sum. 8 V. c. 13, s. 68,—13, 14 V. c. 53, s. 19,—20 V. c. 59, s. 12.

In case of death, resignation, &c., of County Attorney, a Clerk of County or Division Court, successor may sue.

10. In case of the resignation or removal from office or in case of the death while in office or after resignation or removal from office of any County Attorney or the Clerk of any County or Division Court, the County Attorney for the time being may, in his own proper name, or by his name and description of office, sue and recover from the person who so resigned or was removed or from the executors or administrators of the deceased, and from his sureties, all such sums of money as remained in his hands at the time of his resignation, removal or death and the same may be recovered by an action of debt in any Court of Record having competent jurisdiction, in which the Plaintiff may declare as for money had and received to his use as County Attorney; and a like action may be brought against any executors or administrators of executors or administrators. 8 V. c. 13, s. 69,—13, 14 V. c. 53, s. 20.

In suits against executors or administrators, defendant may plead.

11. In any such action against executors or administrators, the defendant may plead in like manner, and avail himself of the like matters of defence, as in an action founded on simple contract of the original testator or intestate. 8 V. c. 13, s. 69,—13, 14 V. c. 53, s. 20.

Court may refer account to be audited.

12. The Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as in the case mentioned in the eighth and ninth sections of this Act. 8 V. c. 13, s. 69,—13, 14 V. c. 53, s. 20.

**13.** In all actions and proceedings by any County Attorney, proof of his acting in the office of County Attorney shall be sufficient evidence of his holding such office, unless the contrary be shown. 8 V. c. 13, s. 70,—13, 14 V. c. 53, s. 21.

*Proof of County Attorney acting as such, evidence of his holding office.*

## C A P . X X I .

An Act respecting the Practice and Procedure in Suits instituted on behalf of the Crown, in matters relating to the Revenue and the repeal of Letters Patent.

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

**1.** Every Commission, Extent, Writ, or other Process issued from either of the Superior Courts of Common Law for Upper Canada by or on behalf of the Crown, may be tested, made returnable and be returned on any day certain in Term or Vacation to be named in such Commission, Extent, Writ or other Process. 20 V. c. 2, s. 1.

*Commissions, extents, &c., may be issued and be returnable in vacation.*

**2.** At the return of any such Commission, Extent, Writ or other Process, the like rules may be given, and such other proceedings had, and such subsequent Writs and Process issued, at any time in Vacation; as may be given, had or issued in Term time. 20 V. c. 2, s. 1.

*Rules may be issued and proceedings had in vacation.*

**3.** Every Commission, Extent, Writ or other Process, rule and proceeding, issued or had in Vacation, shall be as valid and effectual as if the same had been issued or had in Term. 20 V. c. 2, s. 1.

*Writs issued in Vacation as valid as if in Term time.*

**4.** Nothing herein contained shall extend to alter the time for filing any pleadings. 20 V. c. 2, s. 1.

*Time for filing pleadings, not altered.*

**5.** In case a person enters a claim to any goods seized under any Extent, or returned as forfeited (which he may do in Vacation), the further proceedings shall be according to the ordinary practice of the Court of Exchequer in England. 20 V. c. 2, s. 1.

*If goods seized be claimed, the exchequer practice in England to govern.*

**6.** In case in any information, action, suit and other legal proceeding before any Court or Tribunal whatever in Upper Canada, by or on behalf of the Crown, against any Corporation or person, in respect of any lands, tenements or hereditaments, or of any goods or chattels belonging to or accruing to the Crown, or standing or being in the name of Her Majesty, or in respect of any sum of money due and owing to Her Majesty, by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the public Revenue, or in any manner

*Attorney General may recover costs in Revenue cases.*

manner whatsoever, judgment be given for the Crown, Her Majesty's Attorney General for Upper Canada may recover costs, in the same manner as and under the same rules, regulations and provisions that apply to the payment or receipt of costs in proceedings between Subject and Subject. 20 V. c. 2, s. 2.

Defendant may recover costs in Revenue cases.

**7.** If in any such information, action, suit or other proceeding, judgment be given against the Crown, the defendant may recover costs, in like manner and subject to the same rules and provisions as though such proceeding had been had between Subject and Subject; And the Receiver General shall pay such costs out of any moneys voted by Parliament for that purpose. 20 V. c. 2, s. 2.

Superior Courts of Common Law to make rules, &c.

**8.** The Judges of the Superior Courts of Common Law in Upper Canada, or any four of them, of whom the Chief Justices shall be two, may make such general rules and orders for the regulation of the pleadings and practice on informations, suits and other proceedings instituted by or on behalf of the Crown, in Her Majesty's Courts of Common Law in Upper Canada, and may frame such writs and forms of proceedings, as to them seem expedient. 20 V. c. 2, s. 3.

Rules to be laid before Parliament.

**9.** All such rules, orders or regulations shall immediately upon the making of the same be transmitted to the Governor and be by him laid before both Houses of Parliament, if Parliament be then sitting, or, if Parliament be not sitting then, within five days after the next meeting thereof. 20 V. c. 2, s. 3.

Not to have effect for 3 months after laid before Parliament.

**10.** No such rule, order or regulation shall have effect until three months after the same has been so laid before both Houses of Parliament. 20 V. c. 2, s. 3.

Rules to be binding, &c.

**11.** Any rule, order or regulation so made, shall, from and after such time, be binding and obligatory on all Courts of Common Law and on all Courts of Error or Appeal into which any Judgment of the said Courts may be carried. 20 V. c. 2, s. 3.

The Governor or Houses of Parliament may suspend Rules.

**12.** At any time within three months next after such rules, orders and regulations have been laid before Parliament, the Governor in Council, by Proclamation inserted in the *Canada Gazette*, or either of the Houses of Parliament, by Resolution passed, may suspend the whole or any part of such rules, orders or regulations; in either of which cases the whole, or the part thereof so suspended, shall not be binding on the Superior Courts, or on any other Court of Common Law, or Court of Error or Appeal. 20 V. c. 2, s. 3.

Court of Chancery and Superior Courts may issue Writs of

**13.** Notwithstanding the want of enrolment, it shall be lawful for the Court of Chancery, or either of the Superior Courts of Common Law to issue Writs of *Scire Facias* to repeal Letters

Letters Patent, grant or other matter of Record under the Great Seal, in the same manner and under the same restrictions, as near as may be, as such Writs are now issuable from the Court of Chancery in England; and all the proceedings thereafter shall be, as near as may be, the same as in England. 22 V. c. 97, s. 1.

*Scire Facias* in the manner, &c., as the Court of Chancery in England.

14. Before the issue of any such writ of *Scire Facias*, the party making application for the same shall, in addition to the *Fiat* of the Attorney General, file in the Court from which the writ is to be issued an exemplification under the Great Seal of the Province of the Letters Patent, grant or other matter of record upon which the said Writ of *Scire Facias* is to be founded. 22 V. c. 97, s. 2.

Exemplification of Letters Patent, &c., to be filed, and *fiat* of Attorney General to be obtained before Writ issues.

15. The Judges of the said Court of Chancery and of the said Superior Courts of Common Law, or any six of them, of whom the Chancellor and the two Chief Justices shall be three, may make such general rules and orders as in their judgment may be necessary or proper for the effectual execution of the two last preceding sections and of the intention and object thereof, and for that purpose may meet from time to time as occasion requires. 22 V. c. 97, s. 3.

Judges to meet and make rules and orders under this Act.

## C A P . X X I I .

### An Act to regulate the procedure of the Superior Courts of Common Law and of the County Courts.

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

1. In the Superior Courts of Common Law and in the County Courts respectively, the process and proceeding shall be as follows: Process and proceeding in the Courts.

#### ORIGINAL PROCESS.

##### 1.—NON BAILABLE.

2. Except in cases where it is intended to hold the Defendant to special bail, all personal actions including actions by or against Members of both Houses of the Provincial Parliament and Attorneys at Law brought in the said Courts when the Defendant is residing or supposed to reside within the jurisdiction thereof, shall be commenced by Writ of Summons according to the Form A No. 1, and in every such Writ and copy thereof, the place and county of the residence or abode or supposed residence or abode of the party Defendant, shall be mentioned. 19 V. c. 43, s. 16,—19 V. c. 90, s. 2,—12 V. c. 66, s. 5.

All actions not bailable to be commenced by Summons

## 2.—BAILABLE.

Commencement of actions where it is intended to hold defendant to special bail.

3. In case any person is to be arrested and held to special bail, the process shall be by a Writ of *Capias* according to the Form A No. 2, which Writ shall bear date, be tested and (in addition to other indorsements) be endorsed, in the same manner as Writs of Summons, and may be directed to the Sheriff of any County in Upper Canada. 19 V. c. 43, s. 22.

## WHO TO ISSUE.

Process Clerk to issue Writs, &c., to parties and their Attorneys in Toronto.

4. 1. In the Superior Courts, the Clerk of the Process shall issue to the parties or their Attorneys all original, and other Writs of Summons and of *Capias*, and all Writs of Replevin issued respectively from the principal office at Toronto, and shall renew such Writs except Writs of *Capias* as hereinafter authorized; 19 V. c. 43, s. 4.

Deputy Clerk and County Court Clerk in the outer Counties.

2. And the Clerk of the Process and each Deputy Clerk of the Crown shall issue Writs for the commencement of actions, and the Clerks of the County Courts shall issue all similar writs in such Courts respectively; 19 V. c. 43, s. 4.

Writs to issue alternately from each Court.

3. In the Superior Courts, such writs shall be issued alternately one from each of such Courts, and not otherwise, but this shall not affect the issue of concurrent Writs. 19 V. c. 43, s. 4.

All Writs to be under the Seal of the Courts, and tested, &c.

5. All Writs issued by any of the said Courts shall be under the seal thereof, and in the Superior Courts shall be tested in the name of the Chief Justice, and in the County Courts in the name of the Judge thereof, or in case of the death of such Chief Justice or Judge, then in the name of the Senior Judge in the Superior Courts and of the Junior or acting Judge in the County Courts for the time being. 19 V. c. 43, s. 4,—19 V. c. 90, s. 4.

Office from which issued to be noted in the margin.

6. The Process Clerk and each Deputy Clerk of the Crown and the Clerk of each County Court, shall note in the margin of every Writ issued by him, from what office and in what County the Writ issued, and shall subscribe his name thereto. 19 V. c. 43, s. 20,—19 V. c. 90, s. 4.

Proper office for taking out Writs in transitory actions.

7. In cases in the Superior Courts in which the cause of action is transitory, the Plaintiff may sue out the Writ for the commencement of the action from the office of the Clerk of either of the said Superior Courts, or from the office of any of the Deputy Clerks of the Crown, and in like cases in a County Court the Writ may be sued out from any County Court having jurisdiction over the cause of action. 19 V. c. 43, s. 6, and c. 90, s. 5.

**8.** When the cause of action is local, the Writ for the commencement of the action must be sued out from the office within the proper County, and all proceedings to final judgment in actions whether transitory or local, shall be carried on in the office from which the first process issues. 19 V. c. 43, s. 7, and c. 90, s. 5.

When venue local.

#### WRIT OF SUMMONS.

**9.** It shall not be necessary to mention any form or cause of action in any Writ of Summons or in any notice thereof. 19 V. c. 43, s. 17.

Form of action need not be stated in.

**10.** Every such Writ shall contain the names of all the Defendants in the action, and of no other Defendant. 19 V. c. 43, s. 18.

To contain the names of all the parties.

**11.** Every such Writ shall bear date on the day on which the same issues. 19 V. c. 43, s. 9.

To be dated the day of issue.

**12.** Every such Writ shall be indorsed with the name and place of abode of the Attorney actually suing out the same, and when he sues out the same as agent for another Attorney, the name and place of abode of such other Attorney shall also be indorsed thereon. 19 V. c. 43, s. 21.

And endorsed with the name and abode of the plaintiffs, Attorney and Agent.

**13.** When the Writ is sued out by the Plaintiff in person, he shall indorse thereon a memorandum expressing that the same has been sued out by him in person, and mentioning the City, Town, incorporated or other Village or Township within which such Plaintiff resides. 19 V. c. 43, s. 21.

When sued out in person, to be so noted, &c.

**14.** The Plaintiff's Attorney, or the Plaintiff, if he sues in person, shall endorse on every such Writ issued for the payment of a debt, and upon every copy thereof, the amount of the Plaintiff's claim for debt, and if there be an Attorney, the Attorney's claim for the costs of Writ, copy and service, and attendance to receive debt and costs, and, that upon payment thereof within eight days, to the Plaintiff or his Attorney, as the case may be, further proceedings will be stayed, which indorsement shall be written or printed in the following form, or to the like effect :

The amount of plaintiff's claim to be endorsed on Writ—If paid within 8 days, proceedings to stop.

“ The Plaintiff claims \$            for debt, and \$            for costs ; Form.  
 “ and if the amount thereof be paid to the Plaintiff or his Attorney  
 “ within eight days from the service hereof, further proceedings  
 “ will be stayed ;”

But the Defendant may, notwithstanding such payment, have the costs taxed, and if more than one sixth be disallowed, the Plaintiff's Attorney shall pay the costs of taxation. 19 V. c. 43, s. 26.

In demands for liquidated sums, certain particulars may be endorsed on the Writ.

**15.** In all cases where the Defendant resides within the Jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract express or implied, as for instance, on a Bill of Exchange, Promissory Note or Cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guarantee whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, note or cheque ;—The Plaintiff may make upon the Writ of Summons and copy thereof, a special indorsement of the particulars of his claim, in the Form A No. 5, or to the like effect ; and when the Writ has been so indorsed, the indorsement shall be considered as particulars of demand, and no further or other particulars need be delivered unless ordered by the Court or a Judge. 19 V. c. 43, s. 41.

No further particulars need be given unless ordered.

Writs issued from any of the Courts may be served in any County.

**16.** The Writ of Summons, whether issued by one of the Superior Courts or by any County Court, may be served in any County in Upper Canada, and the service thereof, whenever practicable, shall be personal ; but the Plaintiff may on affidavit from time to time apply to the Court out of which the Writ issued, or to a Judge having jurisdiction over the case, and if it appears to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the Writ has come to the knowledge of the Defendant, or that he wilfully evades service of the same, and has not appeared thereto, such Court or Judge may by order grant leave to the Plaintiff to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge seem fit. 19 V. c. 43, ss. 31, 34.

If service evaded, how plaintiff to proceed.

Service on Corporations, how effected.

**17.** Every such Writ issued against a Corporation aggregate, and in the absence of its appearance by Attorney, all papers and proceedings in the action before final judgment may be served on the Mayor, Warden, Reeve, President, or other head Officer, or on the Township, Town, City or County Clerk, or on the Cashier, Manager, Treasurer or Secretary, Clerk or Agent of such Corporation, or of any branch or agency thereof in Upper Canada ; and every person who, within Upper Canada, transacts or carries on any of the business of, or any business for any Corporation whose chief place of business is without the limits of Upper Canada, shall, for the purpose of being served with a Writ of Summons issued against such Corporation, be deemed the agent thereof. 19 V. c. 43, s. 33,—3 W. 4, c. 7, s. 1.

Time of delivery of Writ at Sheriff's office to be endorsed.

**18.** Upon the delivery of the Writ of Summons at the office of any Sheriff to be served by him, he, his Deputy or Clerk, shall endorse thereon the time it was so delivered, and in case the Writ is not fully and completely served within fifteen days after such delivery, the Plaintiff, his Attorney or Agent, shall be entitled to receive back the same, and such Sheriff, Deputy Sheriff



Sheriff or Clerk shall endorse thereon the time of such redelivery, and in the taxation of costs, the costs of the mileage and service of such Writ by any literate person afterwards, shall be allowed as if the same had been served by the Sheriff or his officer: and if such Sheriff neglects or refuses to return any such Writ after the expiration of the said fifteen days, the Plaintiff may issue a Duplicate, or concurrent Writ on the *Præcipe* already filed, and the costs of the first or other Writ not returned may be charged against and recovered from the said Sheriff by the Plaintiff or his Attorney. 16 V. c. 175, ss. 13, 14,—See 20 V. c. 57, s. 23.

If not served within 15 days may be withdrawn and served by any literate person.

**19.** The person serving such Writ shall, within three days next after such service, indorse thereon the day of the week and of the month of the service thereof, otherwise the Plaintiff shall not be at liberty in case of non-appearance to proceed under this Act; and every affidavit of service of such Writ shall mention the day on which such indorsement was made, and in the taxation of costs no fees shall be allowed for the mileage or service of the Writs unless served and sworn in the affidavit of service to have been served by the Sheriff, his Deputy or Bailiff being a literate person, (or by a Coroner when the Sheriff is a party to the suit,) except as provided in the last preceding section of this Act. 19 V. c. 43, s. 32,—20 V. c. 57, s. 23.

Time of service of Writs to be indorsed three days after service.

**20.** The Plaintiff in any action may, at any time during six months from the issuing of the original Writ of Summons, sue out from the office whence the same issued, one or more concurrent Writ or Writs of the same kind to be tested of the same day as the original Writ, and to be marked by the Clerk or Deputy Clerk of the Crown or Clerk of the County Court issuing the same with the word *concurrent* in the margin, with the memorandum required by the sixth section of this Act; but such concurrent Writ or Writs shall only be in force for the period during which the original Writ continues in force. 19 V. c. 43, s. 27.

Concurrent Writs may be sued out.

**21.** No original Writ of Summons shall be in force for more than six months from the day of the date thereof inclusive; but if any Defendant therein named has not been served therewith, the original or any concurrent Writ may at any time before its expiration be renewed for six months from the date of such renewal, and so from time to time, during the currency of the renewed Writ, by being marked in the margin, with a memorandum to the effect following: "Renewed for six months from the day of \_\_\_\_\_," signed by the Clerk or Deputy Clerk of the Crown or Clerk of the County Court who issued the Writ, or his successor in office, upon delivery to him by the Plaintiff or his Attorney, of a *Præcipe*, in the form formerly required to be delivered upon the obtaining of an *Alias* Writ; and the Writ so renewed, shall remain in force and be available to

Within what time Writs must be served, &c.

Renewing Writs.

to

Effect of renewal as to Statute of Limitations.

to prevent the operation of any Statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing the original Writ. 19 V. c. 43, s. 28.

Memorandum of renewal to be sufficient evidence thereof.

**22.** The production of the Writ of Summons with the memorandum signed shewing such Writ to have been renewed, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed Writ. 19 V. c. 43, s. 30.

#### WRITS OF CAPIAS.

Writs of Capias to be in force two months, and not renewable.

**23.** No writ of *Capias* shall be in force for more than two months from the day of the date thereof inclusive; nor shall any such writ be renewed, but on the expiration thereof a new order may be obtained in the manner directed by the Consolidated Statute for Upper Canada respecting "Arrest and Imprisonment for Debt." 22 V. c. 96, ss. 7, 5. (1858.)

Date of.

**24.** Every such Writ shall bear date on the day on which the same issues. 19 V. c. 43, s. 19.

Indorsation on.

**25.** Every such Writ shall be indorsed with the name and place of abode of the Attorney actually suing out the same, and when he sues out the same as agent for another Attorney, the name and place of abode of such other Attorney shall also be indorsed thereon. 19 V. c. 43, s. 21.

If sued out in person.

**26.** When the Writ is sued out by the Plaintiff in person, he shall indorse thereon a memorandum expressing that the same has been sued out by him in person, and mentioning the City, Town, incorporated or other Village or Township within which such Plaintiff resides. 19 V. c. 43, s. 21.

Concurrent Writs of Capias may issue.

**27.** Concurrent Writs of *Capias* may be issued from time to time in like manner and form as the original Writ in the action, and shall only be in force for the same period as such original Writ, and no longer. 19 V. c. 43, s. 27.

Copies, &c., to be served.

**28.** Every Writ of *Capias*, and so many copies thereof as there are persons intended to be arrested thereon or served therewith, together with every memorandum or notice subscribed thereto and all indorsements thereon, shall be delivered with the original Writ to the Sheriff or other officer to whom such Writ is directed and who has the execution and return thereof, and the Plaintiff or his Attorney may order such Sheriff or officer, to arrest one or more of the Defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such Sheriff or officer. 19 V. c. 43, s. 22.

**29.** Such Sheriff or officer shall, within two months from the day of the date of the Writ of *Capias*, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of such process cause one copy thereof, and of the memorandums and indorsements thereon, to be delivered to every person upon whom he executes the same whether by service or arrest.

Sheriff to execute within two months from date.

**30.** Such service shall be of the same force and effect as the service of the Writ of Summons hereinbefore mentioned; and subsequent proceedings whether after an arrest and service or service only, shall, in all the Courts, be according to the practice in force in the Superior Courts of Common Law in like cases. 19 V. c. 49, s. 22,—22 V. c. 96, s. 5.

Service equivalent to service of Writs of Summons.

**31.** Any person arrested upon any writ of *Capias* issued out of either of the Superior Courts of Common Law, may apply at any time after his arrest to the Court in which the action has been commenced, or to a Judge of one of such Courts, for an order or rule on the Plaintiff, to show cause why the person arrested should not be discharged out of custody; and such Court or Judge may make absolute or discharge any such order or rule and direct the costs of the application to be paid by either party, or make such other order therein as to such Court or Judge may seem fit; but any such order made by a Judge may be discharged or varied by the Court on application by either party dissatisfied with such order; and the Judge, or acting Judge of a County Court making any order to hold to bail, whether in one of the Superior Courts or in his own Court shall, in respect to such order, the Writ of *Capias* thereon issued, and the arrest made thereupon, possess all the powers given to a Judge of either of the said Superior Courts under this Section, and may in like manner, on application to him, order the Defendant to be discharged out of custody, direct the costs of the application to be paid by either party, or make such order therein as to such County Court Judge seems fit. 22 V. c. 96, ss. 8, 10.

Defendant may apply to a Judge to be discharged from custody.

Power of Judge.

Court may discharge or vary Judge's order.

#### BAIL.

**32.** If any Defendant be taken or charged in custody upon any such process, and imprisoned for want of sureties for his appearance thereto, the Plaintiff may, before the end of the next term after the arrest of the Defendant, declare against him and proceed thereon, in the manner and according to the directions contained in the one hundredth and one hundred and thirty-second rules of the Superior Courts of Common Law, made in Trinity Term, in the twentieth year of Her Majesty's Reigu. 19 V. c. 43, s. 22.

Declaration when to be made, when defendant is imprisoned for want of bail.

**33.** The Sheriff to whom a *Capias*, issued out of a County Court is directed, shall take bail from any Defendant arrested thereon,

On Writs from County Courts,

the Sheriff to take bail from persons arrested and assign bail bond, &c.

thereon, and if required shall assign the bail bond in like manner as the law directs in cases where like process is issued from one of the Superior Courts of Common Law, and such assignment shall have the same effect as if the Writ had issued from one of the said Superior Courts. 3 V. c. 13, ss. 21, 26.

Special bail may be entered according to the form in practice after which plaintiff may proceed as upon a Writ of Summons.

**34.** Special bail may be put in and perfected according to the established practice; and after special bail has been so put in, the Plaintiff may, by filing a declaration or otherwise, proceed to judgment, in like manner as if the action had been commenced by Writ of Summons and the Defendant had appeared thereto. 19 V. c. 43, s. 24,—8 V. c. 13, s. 23,—22 V. c. 96, s. 3.

Condition of recognizance of bail.

**35.** The condition of the recognizance of special bail shall be, that, if the Defendant be condemned in the action at the suit of the Plaintiff, he will satisfy the costs and condemnation money, or render himself to the custody of the Sheriff of the County in which the action against such Defendant has been brought, or that the cognizors will do so for him. 8 V. c. 13, s. 26,—2 G. 4, c. 1, s. 11.

How bail may justify.

**36.** Upon due notice given to the Plaintiff or his Attorney, and upon production of the bail piece, and whether the Defendant is detained in custody or not, bail may justify (either in term time or in vacation) before any Judge of the Court in which the action is pending, and such justification and the opposing thereof may be by affidavit or affirmation without the attendance of the bail in open Court or before such Judge, unless specially required by such Court or Judge, and such Court or Judge may thereupon order a rule to issue for the allowance of such bail and for the discharge of the Defendant (if in custody) by a Writ of *Supersedeas*. 2 G. 4, c. 1, ss. 13, 41,—4 W. 4, c. 5, s. 2.

And order for allowance to issue.

Bail may surrender their principal to the Sheriff of any County, &c.

**37.** Special bail, on production of a copy of the bail piece certified by the Clerk of the Court having the custody thereof, may surrender their principal to the Sheriff of the County in which such principal is resident or found, and such Sheriff shall receive such principal into his custody and give such bail a certificate under his hand and seal of office of such surrender, for which certificate the Sheriff shall be entitled to the sum of one dollar, and any Judge of the Court in which the action is pending, upon proof of due notice to the Plaintiff or his Attorney of such surrender, and upon production of the Sheriff's certificate thereof, shall order an *Exoneretur* to be entered on the bail piece, and thereupon the bail shall be discharged. 8 V. c. 13, s. 27,—4 W. 4, c. 5, s. 1,—2 G. 4, c. 1, s. 12.

Such surrender not to affect the venue.

**38.** In cases where such surrender is made to any other Sheriff than the Sheriff of the County specified in the condition of

of the recognizance of bail, the Plaintiff shall not be compelled to change the *venue* or to conduct his suit in any manner different from that which he would have been required to do, had the render been made to such last mentioned Sheriff. 8 V. c. 13, s. 27, —4 W. 4, c. 5, s. 1.

**39.** In case a person is surrendered by his bail to the Sheriffs of any County other than that in which he resided or carried on business at the time, such person shall be entitled to be transferred to the gaol of his own County on prepaying the expense of his removal; and the Sheriff in whose County he was arrested may, if he is satisfied of the facts, transfer him accordingly; but if the Sheriff declines to act without an order of the Court or a Judge, such an order shall be made on the application of the prisoner and notice to the opposite party. 22 V. c. 33, s. 9, 1859.

Person arrested out of his County may be transferred to it, paying the costs.

**40.** In case (in any action in a County Court) the Defendant has been surrendered by his bail into the custody of the Sheriff of a County other than that in which the action has been instituted, the Plaintiff may charge the Defendant in execution, and take all other necessary proceedings in like manner as if the suit had been instituted in one of the Superior Courts. 4 W. 4, c. 5, s. 3.

In cases in a County Court, how plaintiff to proceed when defendant surrendered in a County different from that in which the action was brought.

**41.** A recognizance of bail taken in a County Court may be entered of Record in such Court, and an action of debt or *Scire Facias* shall lie thereupon in such Court as in similar cases in the Superior Courts, and in cases in the County Courts the Judges thereof may grant the same remedies to the Plaintiff against the Sheriff or Sheriff's Bail or the Bail to the action, and afford relief to the Defendant, Sheriff or Bail in like manner and form as might be done by either of the Superior Courts, had the action been instituted in such Court. 8 V. c. 13, ss. 27, 50—12 V. c. 66, s. 7.

Recognizance of bail in County Courts may be recorded and proceeded upon in like manner as in the Superior Courts.

**42.** The Plaintiff, after the commencement of any action by Writ of Summons but before Judgment in such action, upon obtaining a Judge's order for that purpose, in the manner provided for in the fifth section of the Act respecting arrest and Imprisonment for debt, may sue out of the office whence such Summons issued a Writ of *Capias*, and one or more concurrent Writs; and such Writ of *Capias* shall, in every such case, notwithstanding the fourth section of this Act, number three, be issued by the Court out of which the original Writ in the cause was issued, and shall be in the form (A) No. 6, and may be directed to the Sheriff of any County in Upper Canada, and so many copies of such Writ, with every memorandum or notice subscribed thereto, and all endorsements thereon as there may be persons intended to be arrested thereon, shall be delivered with such writ to the Sheriff or other Officer who may have the execution or return thereof, and such Sheriff or Officer shall immediately upon, or after

Plaintiff may obtain *Capias* in certain cases after commencing the suit by Writ of Summons: affidavit required.

Writ to issue from the same Court as the Original Writ.

Form of Writ.

To whom directed.

Copies.

One copy to be delivered to each person on whom the Writ is executed.

Costs.

the execution thereof, cause one such copy to be delivered to every person upon whom such process may be executed by him, and shall, within three days at farthest after such execution, indorse upon such Writ the true day of the execution thereof; and the proceedings in any such action may be carried on as Judgment without regard to the issuing of such *Capias* or to any proceedings in any way arising from or dependent thereon; and on entering Judgment, the Plaintiff shall be entitled to tax the costs of such Writ or Writs of *Capias* and the proceedings thereon, in like manner as if the suit had been originally commenced by *Capias*, together with the other costs incurred and taxable in the cause. S V. c. 13, s. 27,--19 V. c. 43, s. 42,--22, V. c. 96, s. 4

#### ABSENTEES.

Summons to party being a British subject residing out of the jurisdiction of the said Courts.

Service thereof, &c.

**43.** In case any Defendant being a British subject, is residing out of Upper Canada, the Plaintiff may issue a Writ of Summons in the form (A) No. 3, which Writ shall bear the indorsement contained in the said form, purporting that such Writ is for service out of Upper Canada, and the time for appearance by the Defendant shall be regulated by the distance from Upper Canada of the place where the Defendant is residing, having due regard to the means of, and necessary time for postal or other communication. 19 V. c. 43, s. 35.

If service made or cannot be made after due diligence.

Order in such case by the Court or a Judge on affidavit.

Plaintiff must prove his case.

**44.** Upon the Court or Judge being satisfied that there is a cause of action which arose in Upper Canada, or in respect of the breach of a contract made therein, and that the Writ has been personally served upon the Defendant, or that reasonable efforts have been 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 Upper Canada, in order to defeat or delay his creditors, such Court or Judge may from time to time direct that the Plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge (having regard to the time allowed to the Defendant to appear being reasonable and to the other circumstances of the case) may seem fit; but the Plaintiff, before obtaining Judgment, shall prove the amount of the debt or damages claimed by him in such action, either before a Jury on an assessment in the usual mode, or by reference in the manner hereinafter provided, according to the nature of the case, as such Court or Judge may direct. 19 V. c. 43, s. 35.

If the defendant be not a British subject.

**45.** In any action against a person residing out of Upper Canada and not being a British subject, the like proceedings may be taken as against a British subject resident out of Upper Canada, except that the Plaintiff shall, instead of the Summons mentioned in the forty-third Section, issue a Writ of Summons according to the form (A) No. 4, and shall in manner aforesaid serve a notice of such last mentioned Writ upon the Defendant,

Defendant, which notice shall be in the form also contained in the said form No. 4 ; and such service or reasonable efforts to effect the same, shall be of the same force and effect as the service or reasonable efforts to effect the service of a Writ of Summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon. 19 V. c. 43, s. 36.

**46.** A Writ for service within the Jurisdiction may be issued and marked as a concurrent Writ with one for service out of the Jurisdiction, and a Writ for service out of the Jurisdiction may be issued and marked as a concurrent Writ with one for service within the Jurisdiction. 19 V. c. 43, s. 39.

Certain Writs may be made concurrent.

**47.** Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a Defendant residing out of Upper Canada, may be sworn before the Chief Justice or Judge of any Court of Superior Jurisdiction in the Country wherein the Defendant may reside or be served, or before the Mayor or Chief Magistrate of any City, Town or place wherein the Defendant may reside or be served, or before any Consul General, Consul, Vice-Consul or Consular Agent for the time being appointed by Her Majesty at any foreign port or place at or near which the Defendant may reside or be served ; and saving all just exceptions, every affidavit so sworn may be used and shall be admitted in evidence, provided it purport to have been sworn before such Chief Justice, Judge, Mayor or Chief Magistrate, Consul General, Consul, Vice-Consul or Consular Agent. 19 V. c. 43, s. 40.

Affidavits for enabling proceedings to be taken against a party out of the jurisdiction, before whom to be made.

#### MISCELLANEOUS PROVISIONS RESPECTING WRITS, &c.

**48.** If the Plaintiff or his Attorney omits to insert in or to indorse on any Writ or copy thereof, any of the matters required by this Act to be inserted therein or indorsed thereon, such Writ or copy shall not on that account be held void, but it may be set aside as irregular, or be amended upon application made to the Court out of which the same issued, or to a Judge, and such amendment may be made upon any application to set aside the Writ, upon such terms as to the Court or Judge seems fit. 19 V. c. 43, s. 37.

Amendment if the plaintiff omits any thing in the indorsement on or in the Writ.

**49.** If any one of the forms of Writs of Summons in the Forms (A) respectively Nos. 1, 3 and 4, has by mistake or inadvertence been substituted for either of the others, such mistake or inadvertence shall not be an objection to the Writ or any other proceeding in such action, but upon an *ex parte* application to a Judge, whether before or after an application to set aside the Writ or any proceeding thereon, and whether the same or notice thereof has been served or not, the Writ may be amended by such Judge without costs. 19 V. c. 43, s. 38.

Amendment if one form of Writ be substituted by error for another.

Attorney whose name is endorsed on the Writ, to declare whether he sued it out, and if so, plaintiff's name &c., if so ordered.

**50.** Every Attorney whose name is endorsed on any Writ issued for the commencement of any action, shall, on demand in writing made by or on behalf of any Defendant, declare forthwith whether such Writ has been issued by him or with his authority or privity, and if he answers in the affirmative, then he shall also, in case the Court or a Judge so directs, declare in writing within a time to be limited by such Court or Judge, the profession or occupation and place of abode of the Plaintiff, on pain of being guilty of a contempt of the Court from which such Writ appears to have issued; and if such Attorney declares that such Writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court or a Judge. 19 V. c. 43, s. 25.

Proceedings stayed if he declares he did not sue it out.

APPEARANCE.

Defendant may appear at any time before judgment.

**51.** The Defendant may appear at any time before Judgment, and if he appears after the time specified either in the Writ of Summons or in the warning indorsed on any Writ of *Capias* served on him, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the Plaintiff or his Attorney, be in the same position as to pleadings or other proceedings in the action as if he had appeared in time; but a Defendant appearing after the time appointed by the Writ, shall not be entitled to any further time for pleading or for any other proceeding than if he had appeared within such appointed time; and if the Defendant appears after the time appointed by the Writ, and omits to give such notice of his appearance, the Plaintiff may proceed as in case of non-appearance. 19 V. c. 43, s. 62.

His position.

Defendant appearing in person to give an address.

**52.** Every appearance by the Defendant in person shall give an address at which all pleadings and other proceedings not requiring personal service may be left for him, and if such address be not given, the appearance shall not be received, and if an illusory or fictitious address be given, the appearance shall be irregular and may be set aside by the Court or a Judge, and the Plaintiff may, by the Court or Judge, be permitted to proceed by sticking up the proceedings in the office from whence the Writ was sued out. 19 V. c. 43, s. 63.

Where pleadings, &c., may be served.

Mode and form of appearance.

**53.** The mode of appearance to every such Writ of Summons under the authority of this Act, shall be by filing with the proper officer in that behalf, a memorandum in writing according to the following form, or to the like effect:

A. B., Plaintiff, against C. D., Defendant, or against C. D., and another or against C. D., and others.	}	The Defendant, C. D. appears in person or E. F. Attorney for C. D. appears for him.
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(If the Defendant appears in person, here give his address.)

Entered the \_\_\_\_\_ day of \_\_\_\_\_, A. D., one thousand  
eight hundred and \_\_\_\_\_ . 19 V. c. 43, s. 64.

**54.** In no case shall it be necessary for the Plaintiff to enter an appearance for the Defendant. 19 V. c. 43, s. 59.

Plaintiff need not enter appearance for defendant.

**55.** In case of non-appearance by the Defendant where the Writ of Summons has been indorsed in the special form hereinbefore provided, and in case the Plaintiff files the Writ of Summons, and an affidavit of personal service thereof, or in case of service on a corporation, files an affidavit of service in the manner in this Act authorized for service on corporations, or files a rule of Court, or a Judge's Order for leave to proceed under the provisions of this Act, such Plaintiff may at once sign final judgment in the form (A), No. 7, for any sum not exceeding the sum indorsed on the Writ, together with interest to the date of the judgment, and costs to be taxed in the ordinary way, and no proceeding in Error or Appeal shall lie on any such Judgment; and the Plaintiff may, at the expiration of eight days from the last day for appearance and not before, issue execution upon such judgment; but the Court or a Judge may, after final judgment, let in the Defendant to defend, upon an application supported by satisfactory affidavits accounting for the non-appearance and disclosing a defence upon the merits. 19 V. c. 43, s. 60.

Proceedings on non-appearance of defendant on Writ specially endorsed.

Signing judgment.

Execution.

Defendant may be let in to defend.

**56.** In case of such non-appearance where the Writ of Summons has not been indorsed in the special form hereinbefore provided, and in case the Plaintiff files the Writ of Summons, and an affidavit of personal service thereof, or in case of service on a corporation, files an affidavit of service in the manner in this Act authorized for service on corporations, or files the Writ of Summons and a Judge's Order for leave to proceed under the provisions of this Act, such Plaintiff may file a declaration indorsed with a notice to plead in eight days, and in default of a Plea may sign judgment by default at the expiration of the time to plead so indorsed. 19 V. c. 43, s. 61.

And if the Writ be not so specially indorsed.

Declaration.

Signing judgment.

**57.** In case the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the Writ of Summons, and in the event of no plea being filed and served, the Judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the Writ of Summons with interest and costs; but in such case the Plaintiff shall not be entitled to more costs than if he had made such special indorsement and signed judgment upon non-appearance. 19 V. c. 43, s. 61.

Execution.

Costs.

**58.** All the proceedings which are mentioned in any Writ of Summons or *Capias*, or notice or warning thereto or thereon, issued,

At what time certain pro-

ceedings may be taken if defendant do not appear.

Holy-days.

issued, made or given by authority of this Act, may, (in default of a Defendant's appearance or putting in special bail) be had and taken at the expiration of ten days from the service or execution thereof, whatever day the last of such ten days may be and whether in term or vacation; but if the last of the ten days be Sunday, Christmas Day or Good Friday, then the following day, or the following Monday when Christmas Day falls on a Saturday, shall be considered as the last of such ten days. 19 V. c. 43, s. 65.

Long vacation.

**59.** If such Writ be served or executed on any day between the first day of July and the twenty-first day of August, special bail may be put in by the Defendant on bailable process, or appearance may be entered by the Defendant on process not bailable, at the expiration of such ten days. 19 V. c. 43, s. 65.

Proceedings if some of the defendants appear and others do not, the Writ being specially indorsed.

**60.** In any action brought against two or more Defendants when the Writ of Summons has been indorsed in the special form hereinbefore provided, if one or more of such Defendants only appear and another or others of them do not appear, the Plaintiff may sign Judgment against such Defendant or Defendants only as have not appeared, and before declaration against the other Defendant or Defendants, may issue execution upon such Judgment, in which case he shall be taken to have abandoned his action against the Defendant or Defendants who have appeared; or the Plaintiff may, before such execution, declare against such Defendant or Defendants as have appeared, stating by way of suggestion the Judgment obtained against the other Defendant or Defendants who have not appeared, in which case the Judgment so obtained against the Defendant or Defendants who have not appeared, shall operate and take effect in like manner as a Judgment by default obtained before the commencement of this Act against one or more of several Defendants in an action of debt. 19 V. c. 43, s. 66.

Proceedings to be carried on in office whence Writ issues, &c.

Service of papers, &c.

**61.** The service of all papers and proceedings subsequent to the service of the Writ, shall be made upon the Defendant or his Attorney, according to the established practice, unless special provision is otherwise made in this Act, and if the Attorney of either party do not reside or have not a duly authorized agent residing in the County wherein the action has been commenced, then service may be made upon the Attorney wherever he resides, or upon his duly authorized agent in Toronto, or if such Attorney have no duly authorized agent there, then service may be made by leaving a copy of the papers for him in the office where the action was commenced, marked on the outside as copies left for such Attorney. 19 V. c. 43, s. 9.

#### MISNOMER AND JOINDER OF PARTIES TO ACTIONS.

Misnomer not to be pleaded

**62.** No plea in abatement for misnomer shall be allowed in any personal action, but in cases of misnomer, the Defendant may,

may, upon a Judge's summons founded on an affidavit of the right name, cause the declaration to be amended at the costs of the Plaintiff, by inserting the right name; and in case such summons be discharged, the Judge may order the party applying therefor, to pay the costs of the application. 7 W 4. c. 3, s. 8.

in abatement, but to be amended at costs of plaintiff upon Judge's summons.

**63.** The Court or a Judge may at any time before the trial of a cause, order that any person or persons not joined as Plaintiff or Plaintiffs in such cause, shall be so joined, or that any person or persons originally joined as Plaintiff or Plaintiffs shall be struck out from such cause, if it appears to such Court or Judge that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his or their hands to be so joined, or that the person or persons to be struck out as aforesaid, were originally introduced without his or their consent, or that such person or persons consent in manner aforesaid to be struck out; and the amendment shall be made upon such terms as to the amendment of the pleadings if any, postponement of the trial, and otherwise as the Court or Judge making the amendment thinks proper. 19 V. c. 43. s. 67.

Court may, in certain cases, order any party not joined as a plaintiff, to be so joined, or any party originally joined to be struck out, before trial.

**64.** When any such amendment is made, the liability of any person or persons added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in the cause. 19 V. c. 43, s. 67.

Plaintiffs added subject to the same liability as original plaintiffs.

**65.** In case it appears in any action at the trial or assessment of damages therein, that there has been a mis-joinder of Plaintiffs, or that some person or persons not joined as Plaintiff or Plaintiffs ought to have been so joined, and the Defendant has not at or before the time of pleading, given notice in writing that he objects to such non-joinder, specifying therein the name or names of such person or persons, and if it appears to the Court or Judge or other officer presiding at the trial, that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his or their hands to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his or their consent, or that such person or persons consent in manner aforesaid to be so struck out, such mis-joinder or non-joinder may be amended as a variance at the trial or assessment by such Court or Judge, or other officer presiding at the trial or assessment, in like manner as to the mode of amendment and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of the amendment of variances in the sections of this Act, numbered two hundred and sixteen to two hundred and twenty-two. 19 V. c. 43, s. 68.

Proceedings for amendment if the mis-joinder of Plaintiffs; or an omission to join those who ought to be joined appear at the trial, the defendant not having given notice of objection.

Liability of persons ordered to be joined as plaintiffs.

**66.** Every such amendment shall be made upon such terms as the Court or Judge, or other presiding officer by whom the amendment is made, thinks proper; and when any such amendment has been made, the liability of any person who has been added as co-Plaintiff shall, subject to any terms imposed as aforesaid, be the same as if such person had been originally joined in the action. 19 V. c. 43, s. 68.

If such notice has been given by the defendant, or non-joinder be pleaded in abatement.

**67.** In case such notice has been given, or where a plea in abatement may be pleaded, in case a plea in abatement of non-joinder of a person or persons as co-Plaintiff has been pleaded by the Defendant, the Plaintiff, before plea or replication upon payment of the costs only of and occasioned by amending, may, without any order, amend the writ and other proceedings by adding the name of the person named in such notice or plea in abatement, and proceed in the action without any further appearance, and in case of such amendment after plea, the Defendant may plead *de novo*. 19 V. c. 43, s. 69.

Mis-joinder of defendants discovered before trial in action on contract;

**68.** In the case of the joinder of too many Defendants in any action or contract, the Court or a Judge, if it appears that injustice will not be done thereby, may, at any time before trial or assessment of damages, order the name or names of one or more of such Defendants to be struck out, and the amendment shall be made upon such terms as the Court or Judge thinks proper; and in case it appears at the trial of any action on contract, that there has been a mis-joinder of Defendants, such mis-joinder may be amended as a variance at the trial in like manner as the mis-joinder of Plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge, or other presiding officer by whom such amendment is made, thinks proper. 19 V. c. 43, s. 70.

And at trial.

If the non-joinder of defendants be pleaded in abatement in such action.

**69.** In any action on contract where the non-joinder of any person as co-Defendant has been pleaded in abatement, the Plaintiff may, without any order, amend the Writ of Summons and the declaration by adding the name of the person mentioned in such plea in abatement as a joint contractor, and serve the amended Writ upon the person or persons so named in such plea in abatement, and proceed against the original Defendant or Defendants and the person so named in such plea in abatement; but the date of such amendment shall, as between the person so named in such plea of abatement and the Plaintiff, be considered for all purposes as the commencement of the action. 19 V. c. 43, s. 71.

Non-joinder of obligors no ground to abate suit.

**70.** In any action brought against any joint obligor or contractor, the action shall not abate nor the Plaintiff be required to amend on account of any other joint obligor or contractor not having been made a Defendant, unless the party pleading such non-joinder avers in his plea that such joint obligor or contractor is living within the limits of Upper Canada, and states the place

place of his residence, nor unless an affidavit of the truth of such plea be filed therewith. 19 V. c. 43, s. 73.

**71.** In all cases after a plea in abatement and amendment, as aforesaid, if it appears upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original Defendant or Defendants, the original Defendant or Defendants shall be entitled as against the Plaintiff to the costs of such plea in abatement and amendment; but if at such trial it appears that the original Defendant or any of the original Defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the Plaintiff shall nevertheless be entitled to Judgment against the Defendant or Defendants who appear to be liable, and every Defendant who is not so liable shall have Judgment and shall be entitled to his costs as against the Plaintiff, but the Plaintiff shall be allowed such costs, together with the other costs on the plea in abatement and amendment, as costs in the cause against the original Defendant or Defendants who so pleaded in abatement the non-joinder of such person; but any such Defendant who so pleaded in abatement, may, on the trial, adduce evidence of the liability of the Defendants named by him in such plea. 19 V. c. 43, s. 72.

Costs of such plea in abatement.

Judgment as regards defendants liable or not liable respectively.

**72.** The joint obligation, contract or promise may be given in evidence against any one or more of the joint obligors or contractors, and shall have the same force and effect for the recovery of Judgment thereon as if it were only the obligation, contract or promise of the Defendant or Defendants actually sued. 19 V. c. 43, s. 74.

Joint contract, &c., may be given in evidence against any one contractor.

#### JOINDER OF CAUSES OF ACTION.

**73.** Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejectment, or in the County Courts to causes of action which are local and arise in different Counties; and where two or more of the causes of action so joined in cases in the Superior Courts are local and arise in different Counties, the venue may be laid in either of such Counties. 19 V. c. 43, s. 75.

Several causes of action may be joined subject to certain conditions.

**74.** Either of the Superior Courts or a Judge thereof, or the Judge of a County Court, may prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case any such Court or Judge may order separate records to be made up and separate trials to be had; but nothing herein contained shall restrict or diminish the obligation or right of a Plaintiff to include in one action all or any of the drawers, makers, endorsers, and acceptors of any Bill of Exchange or Promissory Note. 19 V. c. 90, s. 9,—19 V. c. 43, s. 75.

Court may order separate trial.

Cases where a husband and wife are co-plaintiffs.

**75.** In any action brought by a man and his wife on any cause of action accruing personally to the wife, in respect of which they are necessarily co-Plaintiffs, the husband may add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a Judge thinks fit; but in case of the death of either Plaintiff, such suit shall abate so far only as relates to the causes of action if any, which do not survive. 19 V. c. 43, s. 76.

LANGUAGE AND FORM OF PLEADINGS IN GENERAL, AND OTHER PROVISIONS IN RESPECT THERETO.

Statements which need not be proved need not be made.

**76.** All statements which need not be proved, such as the statement of time, quantity, quality and value where these are immaterial, the statement of losing and finding, and bailment in actions for goods or their value—the statements of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen—the statement of promises which need not be proved, as promises in *indebitatus* counts and mutual promises to perform agreements, and all statements of a like kind, shall be omitted. 19 V. c. 43, s. 98.

Entering, dating and recording pleadings.

**77.** Every declaration or other pleading shall be entitled of the proper Court, and of the day of the month and year when the same is filed, and shall also be entered on the record made up for trial, and on the Judgment Roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge. 19 V. c. 43, s. 103.

Profert, Oyer, &c., unnecessary;

**78.** It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and, if profert be made, it shall not entitle the opposite party to crave oyer of or to set out upon oyer, such deed or other document. 19 V. c. 43, s. 104.

But may be set out in plea.

**79.** A party pleading in answer to any pleading in which any document is mentioned or referred to, may set out the whole or any part thereof which is material, and the matter so set out shall be taken to be part of the pleading in which it is set out. 19 V. c. 43, s. 105.

As to averment of performance or non-performance of a condition precedent.

**80.** The Plaintiff or Defendant in any action may aver performance of conditions precedent generally, but the opposite party shall not deny such performance generally, and shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest. 19 V. c. 43, s. 106.

## TIME AND MANNER OF DECLARING.

**81.** A Plaintiff shall be deemed out of Court unless he declares within one year after the Writ of Summons or *Capias* is returnable. 19 V. c. 43, s. 107. Plaintiff must declare within a year.

**82.** A notice requiring the opposite party to declare, or to declare peremptorily within eight days, shall be sufficient without any rule or other demand. 19 V. c. 43, s. 102. Notice instead of rule to declare, &c.

**83.** No declaration, or pleading after declaration, shall be filed or served between the first day of July and the twenty-first day of August in any year, and the parties respectively in any case shall be entitled to the same number of days after the twenty-first day of August to plead to or answer any pleading filed or delivered before the first day of July, to which they would have been entitled had this provision not been made. 12 V. c. 66, s. 8,—19 V. c. 43, s. 65. Declaration or pleading not to be filed or served in the long vacation.

**84.** Unless otherwise provided by Statute or rule of Court, declarations and other pleadings and notices required to be served in any action whether in the Superior or County Courts, may be served in any County. 13, 14 V. c. 52, s. 2. Declarations and other pleadings may be served in any County.

**85.** Every declaration shall commence as follows, or to the like effect : Commencement of declaration.

(*Venue.*) A. B., by E. F., his Attorney, (or in person, as the case may be) sues C. D., who has been summoned (or arrested) by virtue of a Writ issued on the \_\_\_\_\_ day of \_\_\_\_\_ A. D., one thousand eight hundred and \_\_\_\_\_, for (*here state cause of action*): And shall conclude as follows, or to the like effect : Form.

And the Plaintiff claims \_\_\_\_\_, (*or if the action is brought to recover specific goods,*) the Plaintiff claims a return of the said goods or their value, and \_\_\_\_\_ for their detention. 19 V. c. 43, s. 108. Conclusion of declaration.

**86.** If after a plea in abatement of the non-joinder of another person as Defendant, the Plaintiff, without having proceeded to trial on an issue thereon, amends by adding the omitted Defendant or Defendants or commences another action against the Defendant or Defendants and the person or persons named in such plea as joint contractors, the commencement of the declaration shall be in the following form, or to the like effect : Commencement after abatement for non-joinder.

(*Venue.*) A. B., by E. F., his Attorney, (or in his own proper person, sues C. D. (*the Defendant originally named in the Summons*) who has been summoned (or arrested) by virtue of a Writ issued on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. one thousand eight \_\_\_\_\_ Form.

eight hundred and \_\_\_\_\_, and G. H., the non-joinder of which G. H. the said C. D. has heretofore pleaded in abatement, for, &c. 19 V. c. 43, s. 109.

Forms of pleading B, if observed in substance, to be sufficient.

**§7.** The forms contained under letter (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 a departure from such forms shall not render the pleading croneous or irregular so long as the substance is expressed without prolixity. 19 V. c. 43, s. 140.

Declaration in County Courts not invalid because of the Counts exceeding the jurisdiction.

**§8.** In case the damages laid at the conclusion of any declaration in a County Court do not exceed the jurisdiction of such Court, but the sums mentioned or claimed in the different counts of such declaration do in the aggregate exceed the jurisdiction of such Court, the declaration or any subsequent pleading shall not on that ground be subject to any objection either by demurrer or otherwise, if the sum laid in each count respectively be within the jurisdiction. 12 V. c. 66, s. 8.

#### CHANGE OF VENUE.

Provision if the *venue* changed.

**§9.** The *venue* in any action in the Superior Courts may be changed according to the practice now in force, and notwithstanding a change of the *venue*, the proceedings shall continue to be carried on in the office from which the first process in the action issued; But the Court or any Judge may, on application of either party, order the issue to be tried or damages to be assessed in any other County than that in which the *venue* has been laid, and for that purpose may order a suggestion to be entered on the Record, that the trial may be more conveniently had or damages assessed in the County where the same is ordered to take place. 19 V. c. 43, s. 8,--7 W. 4, c. 3, s. 14.

#### PLEAS AND SUBSEQUENT PLEADINGS.

Signature of Counsel not required.

**§10.** The signature of Counsel shall not be required to any pleading, nor shall any wager of law be allowed. 19 V. c. 43, s. 134,--7 W. 4 c. 3, s. 10.

Time for pleading in bar when defendant is within the jurisdiction.

**§11.** In cases where the Defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a Judge, shall be eight days, and a notice requiring the Defendant to plead in eight days, otherwise judgment, may be indorsed on the copy of the declaration served or be delivered separately, and in cases in the County Courts the declaration, and all pleadings and notices requiring to be served, may be served in any County. 19 V. c. 43, s. 112.

Notice to plead sufficient.

**§12.** A notice requiring the opposite party to plead, reply, rejoin, or otherwise, as the case may be, within eight days, otherwise



otherwise Judgment, shall be sufficient without any rule or other demand; and such notice may be delivered separately or be indorsed on any pleading which the other party is required to answer. 19 V. c. 43, s. 111.

**93.** Express colour shall not be necessary in any pleading. 19 V. c. 43, s. 113. Express colour unnecessary.

**94.** Special traverses shall not be necessary in any pleading. 19 V. c. 43, s. 114. And special traverses.

**95.** In a plea or subsequent pleading, it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non*, or to the like effect, or any prayer of judgment; nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment. 19 V. c. 43, s. 115. Certain allegations and prayers not required.

**96.** No formal defence shall be required in a plea, avowry or cognizance, and it shall commence as follows, or to the like effect: Commencement of Plea.

The Defendant, by E. F., his Attorney, (or in person, as the case may be) says that (*here state first defence*);

And it shall not be necessary to state in a second or other plea, or avowry or cognizance, that it is pleaded by leave of the Court or a Judge, or according to the form of the statute, or to that effect, but every such plea, avowry or cognizance, shall be written in a separate paragraph and be numbered, and shall commence as follows, or to the like effect:

And for a second (&c.) plea to (*stating to what it is pleaded*) the Defendant says that &c., Second Plea.

And no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading. 19 V. c. 43, s. 116. Formal conclusions unnecessary.

**97.** Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action. 19 V. c. 43, s. 117. Defence arising after action, how pleaded.

**98.** In cases in which a plea *puis darrein continuance* was formerly pleadable in Banc or at *Nisi Prius*, the same defence may be pleaded with an allegation that the matter arose after the last pleading; but unless the Court or a Judge otherwise orders, such plea shall not be allowed unless accompanied by an affidavit that the matter thereof arose within Or after the last pleading, affidavit required.

within eight days next before the pleading of the plea. 19 V. c. 43, s. 118.

Defendant may pay money into Court, except in certain cases.

**99.** Except in actions for assault and battery, false imprisonment, libel, slander when not within the fifth Section of the Act to amend the law relating to libel and slander, malicious arrest or prosecution, criminal conversation or debauching of the Plaintiff's daughter or servant, a sole Defendant in any action, without rule or Judge's order, or one or more of several Defendants (by leave of the Court or a Judge upon such terms as the Court or Judge thinks fit,) may pay into Court a sum of money by way of compensation or amends. 8 V. c. 13, s. 36,—13, 14 V. c. 60,—2 G. 4 c. 1, s. 25,—19 V. c. 43, ss. 119, 121.

Officer to receive one per cent. on moneys paid into Court.

**100.** The money shall be paid to the proper officer of the Court who, for receiving the same, may exact a sum not exceeding one per cent on the sum so paid in, and who shall sign a receipt for the amount in the margin of the plea, for signing which receipt he shall be entitled to twenty cents, and the sum so paid in shall on demand be paid out to the Plaintiff, or to his Attorney upon a written authority from the Plaintiff. 2 G. 4, c. 1, s. 26,—19 V. c. 43, s. 121.

Such payment how pleaded.

**101.** Payment of money into Court shall be pleaded in all cases as nearly as may be in the following form, *mutatis mutandis* :

Form.

The Defendant, by E. F., his Attorney, (or in person, &c.,) (if pleaded to part, say, as to \_\_\_\_\_, parcel of the money claimed,) brings into Court the sum of \_\_\_\_\_, and says the said sum is enough to satisfy the claim of the Plaintiff in respect of the matter herein pleaded to. 19 V. c. 43, s. 120.

Reply of Plaintiff in such case.

**102.** The Plaintiff may reply to a plea of payment of money into Court, by accepting the sum so paid in, in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and may in that case tax his costs of suit, and in case of non-payment thereof within forty-eight hours, may sign judgment for his costs so taxed ; or the Plaintiff may reply that the sum paid in is not enough to satisfy his claim in respect of the matter to which the plea has been pleaded, and in the event of an issue thereon being found for the Defendant, the Defendant shall be entitled to judgment and his costs of suit. 19 V. c. 43, s. 122.

Plaintiff satisfied.

Plaintiff not satisfied.

Plea good tho' it treat an alleged breach of contract as a wrong, and *vice versa*.

**103.** In case doubts arise as to the form of pleas when causes of action may be considered to partake of the character both of breaches of contract and of wrongs, no plea good in substance shall be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong. 19 V. c. 43, s. 123.

**104.** Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue be taken thereon and so much thereof as is a sufficient answer to part of the causes of action be proved, and found true by the Jury, a verdict shall pass for the Defendant in respect of so much of the causes of action as are answered, and for the Plaintiff in respect of so much of the causes of action as are not answered; and if upon a plea of set-off the Jury find a larger sum proved to be due from the Plaintiff to the Defendant than is proved to be due from the Defendant to the Plaintiff, a verdict shall pass for the Defendant for the balance remaining due to him, and he shall have Judgment to recover such balance and his costs of suit. 19 V. c. 43, s. 124.

Distributive plea to be construed distributively.

If on set-off, Defendant proves more due from Plaintiff than to him.

**105.** A Defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration although it might have been included in a general traverse. 19 V. c. 43, s. 125.

Traversing facts alleged in declaration.

**106.** A Plaintiff may traverse the whole of any plea or subsequent pleading of the Defendant by a general denial, or admitting some part or parts thereof may deny all the rest or deny any one or more allegations. 19 V. c. 43, s. 126.

Traversing pleas.

**107.** A Defendant may in the like manner deny the whole or part of a replication or subsequent pleading of the Plaintiff. 19 V. c. 43, s. 127.

Replications, &c.

**108.** Either party may plead in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

Joining issue

The Plaintiff joins issue on the Defendant's, first, (&c. *specifying which or what part*) plea.

The Defendant joins issue upon the Plaintiff's replication to the first (&c. *specifying which*) plea.

And such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the Plaintiff's pleading is in denial of the pleading of the Defendant, or some part of it, the Plaintiff may add a joinder of issue for the Defendant. 19 V. c. 43, s. 128.

Joinder how construed.

**109.** Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his Attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded

Pleading and demurring at the same time.

Affidavit may be required.

pleaded

pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and the Court or a Judge may direct which issue shall be first disposed of. 19 V. c. 43, s. 129.

Several matters may be pleaded by leave of the Court or of a Judge.

**110.** The Plaintiff may, by leave of the Court or a Judge, plead in answer to the plea or subsequent pleading of the Defendant as many several matters as he thinks necessary to sustain his action, and the Defendant may by leave of the Court or a Judge plead in answer to the declaration or other subsequent pleading of the Plaintiff, as many several matters as he thinks necessary for his defence, but if required by the Court or a Judge, then only upon an affidavit of the party making such application or his Attorney, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be pleaded as aforesaid by way of confession and avoidance, are respectively true in substance and in fact; and the costs of any issue either of fact or of law, shall follow the finding or Judgment on such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues. 19 V. c. 43, s. 130.

On affidavit if required.

Costs.

Rule not required.

**111.** No rule of Court for leave to pay money into Court or to plead several matters shall be necessary where a Judge's Order has been made for the same purpose. 19 V. c. 43, s. 131.

Certain pleas may be pleaded together without leave.

**112.** The following pleas, or any two or more of them, may be pleaded together as of course, without leave of the Court or a Judge, that is to say: a plea denying any contract or debt alleged on the declaration, a plea of tender as to part, a plea of the statute of limitations, set-off, discharge of the Defendant under any Bankrupt or Insolvent law, *plene administravit*, *plene administravit prater*, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the Plaintiff's, leave and license, *son assault demesne*, and any other pleas which the Judges of the said Superior Courts, or any four of them of whom the Chief Justices of the said Courts shall be two, by any rule or order to be from time to time by them made in Term or in vacation, order and direct. 19 V. c. 43, s. 133.

In other cases several pleas, &c., shall not be filed without leave.

**113.** Except in the cases herein specially provided for, if either party plead several pleas, replications, avowries, cognizances or other pleadings without leave of the Court or a Judge, the opposite party may sign Judgment, but such Judgment may be set aside by the Court or a Judge upon an affidavit of merits, and on such terms as to costs and otherwise as they or he may think fit. 19 V. c. 43, s. 135.

**114.** All objections to the pleading of several pleas, replications or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the rule to shew cause or the summons to plead several matters. 19 V. c. 43, s. 132.

Objections when to be heard.

**115.** One new assignment only shall be pleaded to any number of pleas to the same cause of action, and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the Plaintiff proceeds for causes of action different from all those which the plea professes to justify, or for an excess over and above what all the defences set up in such pleas justify, or for both. 19 V. c. 43, s. 136.

One new assignment only to several pleas to the same cause of action.

**116.** No plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of a Court or Judge, and such leave shall be granted only upon satisfactory proof that the repetition of such plea is essential to a trial of the merits. 19 V. c. 43, s. 137.

Pleas to new assignment.

**117.** Where an amendment of any pleading is allowed no new notice to plead thereto shall be necessary, but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever may last expire, unless otherwise ordered by the Court or a Judge; and in case the pleading amended had been pleaded to before such amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the Court or a Judge allows, the pleading originally pleaded thereto shall, if applicable, stand and be considered as pleaded in answer to the amended pleading. 19 V. c. 43, s. 139.

Time for pleading to an amended pleading, &c.

#### DILATORY PLEAS.

**118.** If a Defendant pleads any dilatory plea, being matter in law and not of fact, the Plaintiff may set down such plea for argument on the first paper day thereafter on which the Court meets, or on any other day in Term, giving two days' notice thereof to the Defendant or his Attorney; and if the Plaintiff fails so to set down the same for argument, he may apply to any Judge of the Court to hear and determine the issue joined thereon, in like manner as the same might be done in open Court; and in case the Judge gives judgment for the Plaintiff, he shall direct the plea to be taken off the file, with costs, to be taxed by the proper officer; and the Defendant shall, within four days from the date of the order, plead an issuable plea, and rejoin gratis, and go to trial at such time as he would have been bound to go to trial in case he had pleaded such issuable plea in the first instance. 2 G. 4, c. 1, s. 37.

Dilatory pleas may be argued before a Judge in vacation.

Unfair pleadings may be struck out or amended.

**119.** The Court or a Judge may order any pleading so framed as to prejudice, embarrass, or delay the fair trial of the action, to be struck out, or may make such other order respecting the same, and also respecting the costs of the application, as such Court or Judge sees fit. 19 V. c. 43, s. 101.

#### DEMURRERS.

Either party may demur to the pleading of the opposite party.

**120.** Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be. 19 V. c. 43, s. 99.

Form of Demurrer.

**121.** The form of a demurrer shall be as follows, or to the like effect :

The Defendant, by his Attorney, (*or Plaintiff, as the case may be,*) (*or in person, &c.,*) says that the declaration (*or plea, &c.*) is bad in substance.

A substantial ground of demurrer to be stated in the margin.

And on the margin thereof some substantial matter of law intended to be argued shall be stated ; and the Court or a Judge may set aside any demurrer delivered without such statement, or with a frivolous statement, and may give leave to sign Judgment as for want of a plea ;

Form of joinder in demurrer.

And the form of a joinder in demurrer shall be as follows, or to the like effect :

The Plaintiff (*or Defendant*) says that the declaration (*or plea, &c.*) is good in substance. 19 V. c. 43, s. 138.

Judgment to be given according to the very right.

**122.** Where issue is joined on demurrer, the Court shall give Judgment according as the very right of the cause and matter in law appears unto them, without regarding any imperfection, omission, defect in or lack of form, and no Judgment shall be arrested, stayed or reversed for any such imperfection, omission, defect in or lack of form. 19 V. c. 43, s. 99.

Special Demurrers superseded.

**123.** No pleading or amended pleading shall be deemed insufficient for any defect which formerly could only have been objected to by special demurrer. 19 V. c. 43, s. 100.

#### EQUITABLE DEFENCES.

Equitable defence may be pleaded.

**124.** Any Defendant, or the Plaintiff in Replevin, in any cause who if Judgment were obtained, would be entitled to relief against such Judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defence, and the said Courts shall receive such defence by way of plea ; but such plea must begin with the words "for defence on equitable grounds," or words to the like effect. 19 V. c. 43, s. 287,—20 V. c. 57, s. 11,—20 V. c. 58, s. 2.

Commencement of plea.

**125.** Any such matter which, had it arisen before or during the time for pleading, would have been an answer to the action by way of plea, may, if it arises after the lapse of the period during which it could have been pleaded, be set up by way of *audita querelá*. 19 V. c. 43, s. 258.

Defence by way of *audita querelá*.

**126.** The Plaintiff may reply, in answer to any plea of the Defendant, facts which avoid such plea upon equitable grounds, but such replication must begin with the words "for replication on equitable grounds," or words to the like effect. 19 V. c. 43, s. 259.

Replication on equitable grounds.

**127.** In case it appears to the Court or any Judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, the Court or Judge may order the same to be struck out, on such terms, as to costs and otherwise, as to such Court or Judge seems reasonable. 19 V. c. 43, s. 290.

Striking out any such plea &c., which cannot be dealt with by a Court of Law.

#### INTERLOCUTORY MATTERS AND PROCEEDINGS.

**128.** Whenever the Plaintiff or Defendant in any suit instituted in either of the said Superior Courts, wishes to produce to either of such Courts or to any Judge thereof, the writ, declaration, plea or any other proceeding filed in the cause in the office of any Deputy Clerk of the Crown, the Plaintiff or Defendant may demand and receive from such Deputy Clerk a copy of the same certified by the said Deputy to be a true copy of the original, and such copy so certified shall be received by such Court or Judge, in all cases in lieu of the original, and as a proof thereof. 2 G. 4, c. 1, s. 34.

Certified copies of proceedings may be obtained from any Deputy Clerk's office.

#### TIME TO PLEAD, REPLY, &c.

**129.** In suits in either of the Superior Courts, the Judge or acting Judge of the County Court for the County in which the suit has been brought or the venue laid, may, upon the application of the Plaintiff or Defendant in such suit, grant summonses and orders for time to declare, plead, reply, or rejoin and for particulars of demand, or of set-off, and may grant summonses and orders, for payment of money into Court, for the allowance of Bail, or for security for costs; and such Judge of the County Court may hear and determine such applications and grant such summonses, impose such terms, and make such orders as might be granted, imposed and made in the like cases by a Judge of one of the Superior Courts sitting in Chambers. 16 V. c. 175, s. 17,—13, 14 V. c. 52, s. 5,—20 V. c. 57, s. 21,—12 V. c. 63, s. 35.

Judges of the County Courts may grant summonses and orders in certain matters relating to suits in the Superior Court.

**130.** The provisions of the last section shall not apply to any suit wherein the venue is laid in the County of York, or to any suit wherein the Attorney for the Defendant, or in case of two

Except in the County of York and in other

excepted instances.

or more Defendants, where the Attorney for any one or more of them, resides in a County different from that in which the Attorney for the Plaintiff, or if he prosecutes in person in which the Plaintiff, resides; and either party interested may appeal from any such decision or order to the Court in which the action is pending, or to a Judge of one of the Superior Courts at Chambers, and such Court or Judge may affirm, reverse or modify such decision or order, or make such other order upon the subject matter of appeal, and the proceedings had thereon, and with or without costs, as to such Court or Judge seems meet. 12 V. c. 63, s. 35,—20 V. c. 57, s. 21.

With right to appeal to Superior Court or a Judge thereof.

EFFECT OF DEATH OR MARRIAGE UPON THE PROCEEDINGS IN AN ACTION.

Death of plaintiff or defendant.

**131.** The death of a Plaintiff or Defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned. 19 V. c. 43, s. 208.

If there be more than one plaintiff or defendant, and the cause of action survives to the others.

**132.** In case there be two or more Plaintiffs or Defendants and one or more of them dies, and if the cause of action survives to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the action shall not be thereby abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants. 19 V. c. 43, s. 209.

Death of a sole plaintiff.

**133.** In case of the death of a sole Plaintiff or sole surviving Plaintiff, the legal representative of such Plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Plaintiff, and such Judgment shall follow upon the verdict, in favor of or against the person making such suggestion, as if such person were originally the Plaintiff. 19 V. c. 43, s. 210.

Death of a sole defendant or of a sole surviving defendant may be suggested.

**134.** In case of the death of a sole Defendant or sole surviving Defendant where the action survives, the Plaintiff may make a suggestion of the death, either in any of the pleadings, if the cause has not arrived at issue, (or by filing a suggestion with the other pleadings, if it has so arrived,) and that a person named in such suggestion is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and of the said other pleadings, and with a notice signed by the Plaintiff or his Attorney, requiring such executor or administrator to appear within ten days after service of the notice, inclusive of the day of such service, and notifying him that in default of his so doing, the Plaintiff may sign Judgment against him as such executor or administrator. 19 V. c. 43, s. 211.

Copy and notice to be served on the opposite party.



**135.** The same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which such action has been brought. 19 V. c. 43, s. 211.

After such notice, the proceedings to be the same as in actions relating to executors.

**136.** In case of no pleadings before the death, the suggestion shall form part of the declaration, and the declaration, with a notice to plead, and the suggestion, may be served together, and the new Defendant shall plead to both at the same time, and within eight days after the service. 19 V. c. 43, s. 211.

If no previous pleadings, the suggestion to form part of the declaration.

**137.** In case the Plaintiff had declared, but the Defendant had not pleaded before the death, the new Defendant shall plead at the same time to the declaration and suggestion within eight days after service of the suggestion; and in case the Defendant had pleaded before the death, the new Defendant shall, within eight days after the service of the suggestion, plead thereto only by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless by leave of the Court or a Judge he be permitted to plead fresh matter in answer to the declaration. 19 V. c. 43, s. 211.

If plaintiff has declared and defendant has not pleaded.

**138.** In case the Defendant had pleaded before the death, but the pleadings have not arrived at issue, the new Defendant, besides pleading to the suggestion within eight days after the service thereof, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the Plaintiff recovers, he shall be entitled to the like Judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator. 19 V. c. 43, s. 211.

If Defendant has pleaded.

If plaintiff recovers.

**139.** The death of either party between the verdict and Judgment shall not hereafter be alleged for error, so as such Judgment be entered within two terms after the verdict. 19 V. c. 43, s. 212.

The death of either party between verdict and Judgment.

**140.** If the Plaintiff in any action dies after an interlocutory Judgment and before a final Judgment obtained therein, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained by the executor or administrator of the Plaintiff; and if the Defendant dies after interlocutory Judgment and before final Judgment, the action shall not abate if such action might have been originally prosecuted or maintained against the executor or administrator of such Defendant. 19 V. c. 43, s. 213.

Plaintiffs dying between interlocutory and final judgment.

And if Defendant so dies.

A writ of Revivor may issue in case of plaintiff's death.

**141.** The Plaintiff, or, if he dies after interlocutory Judgment, his executor or administrator, shall have a Writ of Revivor in the form (A) No. 11, or to the like effect, against the Defendant, if living after such interlocutory judgment, or if he has died, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by the Plaintiff, or by his executor or administrator. 19 V. c. 43, s. 213.

Proceedings thereupon.

**142.** If such Defendant, his executor or administrator, appears at the return of such writ, and does not show or allege any matter sufficient to arrest the final judgment, or if he makes default, the damages shall be assessed, or the amount for which final judgment is to be signed shall be referred to the proper officer as in this Act provided; and after the assessment had, or the delivery of the order with the amount endorsed thereon to the Plaintiff, his executor or administrator, final judgment shall be given for the Plaintiff, his executor or administrator, against the Defendant, his executor or administrator respectively. 19 V. c. 43, s. 213.

Marriage of a woman plaintiff or defendant.

**143.** 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 issued 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 has sued or defended by Attorney appointed by her when sole, such Attorney may continue the action or defence, unless his authority be countermanded by the husband, and the Attorney changed according to the practice of the Court. 19 V. c. 43, s. 214.

Right of defendant in action which would have abated but for this Act.

**144.** Where an action would but for this Act have abated by reason of the death of either party and in which the proceedings may be revived and continued under this Act, the Defendant or person against whom the action may be so continued, may apply by summons to compel the Plaintiff or person entitled to proceed with the action, to proceed according to the provisions of this Act within such time as a Judge having jurisdiction in the case may order. 19 V. c. 43, s. 215.

When a suggestion of default may be made.

**145.** In default of such proceeding, the Defendant or other person against whom the action might be so continued, may enter a suggestion of such default and of the representative character of the person by or against whom the action might be proceeded with, (*as the case may be,*) and shall have judgment for the costs of the action against the Plaintiff, or against the person entitled to proceed in his room, (*as the case may be,*) and in the latter case, to be levied of the goods of the testator or intestate. 19 V. c. 43, s. 215.

JUDGMENTS BY DEFAULT, AND THE MODE OF ASCERTAINING  
THE AMOUNT TO BE RECOVERED THEREON.

**146.** No rule or order to compute shall be used. 19 V. c. 43, s. 141. No rule or order to compute necessary.

**147.** In actions where the Plaintiff seeks to recover a debt or liquidated demand in money, the true cause and amount of which has been stated in the special indorsement on the Writ of Summons or in the declaration, judgment by default shall be final. 19 V. c. 43, s. 142. Judgment by default final in certain cases.

**148.** Notwithstanding any thing in this Act contained, the provisions of the Act of the Parliament of Great Britain, passed in the Session held in the eighth and ninth years of the Reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*, as to the assignment or suggestion of breaches, or as to judgment, shall continue in force in Upper Canada. 19 V. c. 43, s. 145. Provisions of a certain British Act of 8, 9 W. 3, c. 11, to remain in force.

**149.** No Writ of Inquiry shall issue to a Sheriff in cases of judgment by default, but except in cases where the judgment is final as aforesaid, the damages, when to be assessed by a Jury, shall be ascertained at the same time and in like manner as if the parties had pleaded to issue, and the entries shall be made on the Roll accordingly. 2 G. 4, c. 1, s. 29. Writs of Inquiry not to issue to Sheriffs. When to be assessed by a Jury.

PROVISIONS FOR THE DETERMINATION OF QUESTIONS RAISED BY  
THE CONSENT OF THE PARTIES WITH OR WITHOUT PLEADING.

**150.** In case the parties to an action, after writ issued and before judgment, are agreed as to the question or questions of fact, to be decided between them, a Judge, by consent of parties, and upon being satisfied that they have a *bonâ fide* interest in the decision of the question or questions, and that the same is or are fit to be tried, may order that such parties may proceed to the trial of such question or questions of fact without formal pleadings, and such question or questions may be stated for trial in an issue in the form (A) No. 8, and the issue may be entered for trial and tried accordingly in the same manner as an issue joined in an ordinary action, and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court, as in other actions. 19 V. c. 43, s. 77. Parties may agree upon an issue of fact, and try it. Form of stating questions and trial of issue thereon.

**151.** The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the said or any subsequent order, that upon the finding of the Jury in the affirmative or negative of such issue or issues, a sum of money to be fixed by the parties, or to be ascertained by the Jury upon the issue or issues and evidence submitted to them, shall be paid by one of such parties to the other of them, either with or without the costs of the action. 19 V. c. 43, s. 78. And may enter into agreement to pay money or not, according to the result.

Judgment may be entered and execution issued, &c., upon the finding.

**152.** Upon the finding of the Jury upon any such issue, judgment may be entered for the sum agreed or ascertained as aforesaid, with or without costs, (*as the case may be,*) and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge otherwise orders for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial. 19 V. c. 43, s. 79.

Proceedings may be recorded, &c.

Effect of Judgment.

**153.** The proceedings upon any such issue may be recorded at the instance of either party; and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. 19 V. c. 43, s. 80.

Parties may agree upon a special case without pleadings.

**154.** The parties may, after writ issued and before judgment, by consent and by order of a Judge, without any pleadings, state any question or questions of law in a special case for the opinion of the Court. 19 V. c. 43, s. 81.

And may agree to pay or not to pay money according to the decision upon such case, &c.

**155.** The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the aforesaid or any subsequent order, that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action, and the judgment of the Court may be entered for any sum so fixed or ascertained, with or without costs, (*as the case may be,*) and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed by proceedings in error or appeal. 19 V. c. 43, s. 82.

Costs when there is no agreement about them.

**156.** In case no agreement be entered into as to the costs of any such action, the costs shall follow the event, and be recovered by the successful party. 19 V. c. 43, s. 83.

After issue joined, the parties may agree upon a special case for the opinion of the Court.

**157.** After issue joined in any action or information, the parties may, by consent and by order of a Judge of the Court in which the action is depending, state the facts of the case, in the form of a special case, for the opinion of the Court, and agree that a judgment shall be entered for the Plaintiff by confession or for the Defendant of *Nolle Prosequi*, immediately after the decision of the case, or otherwise, as the Court may think fit, and judgment shall be entered accordingly. 7 W. 4, c. 3, s. 17.

PROVISIONS FOR THE MORE EXPEDITIOUS DETERMINATION OF MATTERS OF MERE ACCOUNT.

The Court or Judge on the application of

**158.** If at any time after the writ has issued, it be, upon the application of either party, made to appear to the satisfaction of the Court or a Judge, that the matters in dispute consist wholly

wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, the Court or Judge may, upon such application, if they or he think fit, decide such matter in a summary manner, or order such matter, either wholly or in part, to be referred to an arbitrator appointed by the parties, or, in cases in the Superior Courts, to an officer of the Court, or in country causes in the Superior Courts, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge thinks reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, may be enforced by the same process as the finding of a Jury upon the matter referred. 19 V. c. 43, s. 84,—19 V. c. 90, s. 10,—See 8 V. c. 13, s. 47.

either party, may refer the whole or any part to an arbitrator, officer or County Judge.

Enforcing such order or decision under it.

**159.** If it appear to the Court or Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a Jury, such Court or Judge may direct a case to be stated or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the Jury upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive. 19 V. c. 43, s. 85,—19 V. c. 90, s. 11.

Any incidental question of law may be decided by the Court, or one of fact by a jury upon a special case or issue.

**160.** In all actions involving the investigation of long accounts on either side, the Judge may at and during the trial direct a reference of all issues of fact in the cause, or of such of the said issues and of the accounts and matters involved in all or any such issues as he thinks fit, taking the verdict of the Jury upon any issue or issues not so referred, and directing a verdict to be entered generally, on all or any of the issues, for either party, subject to such reference, or he may leave all or any issues of fact to be found by the Jury, referring only the amount of damages to be ascertained; and if the parties agree upon the arbitrators (not more than three), the names of those agreed on shall be inserted in the order of reference, but if the parties cannot agree, the Judge shall name the arbitrator or arbitrators, and appoint all other terms and conditions of the reference to be inserted in such order, and the award may be moved against, as in ordinary cases, within the first four days of the Term next after the making thereof; And the Judge directing any reference under this section may direct such reference, (if he sees fit to do so) in like manner as he has power to do under the two last preceding sections; and every Arbitrator appointed under this section shall be subject to the provisions of the said section, and shall have the powers expressed in the one hundred and sixty-first section, and be subject to the same regulations as are mentioned and provided in regard to Arbitrators in and by the one hundred and sixty-third section of this Act. 19 V. c. 43, s. 156,—20 V. c. 58, s. 3,—20 V. c. 57, s. 12,—8 V. c. 13, s. 47.

In actions involving long accounts, Judge may direct a reference as to part and a verdict as to other parts, &c., or leave the whole to the jury.

Appointment of arbitrators in referred cases.

As to motion to set aside award.

How the amount of damages shall be ascertained when the Court is of opinion that it is substantially a matter of calculation.

**161.** In actions in which it appears to the Court or a Judge that the amount of damages sought to be recovered by the Plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Jury, but the Court or a Judge may direct that the amount for which final judgment is to be signed, shall be ascertained—if the proceedings be carried on in the principal Office at Toronto, by the Clerk of the Crown and Pleas of the proper Court—or, if the proceedings be carried on in the Deputy Clerk's Office in any County, then by the Judge of the County Court of such County—or, if the proceedings be carried on in any County Court, then by the Clerk thereof; and the attendance of witnesses and the production of documents before such Clerk of the Crown, or Judge or Clerk of the County Court, may be compelled by *subpœna*, in the same manner as before a Jury upon an assessment of damages; and such Clerk of the Crown or Judge or Clerk of the County Court, respectively, may appoint the day for hearing the case, and may adjourn the inquiry from time to time, as occasion requires; and such Clerk of the Crown, or Judge or Clerk of the County Court, (*as the case may be*.) shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order with such indorsement to the Plaintiff, and such and the like proceedings may thereupon be had, as to taxation of costs, signing judgment, and otherwise, as upon the finding of a Jury upon an assessment of damages. 19 V. c. 43, s. 143,—19 V. c. 90, s. 14.

Arbitrator may make award in the form of a special case.

**162.** Upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity, and upon any compulsory reference under this Act, or by consent of parties in any cause in a County Court made by rule or order of such Court, the arbitrator may, if he thinks fit, and if it is not provided to the contrary, state his award as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action has been referred, judgment, if so ordered, may be entered according to the opinion of the Court. 19 V. c. 43, s. 86,—19 V. c. 90, s. 12,—8 V. c. 13, s. 47.

Effect thereof.

Proceedings before arbitrator, and his power to be as upon reference by consent.

**163.** The proceedings upon any such arbitration as aforesaid shall, except otherwise directed by this Act or by the submission or document authorizing the reference, be conducted in like manner and be subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, or otherwise, as upon a reference made by consent under a rule of one of the Superior Courts of Common Law or the order of a Judge thereof. 19 V. c. 43, s. 87,—19 V. c. 90, s. 13.

**164.** In case in any reference to arbitration, whether under this Act or otherwise, the submission be made a rule of any Court of Upper Canada, such Court or a Judge thereof may, at any time, and from time to time, remit the matters referred, or any or either of them, to the reconsideration and re-determination of the arbitrator or arbitrators or umpire, as the case may require, upon such terms as to costs and otherwise as to the said Court or Judge may seem proper. 19 V. c. 43, s. 88.

When the reference is made a rule of Court, case may be remitted to the arbitrators for re-consideration, &c.,

**165.** All applications to set aside any award made on a compulsory reference, shall be made within the first six days of the term next following the publication of the award to the parties, whether the award be made in Vacation or in Term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties. 19 V. c. 43, s. 89.

Period within which application to set aside award must be made.

**166.** Any award made on a compulsory reference may, by authority of a Judge, on such terms as to him seems reasonable, be enforced at any time after six days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed. 19 V. c. 43, s. 90.

When an award may, by order of a Judge, be enforced, after the expiration of six days.

**167.** Whenever the parties or any of the parties to any deed or instrument in writing made or executed, since the twenty-first day of August, one thousand eight hundred and fifty-six, or after this Act takes effect, have agreed, or agree that any existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so having agreed or any person or persons claiming through or under him or them, nevertheless commences an action at Law or a suit in Equity against the other party or parties or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred or any of them, then upon the application of the Defendant or Defendants, or any of them, after appearance and before plea or answer, and upon the Court or Judge being satisfied that no sufficient reason exists why such matters ought not to be referred to arbitration according to such agreement as aforesaid, and that the Defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, the Court in which such action or suit has been brought or a Judge thereof may make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise, as to such Court or Judge may seem fit; but such rule or order may, at any time afterwards, be discharged or varied as justice requires. 19 V. c. 43, s. 91.

When parties to any instrument agree that any difference between them shall be referred to arbitration, the Court or a Judge may stay proceedings on application of defendant and proof of certain matters.

**168.** If in any case of arbitration, the document authorizing the reference provides that the reference shall be to a single arbitrator,

Provision for supplying the

place of a single arbitrator or umpire dying, refusing to act, &c., when the reference does not show an intention that his place should not be supplied.

A Judge to appoint another in default of the proper party.

arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator, or if any appointed arbitrator refuses to act, or becomes incapable of acting, or dies, and the terms of the document do not shew the intention that such vacancy should not be supplied, and the parties do not concur in appointing a new arbitrator, or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator, or if any appointed umpire or third arbitrator refuses to act, or becomes incapable of acting, or dies, and the terms of the document authorizing the reference do not shew the intention that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance, any party may serve the remaining parties or the arbitrators, (*as the case may be*), with a written notice to appoint an arbitrator, umpire or third arbitrator; and if within seven clear days after service of such notice, no arbitrator, umpire or third arbitrator be appointed, any Judge of either of the Superior Courts of Law, or of the Court of Chancery, or of any County Court, if the case be in such County Court, may, upon summons to be taken out by the party who served such notice, appoint an arbitrator, umpire or third arbitrator, (*as the case may be*), and such arbitrator, umpire or third arbitrator may act in the reference and make an award as if he had been appointed by consent of all parties. 19 V. c. 43, s. 92.

When the reference is to two arbitrators and one party neglects to appoint, the other may, after certain notice, &c., appoint his arbitrator to act alone, unless the reference provides that the vacancy should not be supplied.

**169.** When the reference is or is intended to be to two arbitrators, one appointed by each party, either party in case of the death, refusal to act or incapacity of any arbitrator appointed by him, may substitute a new arbitrator, unless the document authorizing the reference shews the intention that the vacancy should not be supplied, and if on such a reference one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid, for seven clear days after the other party has appointed an arbitrator, and has served the party so failing with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole referee in the reference, and an award made by him shall be as binding on both parties as if the appointment had been by consent; but the Court or a Judge may revoke such appointment on such terms as seem just. 19 V. c. 43, s. 93.

Two arbitrators may always appoint an umpire, unless the reference forbid it.

**170.** When the reference is to two arbitrators and the terms of the document which authorizes it do not shew the intention that there should not be an umpire, or do not provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they are called upon by notice as aforesaid to make the appointment sooner. 19 V. c. 43, s. 94.



**171.** The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively contains a different limit of time) within three months after he has been appointed, and has entered on the reference or has been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the time for making the award. 19 V. c. 43, s. 95.

Award to be made within a certain period.

**172.** The Court of which such submission, document or order has been or may be made a rule or order, or any judge thereof, may, for good cause to be stated in the rule or order for enlargement, from time to time, enlarge the term for making the award, and if no other period of enlargement be stated in the consent or order for enlargement, it shall be deemed an enlargement for one month. 19 V. c. 43, s. 95.

Period may be enlarged.

**173.** In case an umpire has been appointed, and in case the arbitrators have allowed their time to expire without making an award, or have delivered to either party or to the umpire a notice in writing stating that they cannot agree, the umpire may enter on the reference in lieu of the Arbitrators. 19 V. c. 43, s. 95.

When the umpire shall act.

**174.** When any award made on any such submission, document or order of reference as aforesaid, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, the Court of which the document authorizing the reference has been or may be made a rule or order, may order any party to the reference who is in possession of such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the lands to the party entitled thereto pursuant to the award, and such rule or order to deliver possession shall have the effect of a Judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the Sheriff as on a Judgment in ejectment. 19 V. c. 43, s. 96.

When the award directs possession of real property to be delivered, the Court may order such delivery and enforce it as a Judgment in ejectment.

**175.** In any County Court, the Judge thereof may, in term, or at the sittings or in vacation by consent of the parties, order any cause to be referred to arbitration, in the same manner, with the same effect and with the same powers, and in like manner may set aside any award thereon, as may be exercised by the Superior Courts in any cause therein. 19 V. c. 90, s. 13,—8 V. c. 13, s. 47.

County Courts may order reference to arbitration as in Superior Courts.

**176.** Every agreement or submission to arbitration by consent, whether by deed, or in writing not under seal, may, on the

Every submission to arbitra-

tion may be made a rule of Court, unless the Instrument forbid it.

the application of any party thereto, be made a rule of either of the Superior Courts of law, or of the Court of Chancery, or of a County Court in actions pending in such County Court, unless such agreement or submission contains words purporting that the parties intended that it should not be made a rule of Court. 19 V. c. 43, s. 97.

Of what Court it may be made a rule, and if a case be stated in the award for the opinion of a Court.

**177.** If in any such agreement or submission it be provided that the same may be made a rule of one in particular of the Superior Courts aforesaid, it shall be made a rule of that Court only; and if when there is no such provision, a case has been stated for the opinion of one of the Superior Courts and such Court is specified in the award, and the document authorizing the reference has not before the publication of the award to the parties been made a rule of Court, such document shall be made a rule only of the Court specified in the award. 19 V. c. 43, s. 97.

Other Courts not to interfere.

**178.** When in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award. 19 V. c. 43, s. 97.

Submission to arbitration if agreed to be made a rule of Court, not revocable without leave of Court.

**179.** In case of the appointment of any arbitrator or umpire by, or in pursuance of any rule of either of the Superior Courts of Common Law or of the Court of Chancery, or of any County Court, or Judge's order, or order of *Nisi Prius* in any action, or by or in pursuance of any submission or reference, not containing words purporting that the parties intended that such agreement should not be made a rule of any of such Superior Courts, the power and authority of such Arbitrator shall not be revocable by any party to the reference, without the leave of the Court by which such rule or order was made, or which is mentioned in the submission, or by leave of a Judge of such Court; or in case no such Court be mentioned in the submission and there be no restriction of jurisdiction as aforesaid, then not without the leave of one of such Superior Courts, or of a Judge thereof, and the arbitrator and umpire shall proceed with the reference notwithstanding any such revocation, and make an award, although the person making such revocation do not afterwards attend the reference; and the Court, or any Judge thereof (*as the case may be*) may, from time to time, enlarge the term for any such arbitrators making their award. 7 W. 4, c. 3, s. 29.

Arbitrator to proceed with reference.

Court may enlarge time for making an award.

Witnesses may, by order of the Court, be compelled to attend arbitrators.

**180.** In case of a reference by any such rule or order, or by any such submission as aforesaid, and in case of an application to the Court by which such rule or order was made, or to the Court mentioned in such agreement, or to any Judge thereof, or if no such Court be mentioned in the submission and there be no restriction of the jurisdiction as aforesaid, then to one of the Superior Courts or a Judge thereof, setting forth the place  
of

of residence of any witness whose presence is desired, such Court or Judge may by a rule or order for that purpose command the attendance and examination of any witness named in such rule or order, and also the production of any documents mentioned therein. 7 W. 4, c. 3, s. 30.

**181.** If, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, be served, either together with or after the service of such rule or order, the disobedience of any such rule or order shall be deemed a contempt of Court, but the person whose attendance is required shall be entitled to the like conduct money, and payment of expenses, and for loss of time, as for and upon attendance at any trial; and no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend for more than two consecutive days, to be named in such order. 7 W. 4, c. 3, s. 30.

Neglect so to do, a contempt of Court.

**182.** In case in any rule or order of reference, or in any such submission to arbitration as aforesaid, it is ordered or agreed that the witnesses upon such reference shall be examined upon oath, the arbitrator or umpire, or any one arbitrator, shall administer an oath to such witnesses, or take their affirmations in cases where an affirmation is allowed by law instead of an oath. 7 W. 4, c. 3, s. 31.

When witnesses may be sworn by arbitrators.

#### SUMMARY APPLICATIONS AND PROCEEDINGS.

**183.** Upon motions founded on affidavits, either party with leave of the Court or a Judge, may make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as have been or may be made respecting such affidavits. 19 V. c. 43, s. 169.

Affidavits on new matter in answer to affidavits.

**184.** Upon the hearing of any motion or Summons, before either of the Superior Courts or any Judge thereof, having jurisdiction in the case, such Court or Judge at discretion, and upon such terms as they or he thinks reasonable, may from time to time, order to be produced, such documents as they or he thinks fit, and may order such witnesses, as they or he thinks necessary, to appear and be examined *viva voce* before such Court or Judge, or before a Judge of any County Court, or before any Clerk or Deputy Clerk of the Crown, and upon reading the report of the Judge of the County Court, or Clerk or Deputy Clerk of the Crown, (*as the case may be*), or if no such reference be made, then upon examining such documents or hearing such witnesses by the Court or Judge in which, or before whom such motion or Summons may be pending, such Court or Judge may make such

Court or Judge may, on hearing any motion or summons, order the production of documents or *viva voce* examinations.

And may make rule or order thereon.

such rule or order as may be just, and in cases within the jurisdiction of a County Court, the Court or a Judge therein having jurisdiction in the case, may order the production of documents or the attendance of witnesses before such Court or Judge, or before the Clerk of such County Court, and upon hearing such evidence or reading the report of the Clerk, may make such order as may be just in like manner as if such proceedings were had in one of the Superior Courts. 19 V. c. 90, s. 16,—19 V. c. 43, s. 170.

Power by rule or order to compel attendance of witnesses or production of documents in such cases.

**185.** Any such Court or Judge may, by such rule or order, or by any subsequent rule or order, command the attendance of the witnesses named therein for the purpose of being examined, or may command the production of any writings or other documents to be mentioned in such rule or order, and in the case of a Judge, he may, if necessary or convenient so to do, direct the attendance of any such witness to be at his own place of abode or elsewhere.

Disobedience to be a contempt of Court.

**186.** If in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, be also served together with or after the service of such rule or order, the wilful disobedience of any such rule or order shall be a contempt of Court, and the order in the case of a Judge's order having been made a rule of Court, proceedings may be forthwith had by attachment. But—1. Every person whose attendance is so required, shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon a trial; 2. And no person shall be compelled to produce under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause; 3. And the Court or Judge, or person appointed to take the examination, may adjourn the same from time to time as occasion may require. 19 V. c. 43, s. 171.

Witnesses to be paid expenses.

What documents need not be produced.

Examinations may be adjourned.

How prisoners may be brought up to give evidence.

**187.** The Sheriff, Gaoler or other Officer having the custody of any prisoner, may take such prisoner for examination under the authority of this Act by virtue of a Writ of *Habeas Corpus* to be issued for that purpose, which Writ may be issued by the Court or Judge, under such circumstances and in such manner as such Court or Judge may by law issue a Writ of *Habeas Corpus ad Testificandum*. 19 V. c. 43, s. 173.

Persons refusing to make affidavit may be compelled to appear and be examined or to produce papers.

**188.** Any party to a civil action or other civil proceeding requiring the affidavit of a person who refuses to make it, may apply by Summons for an order upon such person to appear and be examined upon oath before a Judge, or any other person to be named in the order to whom it may be most convenient to refer the examination, as to the matters concerning which he has refused to make an affidavit, and a Judge may, if he thinks fit, make such order for the attendance of

of such person for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, before the person therein appointed to take the examination, and may therein impose such terms as to such examination and the costs of the application and proceedings thereon as he thinks just, and such order shall be proceeded upon in like manner as the order mentioned in the one hundred and eighty-fourth and one hundred and eighty-fifth sections of this Act. 19 V. c. 43, s. 174.

**189.** Upon the application of any party to a cause or civil proceeding stating his belief upon affidavit that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, the Court or Judge may order that the party against whom such application is made, or if such party be a body corporate, that some named Officer of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds) to the production of such as are in his or their possession or power, and upon such affidavit being made, the Court or Judge may make such further order as is just. 19 V. c. 43, s. 175.

Provision for the discovery of documents in the possession of the adverse party.

**190.** In case the party if not a body corporate would be liable to be called and examined as a witness upon the matter, the Plaintiff with the declaration, and the Defendant with the plea, may deliver, or either of them, by leave of the Court or a Judge, at any other time, may deliver to the opposite party or his attorney, interrogatories in writing upon any matter respecting which discovery may be lawfully sought, and may require such party, or in the case of a body corporate, may require any of the Officers of such body corporate, to answer within ten days the questions in writing by affidavit to be sworn and filed in the ordinary way; and any party or Officer omitting, without just cause, sufficiently to answer, within the above time, or such extended time as the Court or Judge may allow, all questions as to which discovery may be sought, shall be deemed guilty of a contempt, and may be proceeded against accordingly. 19 V. c. 43, s. 176.

Interrogatories may be served on the opposite party who shall be required to answer them.

**191.** The application for such order shall be made upon an affidavit of the party proposing to interrogate, and of his Attorney or agent, or in the case of a body corporate, of their Attorney or agent, stating respectively that the deponent believes that the party proposing to interrogate, whether Plaintiff or Defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or of defence upon the merits, and if the application be made on the part of the Defendant, that the discovery is not

Affidavit upon which the application for leave to serve such interrogatories must be founded.

Where the party is prevented from joining in such affidavit.

sought for the purpose of delay ; but where it happens from unavoidable circumstances, that the Plaintiff or Defendant cannot join in such affidavit, the Court or a Judge may, upon affidavit of the circumstances by which the party is prevented from so joining, allow and order that the interrogatories may be delivered without such affidavit. 19 V. c. 43, s. 177.

In case of omission to answer, the party may be examined orally or commanded to produce the documents, and before whom.

**192.** In case of omission, without just cause, to answer sufficiently such written interrogatories, the Court or a Judge may direct an oral examination of the interrogated party, as to such points as they or he may direct, to be had before a Judge or any other person specially named ; and the Court or a Judge may, by such rule or order, or by any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or may command 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 seems just, and such rule or order shall have the same force and effect and may be proceeded upon in like manner as an order made under the one hundred and eighty-fifth and one hundred and eighty-sixth sections of this Act. 19 V. c. 43, s. 178.

Examination to be filed in the office of the Court.

**193.** Whenever by virtue of this Act, an examination of any party or parties, witness or witnesses, has been taken before a Judge of either of the Superior Courts of Common Law or of any County Court, or before any Officer or other person appointed to take the same, the depositions taken down by such examiner shall be returned to and kept in the office of the Court (Principal or Deputy Clerk's or Clerk's office, *as the case may be*), in which the proceedings are carried on, and office copies of such depositions may be given out, and the examinations and depositions certified under the hand of the Judge or other officer or person taking the same, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. 19 V. c. 43, s. 179.

May be used in evidence.

Examiners may make a special report to the Court.

**194.** Every Judge, Officer or other person named in any such rule or order as aforesaid, for taking examinations under this Act, may, and if need be, shall make a special report to the Court in which such proceedings are pending, touching such examination and the conduct or absence of any witness or other person thereon or relating thereto ; and the Court shall institute such proceedings and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court. 19 V. c. 43, s. 180.

Orders thereupon.

**195.** The costs of every application for any rule or order to be made for the examination of parties or witnesses by virtue of this Act, and of the rule or order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such rule or order is made. 19 V. c. 43, s. 181.

As to costs of rule and examination.

**196.** Either party may apply to the Court or a Judge for a rule or order for the inspection by the Jury or by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute, and the Court or a Judge may make such rule or order upon such terms as to costs and otherwise, as such Court or Judge may think fit; but nothing herein contained shall affect the provisions of any Act as to obtaining a view by a Jury. 19 V. c. 43, s. 172.

Inspection of real or personal property by jury, parties, or witnesses.

#### INSPECTION OF DOCUMENTS.

**197.** Either of the Superior Courts of Common Law and any County Court in which an action or legal proceeding may be pending, or any Judge thereof respectively in vacation, may, on application (and in any such action or proceeding in either of the Superior Courts, when the Attorneys for both parties reside in the same County, the Judge of the County Court of such County may on application), compel the opposite party to allow the party making the application, to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary, to take examined copies of the same, in all cases in which previous to the passing of this Act a discovery might have been obtained by Bill, or other proceeding in Equity, at the instance of the party so making application as aforesaid. 16 V. c. 19, s. 8.

When the Court or a Judge may allow inspection of documents.

#### ADMISSION OF DOCUMENTS.

**198.** Either party may call upon the other party, by notice, to admit any Document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the Documents shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge certifies that the refusal to admit was reasonable; and except in cases where the omission to give the notice is, in the opinion of the Taxing Officer, a saving of expense, no costs of proving any Document shall be allowed unless such notice has been given. 19 V. c. 43, s. 165.

Calling on parties to admit documents.

Costs.

**199.** An affidavit of the Attorney in the cause, or his Clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to such affidavit, shall be in all cases sufficient evidence of such admissions. 19 V. c. 43, s. 166.

Evidence of admissions.

Evidence of service of notice to produce.

**200.** An affidavit of the Attorney in the cause, or his Clerk, of the service of any notice to produce in respect to which notice to admit has been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served. 19 V. c. 43, s. 167.

NOTICE OF TRIAL OR OF ASSESSMENT OF DAMAGES, AND COUNTERMAND THEREOF.

Eight days' notice of trial to be given.

**201.** Eight days' notice of trial or of assessment (the first and last days being inclusive) shall be given, and shall be sufficient in all cases, whether at Bar or at *Nisi Prius*, or at the County Courts. 19 V. c. 43, s. 146,—8 V. c. 13, s. 29,—2 G. 4, c. 1, s. 36.

Four days' notice of trial to be countermanded.

**202.** Unless otherwise ordered by the Court or a Judge, or by consent, a countermand of notice of trial or assessment shall be given four days (the first and last days being inclusive) before the time mentioned in the notice of trial or assessment, unless short notice has been given, and then two days, both inclusive, before the time mentioned in the notice. 19 V. c. 43, s. 147.

NISI PRIUS RECORDS.

*Nisi Prius* records need not be sealed.

**203.** In the Superior Courts, the record of *Nisi Prius* need not be sealed, but shall be passed and signed by the Clerk or Deputy Clerk of the Crown in whose office the same is passed, and in Country causes shall be entered for trial with the Deputy Clerk of the Crown of the proper County, before noon of the Commission or opening day of the Assizes for such County; but the Judge may permit a record in any suit to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he sees fit to do so. 19 V. c. 43, s. 154.

How to be passed.

How to be indorsed.

**204.** The party entering any such record shall indorse thereon whether it be an assessment, an undefended issue or a defended issue; and the Deputy Clerk of the Crown shall make three lists and enter each Record in one of the said lists, in the order in which the Records are received by him, and in the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues not marked "Inferior Jurisdiction," and in the third list, all defended issues marked "Inferior Jurisdiction," and the Judge at *Nisi Prius* may postpone the trial of causes in the third list until all the others have been disposed of, and may call on the causes in the first list at such time and times as he finds most convenient for disposing of the business. 19 V. c. 43, s. 154.



**205.** In Town causes the Records shall be entered with the Clerk of Assize, who shall, for the purpose of receiving and entering the same, attend at the Court House on the Commission or opening day from nine in the morning until noon, after which he shall not receive any Record without the order of the presiding Judge, who shall have the same power in this respect as set forth in the two hundred and third section, and the Clerk of Assize shall make three lists as aforesaid, which shall be regulated and the business disposed of as in Country causes. 19 V. c. 43, s. 155.

How records to be entered in Town causes.

**206.** The judge presiding at the Assizes or County Court sittings, may, in his discretion, peremptorily order the business of the Court to be proceeded with, on the first day of the sitting of the Court. 14, 15 V. c. 14, s. 14.

The Judge may order proceedings peremptorily on the first day.

**207.** In the County Courts, the plaintiffs shall enter with the Clerk of such Courts, respectively, a record in the form of a *Nisi Prius* record, on or before the first day of the sitting of such Courts, and in those Courts no other *venire* than the following need be entered in the record :

How entered in County Courts.

Therefore, the Sheriff (or Coroner, as the case may be,) is commanded that he cause to come before

*Venire.*

, Judge of our said Court, at the next sitting thereof, for trials and assessments, at the Court House, in , in the said County, on the day of , in the year of Our Lord, one thousand eight hundred and , a Jury to try the said issue, (or assess the damages, as the case may be).

When there are issues in law and also in fact, or upon any assessment of damages, the above *venire* may be altered and adapted to the particular case. 8 V. c. 13, s. 30,—12 V. c. 66, s. 9.

#### TRIALS MAY BE ADJOURNED, &c.

**208.** The Court or Judge at the trial of any cause may, when deemed right for the purposes of justice, order an adjournment for such time and subject to such terms and conditions, as to costs and otherwise, as they or he may think fit. 19 V. c. 43, s. 158.

When the Court may adjourn a trial.

#### ADDRESSES OF COUNSEL, &c.

**209.** Upon the trial of any cause the addresses to the Jury shall be regulated as follows: the party who begins, or his Counsel, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, shall be allowed to address the Jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his Counsel, shall then

How addresses of Council to jury regulated.

then be allowed to open his case and also to sum up the evidence (if any), and the right to reply shall be the same as at present. 19 V. c. 43, s. 157.

#### THE EXAMINATION OF WITNESSES.

Cross-examination as to previous statements in writing.

**210.** Upon the trial of any cause, 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 shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the Judge at any time during the trial, may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit. 19 V. c. 43, s. 161.

Proof of previous conviction of a witness may be given if he denies it, &c.

**211.** A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction, and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court at which the offender was convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of *one dollar* and no more may be demanded or taken,) shall, upon proof of the identity of the witness as such convict, be sufficient evidence of his conviction, without proof of the signature or the official character of the person appearing to have signed the certificate. 19 V. c. 43, s. 162.

Attesting witness need not be called where none was required by law.

**212.** It shall not be necessary to prove by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto. 19 V. c. 43, s. 163.

Comparison of disputed writing with genuine.

**213.** Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and Jury, as evidence of the genuineness or otherwise of the writing in dispute. 19 V. c. 43, s. 164.

How far a party may discredit his own witness.

**214.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but in case the witness in the opinion of the Judge, proves adverse, such party may contradict him by other evidence, or by leave of the Judge, may prove that the witness made at other times a statement

statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. 19 V. c. 43, s. 159.

**215.** If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. 19 V. c. 43, s. 160.

Proof of contradictory statements by adverse witness.

#### AMENDMENTS AT THE TRIAL.

**216.** When upon the trial in any Civil Action, or Information for any Misdemeanor, before any Court of Record holding Plea in Civil Actions, or any Judge sitting at *Nisi Prius*, any variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, such Court or Judge may cause the Record to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party as such Court or Judge may think reasonable, and, thereupon the trial shall proceed as if no such variance had appeared. 1 W. 4, c. 1, s. 1.

Variations may be amended in civil cases and in prosecutions for misdemeanors at the discretion of the Court or Judge holding plea thereof.

**217.** When upon the trial in any civil action, or in any information in the nature of a quo warranto or proceedings on a mandamus, before any Court of Record holding Plea in civil actions, or any Judge sitting at *Nisi Prius*, any variance appears between the proof and the recital or setting forth on the record, writ or document, on which the trial is proceeding, of any contract, name or other matter, in any particular or particulars, in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot be prejudiced in the conduct of his action, prosecution or defence, the Court or Judge may cause the record, writ or document, to be forthwith amended by some officer of the Court, or otherwise, both in the part of the pleadings where the variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another Jury, or both of payment of costs and postponement, as such Court or Judge thinks reasonable; and in case such variance exists in some particular in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may be prejudiced thereby

Upon such terms respecting costs as may seem reasonable.

Or the Court may allow the record to be withdrawn.

thereby in the conduct of his action, prosecution or defence, such Court or Judge may cause the same to be amended, upon payment of costs to such opposite party, and the withdrawal of the record or postponement of the trial, as aforesaid, as the Court or Judge may think reasonable. 7 W. 4, c. 3, s. 15.

After amendment, the trial to proceed as though no such variance had appeared.

**218.** In case after any amendment as aforesaid the trial be proceeded with, the same shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance had appeared. 7 W. 4, c. 3, s. 15.

On trial at *Nisi Prius*, order for amendment to be endorsed on the postea, rolls and records to be amended accordingly.

**219.** In case such trial is had at *Nisi Prius*, the order for the amendment shall be endorsed on the Record, and returned therewith; and thereupon such papers, rolls and other records of the Court from which such record issued, as it may be necessary to amend, shall be amended accordingly, and the order for amendment shall be entered on the roll or other document upon which the trial is had. 7 W. 4, c. 3, s. 15.

Party dissatisfied with the amendment may apply for new trial.

**220.** Any party dissatisfied with the decision of the Judge at *Nisi Prius*, respecting his allowance of any such amendment, may apply to the Court from which the record issued for a new trial upon that ground; and in case such Court thinks the amendment improper, a new trial shall be granted accordingly, on such terms as the Court may think fit, or the Court shall make such other order as to them may seem meet. 7 W. 4, c. 3, s. 15.

Instead of amendment, the Judge may direct the jury to find facts according to the evidence, and if variance be immaterial, Court may give judgment according to the merits.

**221.** In any such case of variance, the Court or Judge instead of causing the record to be amended as aforesaid, may direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on the record; and notwithstanding the finding on the issue joined, if the Court in which the action is pending thinks the variance immaterial to the merits of the case, and the mistatement such as could not have prejudiced the opposite party in the conduct of the action or defence, such Court shall give judgment according to the very right and justice of the case. 7 W. 4, c. 3, s. 16.

The Courts may and must make all such amendments in any civil proceedings as may be necessary to full justice.

**222.** The Courts and every Judge thereof, and any Judge sitting at *Nisi Prius*, or for the trial of causes, may, at all times, amend all defects and errors in any proceeding in civil causes, whether there is any thing in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge seems fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made. 19 V. c. 43, s. 291.

## COSTS OF THE DAY.

**223.** The Act of the Parliament of Great Britain, passed in the fourteenth year of the Reign of King George the Second, intituled, *An Act to prevent inconveniences from delays of causes after issue joined*, so far as the same relates to judgment as in case of a nonsuit, shall not be in force in Upper Canada. 19 V. c. 43, s. 149.

The British Act of 14 G. 2, c. 17, not to be in force in U. C.

**224.** In case a notice of trial or assessment be given and not duly countermanded, and in case the party who gave the notice of trial or assessment do not bring the issue to trial or assess the damages, such party shall for such default pay the costs of the day to the party to whom such notice was given. 2 G. 4, c. 1, s. 36,—19 V. c. 43, s. 148.

Costs of the day provided for.

**225.** The rule for costs of the day for not proceeding to trial or assessment pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion made in Court. 19 V. c. 43, s. 148.

Rule for costs of the day on affidavit.

## TOWN AND COUNTRY CAUSES.

**226.** In the Superior Courts, causes in which the venue is laid in the United Counties of York and Peel, or in the County of York alone, when no longer united with the said County of Peel, shall be called Town causes, and all other causes shall be called Country causes. 19 V. c. 43, s. 150.

Town causes and Country causes distinguished.

**227.** In case issue be joined in any cause, in either of the Superior Courts, and the Plaintiff neglects to bring such issue on to be tried, at the times following, that is to say, in Town causes where issue is joined in, or in the vacation before Hilary, Trinity or Michaelmas Term, and the Plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such term, or if issue be joined in or in the vacation before Easter Term, then if the Plaintiff neglects to bring the issue on to be tried at or before the first Assizes after Easter Term,—and in Country causes where issue is joined in, or in the vacation before Hilary or Trinity Term, and the Plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such Term, or if issue be joined in, or in the vacation before Easter or Michaelmas Term,—and the Plaintiff neglects to bring the issue on to be tried at or before the first Assizes after such Term; or in case issue be joined in any cause in any County Courts, if the Plaintiff neglects to bring the issue on to be tried at the first sittings of the Court after issue joined, then upon such neglect in any of the Courts respectively, and whether the Plaintiff has in the meantime given notice of trial or not, the Defendant may give twenty days' notice to the Plaintiff, to bring the issue on to be tried at the Assizes, or sittings of

If plaintiff neglects to go to trial within a certain time after issue joined, Defendant may give notice to plaintiff to bring issue to trial, &c.

of the County Court next after the expiration of the notice; and if the Plaintiff afterwards neglects to give notice of trial for such Assizes or Sittings, or to proceed to trial as required by the notice given by the Defendant, the Defendant may suggest on the record that the Plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if untrue,) and the Defendant may sign Judgment for his costs; but the Court or a Judge may extend the time for proceeding to trial with or without terms; and no rule for trial by proviso shall hereafter be necessary. 19 V. c. 43, s. 151,—19 V. c. 90, s. 15.

#### TRANSMISSION AND DELIVERY OF NISI PRIUS RECORDS, &c.

On receiving notice, Deputy Clerks of the Crown to transmit *Nisi Prius* record to Toronto, sealed up, &c.

Failure to be a contempt.

After such notice, a party may move although the record be not in Court: first filing affidavit of notice.

When and how Deputy Clerks shall deliver record or exhibits to Attorney or parties.

Attorney entitled to postea to prepare the same.

**228.** Every Deputy Clerk of the Crown shall, within twenty-four hours after notice in writing delivered to him in his office, for that purpose, and payment of the necessary postage, enclose, seal up and transmit by post to the proper principal office at Toronto, addressed to the Clerk thereof, any record of *Nisi Prius* in his custody mentioned in such notice, together with all exhibits filed at the trial, and in default thereof, he may be adjudged guilty of a contempt of Court, and be dealt with in the discretion of the Court accordingly; and if, after such notice, the *Nisi Prius* record be not in Court at the time of moving any rule requiring a reference thereto, the party moving may, on filing an affidavit of the service of notice, and that the record, on search, has not been found in the said principal office, be allowed by the Court to move such rule without the production of the Record of *Nisi Prius*. 14, 15 V. c. 118, s. 6,—20 V. c. 57, s. 3.

**229.** The said Deputy Clerks of the Crown shall, after the time for the moving for new trials has expired, deliver to the Attorney of the party entitled to the Postea, any record in their custody upon getting a receipt for the same, but they shall not deliver to any party any Exhibit filed, without a Judge's order to that effect. 14, 15 V. c. 118, s. 2.

**230.** After verdict or non-suit, the Attorney of the party entitled to the Postea in the cause shall prepare the same. 14, 15 V. c. 118, s. 4.

#### RULES FOR NEW TRIALS, OR TO ENTER A VERDICT OR NON SUIT.

Grounds to be stated in Rule *Nisi* for new trial.

Court may allow amendments.

**231.** In every rule *Nisi* for a new trial or to enter a verdict or non-suit, the grounds upon which such rule has been granted shall be shortly stated therein; but in case of any omission, the Court may permit the rule to be amended and served again on such terms as are deemed reasonable. 19 V. c. 43, s. 168.

**232.** If a new trial be granted on the ground that the verdict is against evidence, the costs of the first trial shall abide the event, unless the Court otherwise order. 19 V. c. 43, s. 168.

When costs to abide the event.

**233.** In cases in the County Courts, verdicts or non-suits may be set aside and new trials granted, or Judgments be arrested, upon the like grounds and principles as in the Superior Courts, but no motion for any such purpose shall be entertained after the rising of the Court on the second day<sup>5</sup> of the term ensuing the rendering of the verdict or the non-suit. 8 V. c. 13, s. 43.

County Courts may set aside non-suits or grant new trials.

#### ARREST OF JUDGMENT, AND JUDGMENT *non obstante veredicto*.

**234.** Upon any motion made in arrest of Judgment or for Judgment *non obstante veredicto* by reason of the non averment of some material fact or facts, or of some material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may, by leave of the Court, suggest the existence of the omitted fact or facts or other matter which if true would remedy the alleged defect; and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a Judge may allow, and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action. 19 V. c. 43, s. 217.

Proceedings on motions in arrest of judgment or for judgment *non obstante*.

Suggestion of facts by party whose pleading is objected to.

**235.** If the fact or facts suggested be admitted or be found to be true, the party who suggested them shall be entitled to such Judgment as he would have been entitled to if such fact or facts or allegations had been originally stated in the pleading and proved or admitted on the trial, together with the costs of and occasioned by the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled. 19 V. c. 43, s. 218.

If suggestion be found true.

If untrue.

#### CONFESSIONS, FILING THE SAME AND JUDGMENTS THEREON.

**236.** Final judgment upon a *cognovit actionem* or Warrant of Attorney to confess judgment given or executed before the suing out of any process, may, at the option of the Plaintiff, be entered in any office of either of the said Superior Courts, and in like manner and like circumstances final judgment may be entered on a *cognovit actionem* or Warrant of Attorney to confess judgment for an amount not exceeding four hundred dollars, in any County Court, unless some particular office or some particular County Court for that purpose be expressly stated in the *cognovit* or warrant. 19 V. c. 90, s. 6,--19 V. c. 43, s. 10.

As to judgment on *cognovits*.

Confessions  
and *cognovits*  
given after this  
Act to be regis-  
tered.

**237.** No confession of judgment or *cognovit actionem* shall be valid or effectual to support any judgment or writ of execution, unless, within one month after the same has been given, the same, or a sworn copy thereof, be filed of record in the proper office of the Court in the County in which the person giving such confession of judgment or *cognovit actionem* resides; and a book shall be kept in every such office to be called the Cognovit Book, in which shall be entered the names of the Plaintiff and Defendant in every such confession or cognovit, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such confession or cognovit, or copy thereof, is filed in the said office; and such book shall be open to inspection by any person during office hours, on the payment of a fee of twenty cents. 20 V. c. 57, s. 17.

#### JUDGMENT AND WRITS OF EXECUTION.

When final  
judgment may  
be entered.

**238.** The party in whose favour a verdict has been rendered, or when the Plaintiff has been non-suited at the trial, the Defendant may, in the Superior Courts, enter final judgment on the fifth day, and in the County Courts on the third day of the Term next following such verdict or non-suit, and thereupon sue out execution. 19 V. c. 43, ss. 182, 184,--S V. c. 13, s. 42.

After verdict or  
non-suit, Judge  
may certify  
that execution  
ought to issue  
forthwith.

**239.** In case the Plaintiff or Demandant in any action or suit becomes non-suit, or a verdict be given or damages assessed for the Plaintiff or Demandant, Defendant or Tenant, the Judge before whom any issue joined in any such action is tried, or before whom damages are assessed, may certify under his hand on the back of the Record, at any time before the end of the Sittings or Assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification, and in case of a verdict or damages assessed for the Plaintiff, then either for the whole or any part of the sum found by such verdict or assessment, in all which cases costs may be taxed in the usual manner, and judgment may be entered and execution issued forthwith or afterwards on any day in vacation or term, according to the terms of such certificate, and the *postea* with such certificate as a part thereof, shall be entered of record as of the day on which the judgment is signed; but the party entitled to such judgment may postpone the signing thereof. 19 V. c. 43, s. 182,--S V. c. 13, s. 42.

Taxing costs.

Execution.

Entering  
*postea*.

Sum of money  
recovered to be  
awarded gene-  
rally.

**240.** In all actions where the Plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages. 19 V. c. 43, s. 144.

**241.**



**241.** Every judgment signed by virtue of the two hundred and thirty-ninth section may be entered and recorded as the judgment of the Court wherein the action is pending, though the Court may not be sitting on the day of the signing thereof, and shall be as effectual as if the same had been signed and recorded according to the course of the common law. 19 V. c. 43, s. 183.

Entry and record of judgment.

**242.** Notwithstanding any Judgment signed or recorded or execution issued by virtue of the two hundred and thirty-ninth and two hundred and forty-first sections, the Court in which the action is brought may order such Judgment to be vacated and execution to be stayed or set aside, and may enter an arrest of Judgment or grant a new trial or a new assessment of damages, as justice may appear to require, and thereupon the party affected by such Writ of Execution shall be restored to all that he may have lost thereby, in like manner as upon the reversal of a Judgment by Writ of Error, or otherwise as the Court may think fit to direct; but any application to vacate such Judgment must be made within the first four days of the Term in the Superior Courts, and within the first two days in the County Courts next after the rendering of the verdict. 19 V. c. 43, s. 184.

Judgment may be set aside, &c.

Consequence of its being so.

**243.** Every Deputy Clerk of the Crown and Pleas and every County Court Clerk shall keep a regular book, in which shall be minuted and docketed all Judgments entered by such Deputy Clerk or County Court Clerk, and such minute shall contain:

Deputy Clerk to keep books for minuting all judgments, &c.

1. The name of every Plaintiff and Defendant;
2. The date of the issue of the first process;
3. The date of the entry of Judgment;
4. The form of action, and the amount recovered, exclusive of costs;
5. The amount of costs taxed, and
6. Whether such Judgment has been entered on verdict, default, confession, *non pros*, non suit, discontinuance, or how otherwise. 19 V. c. 43, s. 15,—19 V. c. 90, s. 7.

**244.** Within three months after the entry of each Judgment, by a Deputy Clerk of the Crown, he shall transmit to the principal Clerk of the proper Court in Toronto, every such Judgment-roll and all papers of or belonging thereto, and such Judgment shall be also docketed in the principal office, and in case in any of the Courts the original Judgment-roll happens to be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in any

Judgments to be also docketed at Toronto.

If the original roll be lost, copies may be used.

any of such docket books, certified by the Clerk or Deputy Clerk of the Crown, or by the Clerk of the County Court having such book in his custody, shall be evidence of all matters therein set forth and expressed. 19 V. c. 43, s. 15,—19 V. c. 90, s. 7.

Deputy Clerks may give certificates of judgments entered by them, which certificates may be registered in the proper County and bind lands.

**245.** When any such Deputy or any County Court Clerk enters up Judgment in any of the said Courts, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him, of such Judgment, containing the like particulars as are required in certificates of Judgments given by the Clerks of the Crown and Pleas, and such certificate may be registered in the Registry Office of any County in Upper Canada, and the same certificate and the registration thereof shall have like force and effect in binding or operating as a charge upon lands, tenements and hereditaments situated within such County, as if the certificate had been granted by one of the Clerks of the Crown and Pleas at Toronto. 19 V. c. 43, s. 15,—19 V. c. 90, s. 7.

Writs of Execution.

**246.** All Writs of Execution may issue from the offices wherein the Judgment has been entered, and in the Superior Courts, after the transmission of the roll to the principal office, such Writs may, at the option of the party entitled thereto, be issued out of such principal office. 13, 14 V. c. 52, s. 3,—19 V. c. 43, s. 11.

Writ to Sheriff of the County where the *venue* is laid may be dispensed with.

**247.** It shall not be necessary to issue any Writ directed to the Sheriff of the County in which the *venue* is laid, but Writs of Execution may issue at once into any County and be directed to and executed by the Sheriff of any County without reference to the County in which the *venue* is laid, and without any suggestion of the issuing of a prior Writ into such County. 19 V. c. 43, s. 186.

It shall still be necessary to sue out execution in the proper County to charge bail.

**248.** Where, at the time this Act takes effect, it is necessary to sue out process of execution against the person into any particular County in order to charge bail, the same shall continue to be necessary, notwithstanding any thing contained in this Act. 7 W. 4, c. 3, s. 33.

Duration of Writs of Execution.

**249.** Except Writs of *Capias ad Satisfaciendum*, every Writ of Execution shall bear date and be tested on the day on which it is issued, and shall remain in force for one year from the teste, (and no longer if unexecuted,) unless renewed, but such Writ may, at any time before its expiration, be renewed by the party issuing it, for one year from the date of such renewal, by being marked in the margin, with a memorandum to the effect following: "Renewed for one year from the                    day of                   ," signed by the Clerk or Deputy Clerk of the Crown or Clerk of the County Court who issued such Writ, or by his successor in office; and a  
Writ

Renewal.

Writ of Execution so renewed shall have the effect and be entitled to priority according to the time of the original delivery thereof to the Sheriff. 19 V. c. 43, s. 189. Effect of renewal.

**250.** The production of a Writ of Execution, marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed. 19 V. c. 43, s. 190. Evidence of renewal.

**251.** In case any suit of the proper competence of a Division Court be brought in a Superior Court, or in a County Court, no execution against lands shall issue, unless the amount of the judgment exceeds forty dollars. 13, 14 V. c. 53, s. 78. When lands not liable unless the judgment exceeds forty dollars.

#### GOODS AND LANDS NOT TO BE JOINED IN THE SAME EXECUTION.

**252.** Goods and chattels, lands and tenements shall not be included in the same Writ of Execution, nor shall any execution issue against lands and tenements until the return of an execution against goods and chattels; nor shall the Sheriff expose the lands to sale within less than twelve months from the day on which the writ is delivered to him. 43 G. 3, c. 1, ss. 1, 2. Goods and lands not to be included in the same Writ, and Writs against lands not to be returnable or executed in less than 12 months.

#### INVENTORY AND SALE OF GOODS.

**253.** In case any goods or chattels be seized in execution under a writ issued out of either of the Superior Courts of Common Law or of any County Court, the Sheriff, his deputy or officer, who seized the same, shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized; and no Sheriff or other officer shall sell any effects under a Writ of Execution until he has, previously thereto, given at least eight days' public notice in writing of the time and place of sale at the most public place in the Municipality where such effects have been taken in execution. 51 G. 3, c. 6, ss. 2, 3,—49 G. 3, c. 4, s. 5. Sheriff to deliver inventory to the owner, &c.

#### EXEMPTION.

**254.** The necessary wearing apparel, the bed and bedding, and one stove and the cooking utensils, of a party against whom any Writ of Execution issues, or of his family, and also the tools and implements of his trade to the value of sixty dollars, shall be protected from seizure under any execution from either of the said Superior Courts or from any County Court. 20 V. c. 57, s. 23,—See 22 V. c. 96, s. 12. Apparel, tools, &c., exempted from execution.

#### STOCK MAY BE SOLD.

**255.** The stock held by any person in any bank or in any corporation or company in Upper Canada, having a joint transferable stock, may be taken and sold in execution in the same Bank stock and other stocks may be sold in execution.

same manner as other personal property of a debtor. 2 W. 4, c. 6, s. 1,—See 12 V. c. 73, s. 1.

To be transferred on the certificate of the Sheriff.

**256.** Upon the production of a certificate under the hand and seal of office of the Sheriff, declaring to whom any stock taken upon an execution has been sold by him, the cashier of the bank, or the proper officer of any other such company or corporation, the stock of which has been sold, shall transfer such stock from the name of the original stockholder to the person named in the certificate as the purchaser under the execution; and such purchaser shall thenceforth be entitled to receive all dividends and profits arising from such stock, and in all other respects be considered in the place of the former stockholder. 2 W. 4, c. 6, s. 2.

The interest of mortgagors may be sold in execution.

**257.** The Sheriff or other officer to whom any Writ of *Fieri Facias* against the lands and tenements of any Mortgagor of Real Estate is directed, may seize or take in execution, sell and convey, (in like manner as any other Real Estate might be seized or taken in execution, sold and conveyed,) all the legal and equitable interest of such Mortgagor in the Mortgaged lands and tenements. 12 V. c. 73, s. 1.

Effect of such sale.

**258.** The effect of such seizure or taking in execution, sale and conveyance, of any such Mortgaged lands and tenements, shall be to vest in the purchaser, his heirs and assigns, all the legal and equitable interest, of the Mortgagor therein at the time the Writ was placed in the hands of the Sheriff or other Officer to whom the same is directed as well as at the time of such sale, and to vest in such purchaser, his heirs and assigns, the same rights as such Mortgagor would have had, if such sale had not taken place; and the purchaser, his heirs or assigns, may pay, remove or satisfy, any Mortgage, charge, or lien, which at the time of such sale existed upon the lands or tenements so sold, in like manner as the Mortgagor might have done, and thereupon the purchaser, his heirs and assigns shall acquire the same estate, right and title, as the Mortgagor would have acquired, in case the payment, removal or satisfaction had been effected by the Mortgagor, and on payment of the Mortgage money to the Mortgagee by the purchaser, his heirs or assigns, the Mortgagee, his heirs, or assigns shall, if required, give to such purchaser, his heirs or assigns, at his or their charge, a certificate of payment or satisfaction of such mortgage, which certificate may be in the following form, that is to say:

To the Registrar of the County of

I, A. B., of \_\_\_\_\_, do certify that C. D., of \_\_\_\_\_, who hath become the purchaser of the interest of E. F., of \_\_\_\_\_, hath satisfied all money due upon a certain Mortgage made by the said E. F. to me, bearing date the

day

day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and registered at \_\_\_\_\_ of the clock in the forenoon (as the case may be) of the \_\_\_\_\_ day of \_\_\_\_\_, in the same year (or as the case may be,) and that such mortgage is there-fore discharged. As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

(Signed,) A. B.

E. H. of \_\_\_\_\_ ; }  
G. H. of \_\_\_\_\_ ; } Witnesses.

And such certificate shall be of the like effect, and shall be acted upon by Registrars and others to the same extent as if the same had been given to the Mortgagor, his heirs, executors, administrators or assigns. 12 V. c. 73, s. 2.

**259.** Any Mortgagee of lands and tenements so sold, or the heirs or assigns of such Mortgagee, (being or not being Plaintiff or Defendant in the judgment whereon the Writ of *Fieri Facias* under which such sale takes place has issued) may be the purchaser at such sale, and shall acquire the same estate, interest and rights thereby as any other purchaser; but in the event of the Mortgagee becoming such purchaser, he shall give to the Mortgagor a release of the mortgage debt, and if any other person becomes such purchaser, and if the Mortgagee enforces payment of the Mortgage debt against the Mortgagor, then such purchaser shall repay the amount of such debt and interest to the Mortgagor, and in default of payment thereof within one month after demand, the Mortgagor may recover from such purchaser the amount of such debt and interest, in an action for money had and received, and until such debt and interest have been repaid to the Mortgagor, he shall have a charge therefor upon the mortgaged lands. 12 V. c. 73, s. 3.

Mortgagee may become purchaser at Sheriff's sale.

**260.** On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom the same is directed, may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. 20 V. c. 3, s. 11,—and see 12 V. c. 73, s. 1.

The interest of a mortgagor in goods mortgaged may be sold in execution.

#### MONEY AND SECURITIES.

**261.** The Sheriff or other officer, having the execution of any Writ of *Fieri Facias* against goods sued out of either of the Superior Courts of Common Law, or out of any County Court, or of any precept made in pursuance thereof, shall seize any money or bank-notes (including any surplus of a former execution against the debtor), and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money, belonging to the person against whose effects

Sheriff may seize money and securities for money.

the

Money seized to be paid over to party taking out the execution.

the Writ of *Fieri Facias* has issued, and shall pay or deliver to the party who sued out the execution, any money or bank-notes so seized, or a sufficient part thereof, and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, as a security or securities for the amount by the writ and indorsement thereon directed to be levied, or so much thereof as has not been otherwise levied or raised, and such Sheriff or other officer may sue in his own name for the recovery of the sums secured thereby, when the time of payment thereof has arrived. 20 V. c. 57, s. 22.

Payment thereon to the Sheriff to be valid.

**262.** The payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution, (*as the case may be,*) from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security. 20 V. c. 57, s. 22.

Sheriff to pay over moneys so paid to him.

**263.** The Sheriff or other officer shall pay over to the party who sued out the writ, the money so recovered, or a sufficient sum to discharge the amount by the writ directed to be levied.

Surplus to be paid to the party against whom the execution issues.

**264.** If, after satisfaction of the amount, together with Sheriff's poundage and expenses, any surplus remains in the hands of the Sheriff or other officer, the same shall be paid to the party against whom the writ issued.

Sheriff not bound to sue until secured.

**265.** No Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify such Sheriff or officer from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof; and the expense of such bond may be deducted out of any money recovered in such action. 20 V. c. 57, s. 22.

#### PRIORITY OF EXECUTIONS.

Cases of execution from County Courts and Division Courts at the same time against the same debtor provided for.

**266.** Where a writ against the goods of a party has issued from any of such Courts, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery to be executed of the writ to the Sheriff, or of the warrant to the Bailiff of the Division Court; and the Sheriff, on demand, shall, by writing signed by him or his deputy or a clerk in his office, inform the Bailiff of the precise time of such delivery of the writ, and the Bailiff, on demand, shall shew his warrant to any Sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant shewing

shewing the precise time of the delivery of the same to such Bailiff, shall respectively be sufficient justification to any Bailiff or Sheriff acting thereon. 20 V. c. 57, s. 24.

NOTICE OF SALE OF LANDS.

**267.** Before the sale of real estate upon execution against lands and tenements, the Sheriff shall publish an advertisement of sale in the *Canada Gazette*, at least six times specifying : Notice of sale of lands in execution.

First—The particular property to be sold ;

Second—The names of the Plaintiff and Defendant ;

Third—The time and place of the intended sale ;

and he shall, for three months next preceding the sale, also publish such advertisement in a public newspaper of the County in which the lands lie, or shall for three months put up and continue a notice of such sale in the office of the Clerk of the Peace, or on the door of the Court House or place in which the Court of General Quarter Sessions for such County is usually holden ; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day. 2 G. 4, c. 1, s. 20.

**268.** The advertisement in the Official Gazette of any lands for sale under a Writ of Execution, during the currency of the Writ, (giving some reasonably definite description of the land in such advertisement) shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the Writ has become returnable. 19 V. c. 43, s. 188. Notice in Gazette shall constitute incipient execution.

**269.** If the Sheriff goes out of office during the currency of any Writ of Execution against lands, and before the sale, such Writ shall be executed and the sale and conveyance of the lands be made by his successor in office, and not by the old Sheriff ; but any Sheriff may, after he has gone out of office, execute any Deed or Conveyance necessary to effectuate and complete a sale of lands made by him while in office. 19 V. c. 43, s. 187. If Sheriff leaves office, his successor to execute Writs against lands.

POUNDAGE.

**270.** Upon any execution against the person, lands or goods, the Sheriff may, in addition to the sum recovered by the judgment, levy the poundage fees, expenses of the execution, and interest upon the amount so recovered from the time of entering the judgment. 2 G. 4, c. 1, s. 19,—9 V. c. 56, s. 3.—See 19 V. c. 90, s. 24, and *Tariff of fees*, 18th July, 1857. Sheriff's poundage.

**271.** In case a part only be levied on any execution against goods and chattels, the Sheriff shall be entitled to poundage, Limited to amount realized.  
only

only on the amount so levied, whatever be the sum endorsed on the Writ, and in case the real or personal estate of the defendant be seized or advertised on an execution but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money be actually levied on such execution, the Sheriff shall not receive poundage, but fees only for the services actually rendered; and the Court out of which the writ issued, or any Judge thereof in vacation, may allow him a reasonable charge for any service rendered in respect thereof, in case no special fee be assigned in any table of costs. 9 V. c. 56, s. 2.

## WRITS OF CAPIAS AD SATISFACIENDUM.

Teste and date  
of writs of *Ca.*  
*Sa.*

**272.** Every Writ of *Capias ad Satisfaciendum* shall be tested and bear date the day on which it issues, and shall continue in force two months from the day of the date thereof inclusive and no longer, and no such writ shall be renewed, but on the expiration thereof a new Judge's order may be obtained in the manner directed by the twelfth section of the Act respecting arrest and imprisonment for debt.

If to fix bail.

**273.** Writs of Execution to fix bail may be tested and returnable in vacation. 19 V. c. 43, s. 192.

On what au-  
thority Sheriffs  
may discharge  
debtors from  
custody.

**274.** A written order under the hand of the Attorney in the cause by whom any Writ of *Capias ad Satisfaciendum* has been issued, shall justify the Sheriff, Gaoler or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such Attorney professes to act has given written notice to the contrary to such Sheriff, Gaoler or person in whose custody the opposite party may be, but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor, and nothing herein contained shall justify any Attorney in giving such order for discharge without the consent of his client. 19 V. c. 43, s. 191.

## RULES TO RETURN WRITS, AND DUTY OF SHERIFFS AND CORONERS THEREON.

Deputy Clerks  
of the Crown  
and County  
Court Clerks  
may issue rules  
to return writs,  
&c.

**275.** Every Deputy Clerk of the Crown and Pleas, and in County Courts the Clerk, may sign and issue rules on any Sheriff or Coroner to return writs and process issued out of the office of such Deputy or County Court Clerk and directed to such Sheriff or Coroner; and each Sheriff or Coroner shall, in case of his being served with any such rule, return such writs to the office from which the same issued. 19 V. c. 43, s. 14.

Sheriff not  
entitled to fees  
on Writs un-  
less returned in  
4 days after

**276.** In case a writ delivered to a Sheriff for service or execution has remained in his hands fifteen days, and in case he has not been delayed from returning the same by an order in writing from the party from whom he received the writ, his attorney or



or agent, and in case he be afterwards ruled to return such writ, he shall not be entitled to any fees thereon unless, within four days after being so ruled, he returns or encloses the writ by post to such party, his attorney or agent. 3 W. 4, c. 8, s. 18.

being ruled if delivered 15 days before such ruling.

**277.** In the taxation of costs no fees shall be allowed for the mileage or service of Writs of Summons or other *mesne* process unless served and sworn in the affidavit of service to have been served by the Sheriff, his Deputy or Bailiff, being a literate person (or by a Coroner when the Sheriff is a party to the suit,) nor unless a return of the Sheriff or Coroner (*as the case may be*) be endorsed thereon except in cases as provided in the eighteenth section of this Act. 19 V. c. 43, s. 32,—20 V. c. 57, s. 28.

When mileage not allowed on service of *mesne* process unless served by Sheriff.

**278.** In case at any time after the proper day for the return of any writ, or for the performance of any other duty or matter relating to the office of Sheriff or Coroner, application be made for a rule, or a rule be granted on him by any Court, for the return of the writ or performance of the duty or matter, he shall, unless the Court or a Judge otherwise orders, pay to the party making the application or obtaining the rule, all taxable costs thereon. 3 W. 4, c. 8, s. 17.

When Sheriffs liable to costs for not returning Writs.

**279.** In case it appears to the Court or a Judge that the application for a rule is frivolous or vexatious, the Court or Judge may, on discharging the application, order that the Sheriff or Coroner shall be paid all taxable costs and expenses of opposing the same. 3 W. 4, c. 8, s. 17.

If application frivolous, may be allowed costs.

**280.** In case a writ be issued out of any Court of Record directed to a Sheriff or Coroner and be delivered to him for execution, and in case such Sheriff or Coroner be ordered to return the same by any rule or order of the Court out of which the writ issued, and does not make such return within the time specified in the order, any Judge having jurisdiction in the matter may grant to the Plaintiff or Defendant in the writ (*as the case may be*) a summons upon the Sheriff or Coroner to shew cause why a Writ of Attachment should not issue against him; and the same or any other Judge having such jurisdiction may, at the return of the summons, discharge the same, or order a Writ of Attachment to issue against the Sheriff or Coroner, or limit a further period after which such Writ of Attachment shall issue unless a return be made in the meantime, or otherwise order, as to such Judge seems proper under the circumstances. 7 V. c. 33, s. 1.

Attachments for non-return of Writs may be issued unless further time for return granted.

**281.** In case such writ be not returned at the expiration of any further time limited by the order of the Judge, as mentioned in the last preceding section, and in case the service of such order and the failure of the Sheriff or Coroner to return the writ be proved,

If Writ not returned within extended time given by Judge, attachment may issue in

term or vacation.

proved, the Court in term time, or any Judge having jurisdiction as aforesaid in vacation, may order a Writ of Attachment to issue forthwith against the Sheriff or Coroner. 7 V. c. 33, s. 2.

Judge in Chambers may order issue of Writs of *Habeas Corpus*.

**282.** Upon the return of "*Cepi Corpus*" to any attachment in vacation, any Judge having jurisdiction as aforesaid direct the issue of a Writ of "*Habeas Corpus*," and thereupon may exercise the same powers and discretion in committing the Sheriff or Coroner to close custody, or in admitting him to bail, and in all other respects, as are possessed by the said Courts respectively in Term time. 7. V. c. 33, s. 3.

Such Writs may be returnable in term or vacation.

**283.** All Writs of Attachment and "*Habeas Corpus*" issued against any Sheriff or Coroner may be returnable on a day certain in vacation to be fixed by order of the Judge or Court ordering the same; and such return day shall not be more than thirty days from issuing the writ, and when the writ is returnable in vacation, it shall, when issued out of the Superior Courts, be made returnable before the presiding Judge in Chambers, and when issued out of any County Court, before the Judge thereof. 7 V. c. 33, s. 4.

Sheriff or Coroner not returning Writs within three months after attachment executed, to forfeit office.

**284.** Any Sheriff or Coroner who does not return any writ issued out of any of the said Courts within three months after a Writ of Attachment for not returning the same has been executed against him, shall forfeit his office; and if he continues after the expiration of such period to exercise the duties of his office without having been duly re-appointed to the same, he shall forfeit and pay the sum of four hundred dollars to any person who sues therefor in any of Her Majesty's Courts of Record having competent jurisdiction; but no such suit shall be brought after the expiration of twelve months from the time such forfeiture was incurred. 7 V. c. 33, s. 5.

Costs of proceedings to enforce return of Writs to be in discretion of Judge.

**285.** The cost of any proceedings to enforce the return of process shall be in the discretion of the Court or of the presiding Judge, who may order them to be paid by the Sheriff or Coroner, or by either of the parties in the cause. 7 V. c. 33, s. 6.

Act not to interfere with existing remedies.

**286.** The two hundred and eightieth and following Sections of this Act shall not be construed to interfere with or take away any remedy which existed before the passing thereof. 7. V. c. 33, s. 7.

#### EXAMINATION OF DEBTORS—ATTACHMENT OF DEBTS.

Examination of a judgment debtor as to what debts are due to him.

**287.** Any creditor who has obtained a judgment in either of the Superior Courts may apply to the Court or a Judge thereof for a rule or order that the judgment debtor shall be orally examined before the Judge of any County Court or before any Clerk or Deputy Clerk of the Crown, or before any other person

to be specially named, as to any and what debts are owing to him, and the Court or Judge may make such rule or order for the examination of the Judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner, as in case of an oral examination of an opposite party, and in the case of a judgment in any County Court, such County Court or the Judge or acting Judge thereof may exercise similar jurisdiction in relation to such judgment, and in like manner as might be exercised by one of the Superior Courts sitting in Banc. 19 V. c. 90, s. 17,—19 V. c. 43, s. 193.

**288.** Upon the *ex parte* application of such Judgment creditor, either before or after such oral examination, and upon his affidavit or that of his Attorney, stating that Judgment has been recovered and that it is still unsatisfied and to what amount, and that some third person is indebted to the Judgment debtor and is within the jurisdiction, a Judge of any of the said Courts (*as the case may be*) may order that all debts owing by or accruing from such third person to the Judgment debtor shall be attached to answer the Judgment. 19 V. c. 90, s. 17,—19 V. c. 43, s. 194.

Judge may on application and affidavit, order attachment of such debts.

#### PROCEEDINGS AGAINST GARNISHEES.

**289.** Such third person is hereinafter called the garnishee, and service upon him of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Judge directs, shall bind such debts in his hands, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or some officer of the Court to be specially named by such Judge, to show cause why he should not pay the Judgment creditor the debt due from him to the Judgment debtor, or so much thereof as may be sufficient to satisfy the Judgment debt; but the two last preceding and this section shall not apply in actions commenced or carried on against a Defendant as an absconding debtor. 19 V. c. 90, s. 17,—19 V. c. 43, ss. 194 and 195.

And may order the garnishee to appear, &c.

**290.** If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt. 19 V. c. 43, s. 196.

When prompt execution may issue against garnishee.

**291.** If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor may proceed against the garnishee,

If garnishee disputes his liability.

garnishee, by writ calling upon him to shew cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit, and the proceedings upon such suit shall be the same, or as nearly as may be, as upon a Writ of Revivor issued under this Act. 19 V. c. 43, s. 197.

When garnishee to appear before County Court Judge in cases in Superior Courts.

**292.** In cases in the Superior Courts, when the amount claimed as due from any garnishee is within the Jurisdiction of a County or Division Court, the order to appear made under the two hundred and eighty-ninth section shall be for the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides—at some day and place within his County to be appointed in writing by such Judge—and written notice thereof shall be given to the garnishee at the time of the service of the order. 20 V. c. 57, s. 16.

Execution from County or Division Court, if the garnishee does not dispute the debt.

**293.** If the garnishee does not forthwith pay the amount due by him, or an amount equal to the Judgment debt, and does not dispute the debt due or claimed to be due from him to the Judgment debtor, or if he does not appear before the Judge named in the order at the day and place appointed by such Judge, then such Judge on proof of service of the order and appointment having been made four days previous, may make an order directing execution to issue out of the County Court or out of a Division Court according to the amount due, and such order shall without any previous writ or process, be sufficient authority for the clerk of either of such Courts to issue execution for levying the amount due from such garnishee. 20 V. c. 57, s. 16.

The Sheriff or Bailiff to levy the amount with costs and fees.

**294.** The Sheriff or Bailiff to whom such Writ of Execution is directed, shall levy the amount mentioned in the said execution, towards satisfaction of the Judgment debt, together with the costs of the proceeding, to be taxed, and his own lawful fees, according to the practice of the Court from which such execution has issued. 20 V. c. 57, s. 16.

Proceedings if he disputes the debt.

**295.** If the garnishee disputes his liability, then such Judge of the County Court may order that the judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court, as the case may require, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. 20 V. c. 57, s. 16.

Proceedings in County Courts when amount within the jurisdiction of Division Courts.

**296.** In cases in the County Courts when the amount claimed as due from any garnishee is within the Jurisdiction of a Division Court, the order to be made under the two hundred and eighty-ninth section, shall be for the garnishee to appear before the Clerk of the Division Court within whose Division the

the garnishee resides, at his office, at some day to be appointed in the said order by the Judge of the County Court; and the said order shall be served on such garnishee, and if the garnishee do not forthwith pay the amount due by him or an amount equal to the judgment debt, and do not dispute the debt due or claimed to be due from him to the judgment debtor, or if he do not appear before the Division Court Clerk named in the order at his office at the day appointed by such Judge, then such Judge, on proof of the service of the order having been made four days previous, may make an order directing execution to issue out of the Division Court of the Division in which such garnishee resides, according to the amount due, and such order shall without any previous summons or process, be sufficient authority for the Clerk of the said Division Court to issue execution to levy the amount due from such garnishee, and the bailiff to whom such Writ of Execution is directed shall be thereby authorized to levy and shall levy the amount mentioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee disputes his liability, then such Judge may order that the judgment creditor in the said County Court shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. 20 V. c. 58, s. 4.

**297.** Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding should be afterwards set aside or the judgment be reversed. 19 V. c. 43, s. 198,—20 V. c. 57, s. 16,—20 V. c. 58, s. 4.

Payment by garnishee to be a valid discharge.

**298.** There shall be kept at the several offices of the Clerks of the Crown and Deputy Clerks, and at the several County Court offices, a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and copies of any entries made therein may be taken by any person upon application to the proper officer. 19 V. c. 43, s. 199.

Attachment books to be kept in the offices of the Clerks of the Crown and Deputies.

**299.** The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or Judge. 19 V. c. 43, s. 200.

Costs of such application.

#### TO COMPEL SPECIFIC DELIVERY OF CHATTELS.

**300.** The Court or a Judge upon the application of the Plaintiff in any action for the detention of any chattel, may, if he

Specific delivery of a chattel may be

or

compelled, and how.

Option to the plaintiff.

Damages, costs, &c.

or they see fit, order that execution shall issue for the return of the chattel detained, without giving the Defendant the option of retaining such chattel upon paying the value assessed, and may order that unless the Court or a Judge should otherwise direct, the Sheriff shall distrain the Defendant by all his lands and chatels in the said Sheriff's County, till the Defendant renders such chattel, or at the option of the Plaintiff, the Court or Judge may order the Sheriff to make of the Defendant's goods the value of such chattel; but the Plaintiff shall, either by the same or by a separate Writ or Writs of Execution to be issued in the ordinary manner, be entitled to have made of the Defendant's goods or lands, the damages, costs and interest in such action. 19 V. c. 43, s. 201.

THE REVIVAL OF JUDGMENTS AND OTHER PROCEEDINGS BY AND AGAINST PERSONS NOT PARTIES TO THE RECORD.

Execution without *Scire Facias* or revival.

**301.** During the lives of the parties to a judgment, or of any of them, execution may be issued at any time within six years from the recovery of the judgment, without a revival thereof by *Scire Facias*, or by Writ of Revivor. 20 V. c. 57, s. 10,—20 V. c. 58, s. 1,—*And see* 22 V. c. 97.

Application for revival of judgment and execution thereupon.

**302.** In case it becomes necessary to revive a judgment, either by reason of lapse of time or of a change by death or otherwise of the parties entitled, or liable to execution, the party alleging himself to be entitled to execution may either sue out a Writ of Revivor in the form hereinafter mentioned, or apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment, and to issue execution thereupon.

Such application to be by summons or rule to shew cause.

**303.** Such leave shall be granted by the Court upon a rule to shew cause, or by a Judge upon a summons to be served according to the practice of the Court, or in such other manner as the Court or Judge directs, and the rule or summons may be in the form (A) No. 9, or to the like effect. 19 V. c. 43, s. 203.

If the Court be satisfied.

**304.** In case it manifestly appears upon such application, that the party making the same is entitled to execution, the Court or Judge shall allow such suggestion as aforesaid to be entered in the form (A) No. 10, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or Judge shall discharge the rule or dismiss the Summons with or without costs; but in the last mentioned case, the party making the application shall be at liberty to proceed by Writ of Revivor or action upon the judgment. 19 V. c. 43, s. 204.

And if not.

**305.** The Writ of Revivor shall be directed to the party called upon to shew cause why execution should not be awarded, and shall bear teste on the day it is issued, and after reciting the reason why such writ has become necessary, it shall call upon the party to whom it is directed, to appear within ten days after service thereof in the Court out of which it issues, to shew cause why the party at whose instance it is so issued should not have execution against the party to whom such writ is directed, and it shall give notice that in default of appearance, the party who issues such writ may proceed to execution. 19 V. c. 43, s. 205. Writ of Revivor and proceedings thereon.

**306.** Such writ may be in the form (A) No. 11, or to the like effect, and may be sued out and served in any County, and otherwise proceeded upon, whether in Term or Vacation, in the same manner as a Writ of Summons. 19 V. c. 43, s. 205. Form of Writ.

**307.** The *venue* in a declaration upon such writ may be laid in the County in which the writ has been sued out; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action. 19 V. c. 43, s. 205. Venue in such cases.

**308.** Notice in writing to the Plaintiff, his Attorney or agent, shall be sufficient appearance to a Writ of Revivor. 19 V. c. 43, s. 205. Notice to be a sufficient appearance.

**309.** A Writ of Revivor to revive a Judgment less than ten years old, shall be allowed without any rule or order; but if more than ten years old, then not without a rule of Court or Judge's Order; and if more than fifteen years old, not without a rule to shew cause. 19 V. c. 43, s. 207. Age of judgment as respects Writs of Revivor.

**310.** Proceedings against Executors upon a Judgment of assets in *futuro* may be had and taken in the manner herein provided as to Writs of Revivor. 19 V. c. 43, s. 216. Against executors as to assets in futuro.

**311.** All Writs of *Scire Facias* against bail on a recognition, or against members of a Joint Stock Company or other body, or upon a Judgment recorded against a public officer or other person sued as representing such Company or body, or against such Company or body itself, and all such Writs by or against a husband to have execution of a Judgment for or against a wife, or for restitution after a reversal on Error or Appeal, or upon a suggestion of further breaches after Judgment, or for any penal sum pursuant to the Statute passed in the Session holden in the eighth and ninth years of the reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*,—shall be tested, directed and proceeded upon in like manner as Writs of Revivor. 19 V. c. 43, s. 206. Certain Writs of scire facias to be proceeded upon in like manner as Writs of Revivor.

Proceedings by Writ of Revivor against the representatives of deceased joint contractors authorized.

**312.** In case of the death of any one or more of the Defendants in any action, against whom a joint Judgment has been entered, in any Court of Record, the Plaintiff or Plaintiffs, or the survivor or survivors of them, or the executor or administrator of a sole Plaintiff or of the survivor, may proceed by Writ of Revivor against the representatives of such Defendant or Defendants, or by an application to the Court or a Judge as hereinbefore provided, notwithstanding there may be another Defendant still living, and against whom the Judgment may be in force; but the property and effects of stockholders in Chartered Banks, or the members of other Incorporated Companies, shall not be liable to a greater extent than they would have been if this Section had not been passed. 1 V. c. 7, s. 2.

Limitation of liability of Stockholders in chartered Banks or incorporated Companies.

#### PROVISIONS WITH RESPECT TO COSTS.

When costs in civil suits to be regulated by the Law of England.

**313.** In cases not otherwise provided for by Statute or Rule of Court, the allowance of costs to either party in civil suits and penal actions, shall be regulated by the Laws of England. 2 G. 4, c. 1, s. 38,—19 V. c. 43, s. 311.

Costs on Writs under this Act to be as heretofore until otherwise ordered.

**314.** Until otherwise ordered under the provisions of this Act, the costs of Writs issued and of all other proceedings under the authority of this Act, shall be and remain the same as at present established.

Mileage.

**315.** No mileage shall be taxed or allowed for the service of any Writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment has been made. 19 V. c. 90, s. 18.

Party allowed costs after judgment on demurrer, &c.

**316.** In case judgment be given either for or against a Plaintiff or Demandant, or for or against a Defendant or Tenant, upon any demurrer joined in any action whatever, the party in whose favour the judgment is given shall also have judgment to recover his costs in that behalf. 7 W. 4, c. 3, s. 26.

Defendants entitled to costs after a *nolle prosequi*, unless the Judge certifies.

**317.** In case several persons be made Defendants in any personal action, and a *Nolle Prosequi* be entered as to any one or more of them, or in case upon the trial of such action, a verdict passes for him or them, every such person shall have judgment for and may recover his reasonable costs, unless, in the case of a trial, the Judge before whom the trial is had, certifies upon the record under his hand, that there was a reasonable cause for making such person a Defendant in the action. 7 W. 4, c. 3, s. 24.

Costs where *nolle prosequi*

**318.** Where a *Nolle Prosequi* is entered upon any count, or as to part of any declaration, the Defendant shall have judgment



judgment for his reasonable costs in that behalf. 7 W. 4, c. 3, s. 25.

entered as to part of declaration.

**319.** Upon an arrest of judgment or judgment *non obstante veredicto*, the Court shall adjudge to the party against whom such judgment is given, the costs occasioned by the trial of any issues in fact arising out of the pleading for defect of which such judgment is given and upon which such party has succeeded, and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any. 19 V. c. 43, s. 219.

Costs on arrest of judgment or judgment *non obstante*.

**320.** In all Writs of *Scire Facias*, and of Revivor, the Plaintiff, obtaining judgment on an award of execution, shall recover his costs of suit upon a judgment by default, as well as upon a judgment after plea pleaded, or demurrer joined. 7 W. 4, c. 3, s. 26.

Plaintiff allowed costs on *scire facias* after judgment by default, &c.

**321.** In every action brought by an executor or administrator in right of the testator or intestate, such executor or administrator in case of being non-suited, or of a verdict passing against him, and in all other cases in which he would be liable if he were suing in his own right upon a cause of action accruing to himself, shall, unless the Court in which the action is brought, or a Judge thereof otherwise orders, be liable to pay costs to the Defendant, and the Defendant shall have judgment for such costs, and they shall be recovered in like manner. 7 W. 4, c. 3, s. 23.

Payment of costs by executors and administrators.

**322.** In case the Plaintiff in any action does not obtain a verdict for the amount for which the Defendant has been arrested and held to special bail, and in case upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, it be made to appear, to the satisfaction of the Court in which the action has been brought, that the Plaintiff had not any reasonable or probable cause for causing the Defendant to be arrested and held to special bail in such amount as aforesaid, such Court may, by rule or order, direct that the costs of suit shall be allowed to the Defendant, and the Defendant shall thereupon be entitled to such costs of suit, and the Plaintiff, upon such rule or order being made, shall be disabled from taking out any execution for the sum recovered in such action, unless the same exceeds, and then in such sum only as the same exceeds the amount of the taxed costs of the Defendant, and in case the sum recovered in any such action is less than the amount of the taxed costs of the Defendant, then after deducting the sum of money recovered by the Plaintiff from the amount of the Defendant's costs to be taxed as aforesaid, he may take out execution for the balance of such costs in like manner as a Defendant may now by law have execution for costs in other cases. 49 G. 3, c. 4, s. 1.

Circumstances under which defendant, when held to special bail, may be entitled to costs of suit.

In actions on judgments, plaintiff not entitled to costs unless by rule of Court.

**323.** In case of an action brought upon any judgment recovered in any Court of Record of Upper Canada, or in any Division Court, the Plaintiff in such action shall not be entitled to any costs of suit, unless the Court in which the action is brought, or some Judge of the same Court, otherwise orders. 49 G. 3, c. 4, s. 2,—13, 14 V. c. 53, s. 52.

Plaintiff in trespass or trespass on the case, to recover no costs if the verdict be for less than eight dollars, unless the Judge certify certain facts.

**324.** If the Plaintiff in any action of trespass or trespass on the case, recovers by the verdict of a Jury less damages than eight dollars, such Plaintiff shall not be entitled to recover in respect of such verdict any costs whatever, whether the verdict be given on an issue tried or Judgment has passed by default, unless the Judge or presiding Officer before whom such verdict is obtained immediately afterwards, certifies on the back of the record that the action has really been brought to try a right besides the right to recover damages for the trespass or grievance complained of, or that the trespass or grievance in respect of which the action has been brought was wilful and malicious. 19 V. c. 43, s. 312.

This shall not extend to certain trespasses.

**325.** Nothing in the last section contained shall deprive the Plaintiff of costs in any action brought for a trespass over any land, waste, close, wood, plantation or inclosure, or for entering into any dwelling, out building or premises in respect to which notice not to trespass had been previously served by or on behalf of the owner or occupier of the land trespassed over, or upon, or left at the last reputed or known place of abode of the Defendant in such action; but nothing in this or in the last preceding section shall entitle any Plaintiff to recover costs as of an action brought in a Superior Court in any case where by law his action might properly have been brought in an Inferior Court. 19 V. c. 43, s. 312.

Provision as to actions which might have been brought in an Inferior Court.

Suits within the jurisdiction of County Courts may be brought in the Superior Courts subject to County Court costs only.

**326.** In case any Plaintiff having a cause of action within the jurisdiction of a County Court, institutes and carries on such action in either of the Superior Courts of Common Law, and in case the papers and proceedings in the cause filed, issued or used in the Superior Court, be endorsed with the words "Inferior Jurisdiction," then the Plaintiff or Defendant, and all persons and officers entitled to costs and fees therein, shall be allowed the usual costs and disbursements which would, and no more than would, be allowable in case the action had been instituted and carried on in a County Court. 13, 14 V. c. 52, s. 1,—13, 14 V. c. 53, s. 78,—16 V. c. 177, s. 2,—18 V. c. 125, s. 4,—19 V. c. 43, s. 312.

How papers to be endorsed.

But in the County of York not without a Judge's fiat of leave.

**327.** No Plaintiff having a cause of action within the jurisdiction of the County Court, in the County of York, shall institute or carry on such action in either of the Superior Courts, unless the Plaintiff, before issuing the first Process in such action, obtains the *Fiat* of one of the Judges of one of such Superior Courts, allowing the Plaintiff to bring such action in  
one

one of such Superior Courts, on proof by affidavit to the satisfaction of such Judge that some important question of Law or evidence is likely to arise in such action rendering it advisable to have such action tried in such Superior Court. 19 V. c. 91, s. 1.

**328.** In case a suit of the proper competence of a County Court be brought in either of the Superior Courts of Common Law, or in case a suit of the proper competence of a Division Court be brought in either of such Superior Courts or in a County Court, the Defendant shall be liable to County Court costs or to Division Court costs only (*as the case may be*), unless the Judge who presides at the trial of the cause certifies in open Court immediately after the verdict has been recorded, that it is a fit cause to be withdrawn from the County Court or Division Court, (*as the case may be*), and brought in the Superior Court, or a County Court, (*as the case may be*), and if the Judge does not so certify, so much of the Defendant's costs taxed as between Client and Attorney as exceed the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, in entering Judgment, be set off and allowed by the Taxing Officer against the Plaintiff's County Court or Division Court costs to be taxed, and if the amount of costs so set off exceeds the amount of the Plaintiff's verdict and taxable costs, the Defendant shall be entitled to execution for the excess. 8 V. c. 13, s. 59,—13, 14 V. c. 53, ss. 78, 108.

Costs in suits brought in Superior Courts which might be brought in Inferior Courts.

Extra costs paid by the defendant may be allowed him and set off against verdict and costs of plaintiff.

**329.** When several suits are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or when several suits are brought against the maker and endorser of a note, or against the drawer, acceptor or endorser of a bill of exchange, there shall be collected or recovered from the Defendant the costs taxed in one suit only at the election of the Plaintiff, and the actual disbursements only in the other suits; but this provision shall not extend to any interlocutory costs in the progress of a cause. 5 W. 4, c. 1, s. 1.

Costs recoverable in one suit only.

And disbursement in others.

Not to extend to interlocutory cost.

**330.** In case any suit be brought in any of Her Majesty's Courts of Record in respect of any grievances committed by any Clerk, Bailiff or Officer of a Division Court, under colour or pretence of the process of such Court, and the Jury upon the trial find no greater damages for the Plaintiff than ten dollars, the Plaintiff shall not have costs unless the Judge certifies in Court upon the back of the record, that the action was fit to be brought in such Court of Record. 13, 14 V. c. 53, s. 108.

Costs in actions against Clerks and Bailiffs of Division Courts.

**331.** Either party may as of right, upon giving two days' notice to the opposite party, have the taxation of costs by any Deputy Clerk of the Crown and Pleas revised by the principal Clerk of the Court wherein the proceedings have been had; and

Revision of taxation of costs.

When Deputy Clerks liable to be charged with costs.

and the Court or a Judge may by rule or summons, call upon the Deputy Clerk who has taxed any Bill, to shew cause why he should not pay the costs of revising his taxation and of the application, if in the opinion of the Court or Judge, on the affidavits and hearing the parties, such Deputy Clerk was guilty of gross negligence, or of wilfully taxing fees or charges for services or disbursements larger or other than those sanctioned by the Rules and Practice of the Court. 19 V. c. 43, s. 12.

THE JUDGES MAY FRAME A TABLE OF COSTS FOR COUNTY COURTS.

Judges of the Superior Courts may frame table of costs for County Courts.

**332.** The Judges of the said Superior Courts, or any three of them (of whom one of the Chief Justices shall be one,) may, from time to time, frame a table of costs for the several County Courts, and ascertain, determine, declare and adjudge all and singular the fees allowed to be taken by Counsel, Attorneys, Sheriffs, Coroners and Officers of the said Courts respectively, in respect of any business done or transacted in the said County Courts, in all matters, causes and proceedings depending in the said Courts, or before the Judges thereof, in all actions and proceedings within the jurisdiction of such County Courts or of the Judges thereof; and the costs and fees authorized by such table or by any amended table from time to time made, and no other or greater, shall be taken or received by Counsel, Attorneys, Sheriffs, Coroners or Officers of any of the said Courts, for any business by them respectively done in the said County Courts or before the Judges thereof; and the said Judges so framing or altering such table of costs may, if they think fit, associate with them, in framing or altering such table, any one of the County Court Judges appointed under the sixty-third section of the Division Courts Act, for making rules for the Division Courts. 20 V. c. 58, s. 8.

THE JUDGES MAY MAKE RULES.

Power to make rules.

**333.** The Judges of the Superior Courts of Common Law, or any four or more of them, of whom the Chief Justices shall be two, may from time to time make—

Respecting the justification of bail taken by Commissioners.

1. Such orders and rules as they deem fit respecting the manner of justifying and perfecting bail when taken by Commissioners of either of the said Courts, and respecting the notices to be given previous to justification, the attendance of bail before a Commissioner or a Judge, and the affidavits or examinations to be required, and any other matter or thing which to them seems expedient; and also, 2 G. 4, c. 1, s. 41.

Respecting the duties of the Officers.

2. All such general rules and orders for the government and conduct of the Ministers and officers of their respective Courts in and relating to the distribution and performance of the duties and business to be done and performed by them; and also, 12 V. c. 63, s. 32.

3. All such general rules and orders for the effectual execution of this Act, so far as respects such Courts, and of the intention and object thereof ; and

All necessary general rules.

4. For fixing the fees and costs to be allowed for and in respect of the matters herein contained and the performance thereof ; and

Respecting fees.

5. For apportioning the costs of issues ; and

Apportioning costs.

6. For the purpose of enforcing uniformity of practice in the allowance of costs in the said Courts,—as in their judgment may be necessary or proper, and for that purpose may meet from time to time as occasion may require. 19 V. c. 43, s. 313,—12 V. c. 63, s. 32.

Uniformity in the allowance of costs.

**334.** And the said Judges, or any four or more of them, of whom the Chief Justices shall be two, may, also by any rule or order from time to time by them made in Term or in Vacation, make such further alterations in the time and mode of pleading in the said Courts and in the mode of entering and transcribing pleadings, judgments and other proceedings in actions at law, and in the time and manner of objecting to errors in pleadings and other proceedings, and in the mode of verifying pleas and obtaining final judgment without trial in certain cases, as to them may seem expedient. 19 V. c. 43, s. 313.

To make further alterations in mode of pleading, &c.

**335.** All such Rules, Orders and Regulations shall, immediately upon making the same, be transmitted to the Governor and be by him laid before both Houses of the Parliament of this Province, if Parliament be then sitting, or if Parliament be not sitting, then within twenty days after the next meeting thereof ; and no such Rule, Order or Regulation, shall have effect until three months after the same has been so laid before both Houses of Parliament. 19 V. c. 43, s. 313.

Such rules, &c., to be laid before both Houses of Parliament.

**336.** Every Rule, Order and Regulation so made shall, from and after such time as aforesaid, be binding and obligatory on the said Courts and on all Courts of Error and Appeal in this Province, into which the judgments of the said Courts or either of them may be removed, and shall be of like force and effect as if the provisions contained therein had been expressly enacted by the Parliament of this Province. 19 V. c. 43, s. 313.

And then to be binding on all the Courts, &c.

**337.** The Governor may, by proclamation, or either of the Houses of Parliament may, by resolution, at any time within three months next after such Rules, Orders and Regulations have been laid before Parliament, suspend the whole or any part thereof, and in such case the whole or the part so suspended, shall not be binding or obligatory on the said Courts or on any Court of Error

The Governor, or either house of Parliament, may within three months suspend all or any such rules.

Power of the Courts to make occasional rules not restrained.

Error and Appeal; and nothing herein contained shall restrain the authority or limit the jurisdiction of the said Courts or of the Judges thereof, to make rules or orders, or otherwise to regulate and dispose of the business therein. 19 V. c. 43, s. 313.

As to issue, &c., of new or altered Writs.

**338.** The Judges of the said Courts, or any four or more of them, of whom the Chief Justices shall be two, may, from time to time, frame and make such new or altered Writs and forms of proceeding as the Judges as aforesaid deem necessary or expedient for giving effect to the provisions hereinbefore contained, and may think fit to order; and such Writs, Forms and proceedings shall be used and enforced in such and the same manner as other Writs, forms and proceedings of the said Courts are acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing Writ or proceeding, the form of which is in any manner altered in pursuance of this Act, shall, nevertheless, be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act. 19 V. c. 43, s. 314,—19 V. c. 90, s. 8.

As to existing Writs of which the form is altered by this Act.

Judges may extend Superior Court rules to County Courts with modification.

**339.** The Judges of the said Superior Courts, or any three of them, of whom one of the Chief Justices shall be one, may extend and apply to the several County Courts, all or any of the rules and orders at any time made under this Act, with and under such modifications as they may deem necessary, and such Judges may also make such rules and orders for and specially applicable to the said County Courts as may appear to them expedient for carrying into beneficial effect the laws applicable to the said County Courts, and to actions and proceedings therein. 20 V. c. 58, s. 9,—19 V. c. 90, s. 3.

Superior Court rules hereafter.

**340.** All rules and orders of the said Superior Courts, made after this Act takes effect, shall (unless the contrary be expressed therein) extend to the several County Courts. 20 V. c. 58, s. 9.

In unprovided cases the practice of the Superior Courts shall apply to the County Courts.

**341.** In all cases not expressly provided for by law, the practice and proceedings in the several County Courts shall be regulated by and shall conform to the practice for the time being of the said Superior Courts of Common Law, and the practice of the said Superior Courts shall in matters not so provided for, apply and extend to the County Courts and to all actions and proceedings therein. 19 V. c. 90, s. 19.

First and last days of all periods of time limited by this Act or any rules or orders to be inclusive.

**342.** Unless otherwise expressed, the first and last days of all periods of time limited by this Act, or by any rules or orders of Court for the regulation of practice, shall be inclusive. 2 G. 4, c. 1, s. 22.

All rules in the County Court to be two day rules.

**343.** All Rules in the County Courts in Term time shall be two day Rules, (where the same Rules in the Superior Courts would be four day Rules,) and shall be answerable or returnable  
on

on the third day inclusive, after service, and may be made absolute at the rising of the Court on that day, and in all proceedings in Term not otherwise provided for, one half of the period allowed in the Superior Courts when exceeding one day shall be allowed in the County Courts. 9 V. c. 7, s. 3,—20 V. c. 58, s. 17,—8 V. c. 13 s. 43.

INTERPRETATION CLAUSE.

**344.** Whenever any power is given by this Act to the Superior Courts or to a Judge thereof, the words "a Judge" shall be held to authorize any Judge of either of the said Superior Courts of Common Law to exercise such power, although the particular proceedings may not be in a cause pending in the Court whereof he is a Judge. 19 V. c. 43, s. 315.

The words "a Judge" to include Judges of both of the Superior Courts.

**345.** The term "Clerk" in this Act, shall mean the Clerk of the Crown of each of the Superior Courts, or the Clerk of the County Court according as the proceeding with reference to which the term "Clerk" is used, applies to the Superior Courts or County Courts, and the term "Deputy Clerk" shall mean Deputy Clerk of the Crown.

Meaning of words "Clerk" and "Deputy Clerk."

**346.** This Act shall be called and known as and in all proceedings may be cited as "The Common Law Procedure Act." 19 V. c. 43, s. 317.

Short Title of Act.

**347.** The following Forms are those referred to in the foregoing sections of this Act.

A.

No. 1.—(Vide Section 2.)

WRIT OF SUMMONS WHEN THE DEFENDANT RESIDES WITHIN THE JURISDICTION.

Upper Canada, } Victoria, by the Grace of God, &c.  
 County of } To C. D., of , in the County of .

(Seal.)

We command you that within ten days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court (or County Court) of , in an action at the suit of A. B. ; and take notice that in default of your so doing the said A. B. may proceed therein to judgment and Execution.

Witness, &c.

In the margin,  
 Q<sup>2</sup>

Issued

Issued from the Office of the Clerk (or Deputy Clerk) of the Crown and Pleas, (or Clerk of the County Court in the County of \_\_\_\_\_).

(Signed,) J. H., Clerk (or Deputy Clerk,  
(or Clerk of the County Court.)

*Memorandum to be subscribed on the Writ.*

N. B.—This Writ is to be served within six months from the date thereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsements to be made on the Writ before the service thereof.*

This Writ was issued by E. F., of \_\_\_\_\_, Attorney for the said Plaintiff, or this Writ was issued in person by A. B., who resides at (mention the City, Town, incorporated, or other Village, or Township within which such Plaintiff resides).

*Also the indorsement required by the fourteenth Section of this Act.*

*Indorsement to be made on the Writ after service thereof.*

This Writ was served by X. Y. on C. D., (the Defendant or one of the Defendants) on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

WRIT OF CAPIAS.

No. 2.—(Vide Section 3.)

Upper Canada, } Victoria, &c.,  
County of } To the Sheriff of, &c.

(Seal.)

We command you that you take C. D., if he shall be found in your County (or United Counties,) and him safely keep until he shall have given you bail in an action on promise (or of debt, or covenant, or trespass on the case, or as the cause of action may be, &c.) at the suit of A. B., against the said C. D., (and E. F., &c., if there be one or more Defendants not to be arrested,) or until the said C. D. shall by other lawful means be discharged from your custody; And We do further command you, that on execution hereof on the said C. D., you do deliver a copy hereof to the said C. D.; (And we further command you that you serve a copy hereof on the said E. F. &c., if there be one or more Defendants not to be arrested;) And We hereby require the said C. D. to take notice that within ten days after execution



execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our (Court or County Court) of \_\_\_\_\_, according to the warning hereunder written (or indorsed hereon,) and that in default of his so doing, such proceedings may be had and taken as are mentioned in the said warning; (And we hereby command the said E. F. &c., that within ten days after the service hereof on him &c., inclusive of the day of service, he do cause an appearance to be entered according to the warning No. 3;) And We do further command you the said Sheriff, that immediately after the execution hereof, you do return this Writ to the said Court, together with the manner in which you shall have executed the same, and the day of the Execution thereof, or if the same shall remain unexecuted, then that you do return the same at the expiration of two months from the date hereof, or sooner if you shall be required thereto by order of the Court or of a Judge.

Witness, &c.

*In the margin,*

Issued from the Office of the Clerk (or Deputy Clerk) of the Crown and Pleas, (or of the Clerk of the County Court in the County of)

(Signed,) J. H. Clerk (or Deputy Clerk,  
(or Clerk of the County Court.)

*Memorandum to be subscribed on the Writ.*

N. B.—This Writ is to be executed within two months from the date hereof, including the day of such date, and not afterwards.

*Warning to the Defendant.*

1. If a Defendant, being in custody, shall be detained on this Writ, or if a Defendant, being arrested thereon, shall go to prison for want of bail, the Plaintiff may declare against any such Defendant before the end of the Term next after such arrest, and proceed thereon to Judgment and execution;

2. If a Defendant having given bail to the Sheriff on the arrest, shall omit to put in special bail conditioned for his surrender to the Sheriff of the County from which the Writ of *Capias* issued, and file the bail piece in the Office of the Clerk or Deputy Clerk of the Crown and Pleas (or of the Clerk of the County Court) for the same County, the Plaintiff may proceed against the Sheriff or on the bail bond;

3. If a Defendant having been served with this Writ and not arrested thereon, shall not enter an appearance within ten days after

after such service, in the Office of the Clerk or Deputy Clerk of the Crown (or of the Clerk of the County Court) from which the Writ issued, the Plaintiff may proceed to judgment and execution.

*Indorsement to be made on the Writ before the Service thereof.*

This Writ was issued by E. F., of \_\_\_\_\_, Attorney, &c., as in form No. 1.

Bail for \$ \_\_\_\_\_ by order of \_\_\_\_\_, naming the Judge who makes the order.

*Also, the Indorsement required by the Fourteenth Section of this Act.*

*Indorsement to be made on the Writ after execution thereof.*

This Writ was executed by X. Y., by arresting C. D., (or as the case may be as to service on any Defendant,) on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

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No. 3.—(Vide Sections 43 and 49.)

WRIT WHERE THE DEFENDANT, BEING A BRITISH SUBJECT,  
RESIDES OUT OF UPPER CANADA.

Upper Canada, } Victoria, &c.  
County of \_\_\_\_\_ } To C. D., of \_\_\_\_\_.

(Seal.)

We command you that within \_\_\_\_\_ days, (*here insert a sufficient number of days according to the directions in the Act.*) after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court (or County Court) of \_\_\_\_\_, in an action at the suit of A. B. ; And take notice that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed therein to Judgment and execution.

Witness, &c.

*In the margin,*

Issued from the office of, &c., (*as in foregoing cases.*)

*Memorandum to be subscribed on the Writ.*

N. B.—This Writ is to be served within six months from the date thereof, or if renewed, then from the date of such renewal, including day of such date, and not afterwards.

*Indorsements to be made on the Writ before the Service thereof.*

This Writ is for service out of Upper Canada, and was issued by E. F. of \_\_\_\_\_, Attorney for the Plaintiff, or this Writ was issued in person by A. B. who resides at \_\_\_\_\_ (mentioning Plaintiff's residence, as directed in form No. 1.)

(Also, the indorsement required by the fourteenth Section of the Act, allowing the Defendant two days less than the time limited for appearance, to pay the debt and costs.)

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No. 4.—(Vide Sections 45 & 49.)

WRIT WHERE THE DEFENDANT, NOT BEING A BRITISH SUBJECT,  
RESIDES OUT OF UPPER CANADA.

Upper Canada, } Victoria, &c.  
County of \_\_\_\_\_ } To C. D., late of \_\_\_\_\_, in the  
County of \_\_\_\_\_

(Seal.)

We command you that within \_\_\_\_\_ days (insert a sufficient number according to the directions of the Act), after notice of this Writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court (or County Court) of \_\_\_\_\_, in an action at the suit of A. B. ; And take notice that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to Judgment and execution.

*Memorandum to be subscribed on the Writ.*

*The same as on form No. 3.*

*Indorsement, also as on form No. 3.*

*And in the margin,*

*Issued from the Office of, &c., (as in foregoing cases.)*

*Notice of the foregoing Writ.*

To C. D., late of (the City of Hamilton, in Upper Canada,) or (now residing at Buffalo, in the State of New York.)

Take

Take notice that A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, Upper Canada, has commenced an action at law against you, C. D., in Her Majesty's Court (or County Court) of \_\_\_\_\_, by a Writ of that Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand eight hundred and \_\_\_\_\_, and you are required within \_\_\_\_\_ days, after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the Office of the Clerk (or Deputy Clerk) of the Crown, (or of the Clerk of the County Court) for the County of \_\_\_\_\_, to the said action, and in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to judgment and execution.

(Signed,) A. B., the Plaintiff in person,  
 or  
 E. F., Plaintiff's Attorney.

No. 5.—(Vide Section 15.)

SPECIAL INDORSEMENT.

(After the Indorsement required by the fourteenth Section of the Act, this special Indorsement may be inserted.)

The following are the particulars of the Plaintiff's claim :

1851.		
January 10.	—Five barrels of Flour, at \$4.....	\$ 20 0
July	2.—Money lent to the Defendant.....	120 0
October	1.—A Horse sold to Defendant.....	100 0
		\$240 0
	Paid.....	30 0
	Balance due.....	\$210 0
	Or,	
To Bread, (or Butcher's Meat,) supplied between the		
1st January, 1851, and the 1st January, 1852....		\$160 0
	Paid.....	50 0
	Balance due.....	\$110 0

(If any account has been delivered, it may be referred to with its date, or the Plaintiff may give such a description of his claim as on a particular of demand, so as to prevent the necessity of an application for further particulars.)

Or,  
 \$400 (or £100, as the case may be, and so throughout these forms,) principal and interest, due on a bond, dated the \_\_\_\_\_ day of \_\_\_\_\_, conditioned for the payment of \$800 (or £200) and interest.

Or,

Or,

\$400 (or £100), principal and interest, due on a covenant contained in a deed, dated the                      day of                      , to pay \$2000 (or £500) and interest.

Or,

\$400 (or £100), on a Bill of Exchange for that amount, dated the 2nd February, 1851, accepted (or drawn or indorsed) by the Defendant, with interest and Notarial charges.

Or,

\$400 (or £100), on a Promissory Note for that amount, dated the 2nd February, 1851, made (or indorsed) by the Defendant, with interest and Notarial charges.

Or,

\$400 (or £100), on a Guarantee, dated the 2nd February, 1851, whereby the Defendant guaranteed the due payment by E. F., of goods supplied (or to be supplied) to him.

(In all cases where interest is lawfully recoverable, and is not above expressed, add "the Plaintiff claims interest on \$                      from the                      day of                      , until Judgment.")

N. B.—Take notice, that if a Defendant served with this Writ within Upper Canada, do not appear according to the exigency thereof, the Plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed (with interest) and the sum of                      , for costs, and issue execution at the expiration of eight days from the last day for appearance.

No. 6.—(Vide Section 42.)

WRIT OF CAPIAS IN AN ACTION ALREADY COMMENCED.

Upper Canada, } Victoria, &c.  
County of                      } To the Sheriff of &c.

(Seal.)

We command you, that you take C. D., if he shall be found in your County (or United Counties), and him safely keep, until he shall have given you bail in the action on promises (or of debt &c.), which A. B. has commenced against him, and which action is now pending, or until the said C. D. shall, by other lawful means, be discharged from your custody. And we do further command you, that on execution hereof, you do deliver a copy to the said C. D., and that immediately after execution hereof, you do return this writ to our Court (or County Court) of                      , together with the manner in which you shall have executed the same and the day of the execution hereof; and if the same shall remain unexecuted, then that you do so return the same at the expiration of two months

months from the date hereof, or sooner if you shall be required thereto by order of the said Court or a Judge; And we do hereby require the said C. D., that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our said Court, according to the warning hereunder written (or indorsed hereon,) and that in default of his so doing, proceedings may be had and taken as are mentioned in the warning in that behalf.

Witness, &c.

*In the margin,*

Issued from the office of the Clerk (or Deputy Clerk) of the Crown and Pleas, (or of the Clerk of the County Court in the County of \_\_\_\_\_.)

(Signed,) J. H., Clerk (or Deputy Clerk.)  
 or  
 (Clerk of the County Court.)

*Memorandum to be subscribed on the Writ.*

N. B.—This writ is to be executed within two months from the date hereof, including the day of such date, and not afterwards.

*Warning to the Defendant.*

1. This suit, which was commenced by the service of a Writ of Summons, will be continued and carried on in like manner as if the Defendant had not been arrested on this Writ of *Capias*.

2. If the Defendant, having given bail to the Sheriff on the arrest on this writ, shall omit to put in special bail for his surrender to the Sheriff of the County from which the Writ of *Capias* issued, and to file the bail piece in the office of the Clerk (or Deputy Clerk) of the Crown and Pleas, (or of the Clerk of the County Court) for the County of \_\_\_\_\_, the Plaintiff may proceed against the Sheriff or on the Bail Bond.

*Indorsements to be made on the Writ before the execution thereof.*

1. This writ was issued by E. F. of, &c., (as in form No. 1.)

2. Bail for \$ \_\_\_\_\_, by order of ( \_\_\_\_\_ ) naming the Judge who makes the order.

*Also the indorsement required by the fourteenth section of this Act.*

*Indorsement*

*Indorsement to be made on the Writ after the execution thereof.*

This Writ was executed by arresting C. D., (*according to the facts,*) on the                      day of                      , one thousand eight hundred and                      .

---

No. 7.—(*Vide Section 55.*)

In the                      &c., *state the Court.*

On the                      day of                      , A. D. one thousand eight hundred and                      .

(*Day of signing Judgment.*)

Upper Canada, } A. B., in his own person (*or by                      , his*  
to wit : } Attorney,) sued out a Writ of Summons against  
C. D., indorsed according to The Common Law Procedure  
Act, as follows :

(*Here copy special Indorsement.*)

And the said C. D. has not appeared, therefore it is considered that the said A. B. recover against the said C. D., \$                      , together with \$                      , for costs of suit.

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No. 8.—(*Vide Section 150.*)

In the Q. B., (*or C. P., or C. C.*)

The                      day of                      , in the year of our Lord, one thousand eight hundred and                      .

County of                      , } Whereas A. B. has sued C. D. and  
to wit : } affirms and                      denies,

(*Here state the question or questions of fact to be tried.*)

And it has been ordered by the Honorable Mr. Justice                      , (*or by His Honor                      Judge of the County Court, &c.*) according to The Common Law Procedure Act, that the said question shall be tried by a Jury; therefore let the same be tried accordingly.

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No. 9.—

## No. 9.—(Vide Section 303.)

FORM OF A RULE OR SUMMONS WHERE A JUDGMENT CREDITOR  
APPLIES FOR EXECUTION AGAINST A JUDGMENT DEBTOR.

(Formal parts as at present.)

C. D., to show cause why A. B., (or as the case may be,) should not be at liberty to enter a suggestion on the roll in an action wherein the said A. B. was Plaintiff, and the said C. D., Defendant, and wherein the said A. B. obtained judgment for \$ (or £ ), against the said C. D., on the day of , that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

Note.—The above may be modified so as to meet the case of an application by or against the representative of a party to the Judgment.

## No. 10.—(Vide Section 304.)

FORM OF SUGGESTION THAT THE JUDGMENT CREDITOR IS EN-  
TITLED TO EXECUTION AGAINST THE JUDGMENT DEBTOR.

And now, on the day of , it is suggested and manifestly appears to the Court, that the said A. B. (or E. F., as executor of the last Will and Testament of the said A. B. deceased, or as the case may be,) is entitled to have execution of the judgment aforesaid, against the said C. D., (or against G. H., as executor of the last Will and Testament of the said C. D., or as the case may be); therefore, it is considered by the Court, that the said A. B., (or E. F., as such executor as aforesaid, or as the case may be,) ought to have execution of the said judgment against the said C. D., (or against G. H., as such executor as aforesaid (or as the case may be.)

## No. 11.—(Vide Sections 306, 141.)

FORM OF WRIT OF REVIVOR.

Victoria, &c.,  
To C. D., of

GREETING :

We command you, that within ten days after the service of this Writ upon you, inclusive of the day of such service, you appear in our Court (or County Court) of , to shew cause why A. B., (or E. F., as executor of the last Will and Testament



Testament of the said A. B., deceased, *or as the case may be,*) should not have execution against you, *(if against a representative, here insert,* as executor of the last Will and Testament of \_\_\_\_\_, deceased, *or as the case may be,*) of a judgment, whereby the said A. B., *(or as the case may be,*) recovered against you, *(or as the case may be,*) \$ *(or £ )*; and take notice that in default of your doing so, the said A. B., *(or as the case may be,*) may proceed to execution.

Witness, &c.

—  
B.

FORMS OF PLEADINGS.—(*Vide* Section 87.)

ON CONTRACTS.

1. Money payable by the Defendant to the Plaintiff for *(these words "money payable," &c., should precede money counts like 1 to 11, but need only be inserted in the first,)* goods bargained and sold by the Plaintiff to the Defendant.

2. Work done and materials provided by the Plaintiff for the Defendant at his request.

3. Money lent by the Plaintiff to the Defendant.

4. Money paid by the Plaintiff for the Defendant at his request.

5. Money received by the Defendant for the use of the Plaintiff.

6. Money found to be due from the Defendant to the Plaintiff on accounts stated between them.

7. A message and lands sold and conveyed by the Plaintiff to the Defendant.

8. The Defendant's use by the Plaintiff's permission of message and lands of the Plaintiff.

9. The hire of *(as the case may be,)* by the Plaintiff let to hire to the Defendant.

10. Freight for the conveyance of the Plaintiff for the Defendant at his request of goods in *(ships, &c.)*

11. The demurrage of a *(ship)* of the Plaintiff kept on demurrage by the Defendant.

12. That the Defendant on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, by his Promissory Note now overdue, promised to pay to the Plaintiff \$ (or £ \_\_\_\_\_), (two) months after date, but did not pay the same.
13. That one A, on, &c., (date) by his Promissory Note now overdue, promised to pay to the Defendant or order \$ (or £ \_\_\_\_\_), (two) months after date, and the Defendant indorsed the same to the Plaintiff, and the said Note was duly presented for payment and was dishonored, whereof the Defendant had due notice, but did not pay the same.
14. That the Plaintiff on, &c. (date) by his Bill of Exchange now overdue, directed to the Defendant, required the Defendant to pay to the Plaintiff \$ (or £ \_\_\_\_\_), (two) months after date, and the Defendant accepted the said Bill, but did not pay the same.
15. That the Defendant on, &c., (date), by his Bill of Exchange to A, required A to pay the Plaintiff \$ (or £ \_\_\_\_\_), (two) months after date, and the said Bill was duly presented for acceptance and was dishonored, of which the Defendant had due notice, but did not pay the same.
16. That the Plaintiff and Defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the Plaintiff has always been ready and willing to marry the Defendant, yet the Defendant has neglected and refused to marry the Plaintiff.
17. That the Defendant by warranting a horse to be then sound and quiet to ride, sold the said horse to the Plaintiff, yet the said horse was not then sound and quiet to ride.
18. That the Plaintiff and Defendant agreed by charter party, that the Plaintiff's schooner called the *Toronto*, should with all convenient speed sail to *Hamilton*, and that the Defendant should there load her with a full cargo of flour and other lawful merchandize, which she should carry to *Kingston* and there deliver, on payment of freight per barrel, and that the Defendant should be allowed four days for loading and four days for discharging, and four days for demurrage, if required, at \$ (or £ \_\_\_\_\_), per day; and that the Plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said schooner at *Hamilton*, and that the time for so loading has elapsed, yet the Defendant made default in loading the agreed cargo.
19. That the Plaintiff let the Defendant a house, being (designate it) for \_\_\_\_\_ years, to hold from the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at \$ (or £ \_\_\_\_\_) a year, payable quarterly, of which rent \_\_\_\_\_ quarters are due and unpaid.

20. The Plaintiff by deed let to the Defendant a house (*designate it*) to hold for seven years from the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, and the Defendant by the said deed covenanted with the Plaintiff well and substantially to repair the said house during the said term (*according to the covenant*), yet the said house was during the said term out of good and substantial repair.

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FOR WRONGS INDEPENDENT OF CONTRACT.

21. That the Defendant broke and entered certain land of the Plaintiff called lot No. &c., and depastured the same with cattle.

22. That the Defendant assaulted and beat the Plaintiff, gave him into custody to a Constable, and caused him to be imprisoned in the Common Gaol.

23. That the Defendant debauched and carnally knew the Plaintiff's wife.

24. That the Defendant converted to his own use (*or wrongly deprived the Plaintiff of the use and possession of*) the Plaintiff's goods, that is to say—(*mentioning what articles, as for instance, household furniture.*)

25. That the Defendant detained from the plaintiff his title deeds of land called lot No. &c. \_\_\_\_\_, in &c. \_\_\_\_\_, that is to say, (*describe the deeds.*)

26. That the Plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the Defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill.

27. That the Defendant, having no reasonable or probable cause for believing that the Plaintiff, unless forthwith apprehended, was about to quit Canada with intent to defraud his creditors generally, or the said Defendant in particular, maliciously represented that such was the fact, and thereupon maliciously procured a Judge's order for the issue of bailable process against the said Plaintiff, and caused the Plaintiff to be arrested and held to bail for \$ (*or £* ).

28. That the Defendant falsely and maliciously spoke and published of the Plaintiff the words following, that is to say, "He is a thief" (*if there be any special damage, here state it, with such reasonable particularity as to give notice to the Defendant of the peculiar injury complained of, as for instance, whereby the Plaintiff lost his situation as shopman in the employ of N.*)

29. That the defendant falsely and maliciously published of the Plaintiff in a newspaper called \_\_\_\_\_ the words following, that is to say: ("He is a regular prover under bankruptcies,") the Defendant meaning thereby that (the Plaintiff had proved, and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious) or as the case may be.

COMMENCEMENT OF PLEA.

30. The Defendant by \_\_\_\_\_, his Attorney (or in person), says (*here state the substance of the Plea.*)

31. And for a second Plea, the Defendant says (*here state the second Plea.*)

*Plea in actions on Contracts.*

32. That he never was indebted as alleged. (N. B.—*This plea is applicable to other declarations like those numbered 1 to 11.*)

33. That he did not promise as alleged. (*This plea is applicable to other declarations on simple contracts not on bills or notes, such as those numbered 16 to 19. It would be objectionable to use "did not warrant," "did not agree," or any other appropriate denial.*)

34. That the alleged deed is not his deed.

35. That the alleged cause of action did not accrue within \_\_\_\_\_ years, (*state the period of limitation applicable to the case*), before the suit.

36. That before action he satisfied and discharged the Plaintiff's claim by payment.

37. That the Plaintiff, at the commencement of this suit, was, and still is, indebted to the Defendant in an amount equal to (or greater than) the Plaintiff's claim for (*state the cause of set off as in a declaration, see form ante,*) which amount the Defendant is willing to set off against the Plaintiff's claim, (or, and the Defendant claims to recover a balance from the Plaintiff.)

38. That after the claim accrued, and before this suit, the Plaintiff, by deed, released the Defendant therefrom.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACT.

That he is not guilty.

40. That he did what is complained of by the Plaintiff's leave.

41. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged assault in his own defence.

42. That the Defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed, as of right and without interruption, a way on foot and with cattle from a public highway over the said land of the Plaintiff to the said land of the Defendant, and from the said land of the Defendant over the said land of the Plaintiff, to the said public highway, at all times of the year, for the more convenient occupation of the said land of the Defendant, and that the alleged trespass was the use by the Defendant of the said way.

#### REPLICATIONS.

43. The Plaintiff takes issue upon the Defendant's first, second, &c., pleas.

44. The Plaintiff as to the second Plea, says: (*here state the answer to the plea, as in the following forms.*)

45. That the alleged release is not the Plaintiff's deed.

46. That the alleged release was procured by the fraud of the Defendant.

47. That the alleged set off did not accrue within six years before this suit.

48. That the Plaintiff was possessed of land whereon the Defendant was trespassing and doing damage, whereupon the Plaintiff requested the Defendant to leave the said land, which the Defendant refused to do, and thereupon the Plaintiff gently laid his hands upon the Defendant in order to secure him, doing no more than was necessary for that purpose, which is the alleged first assault by the Plaintiff.

49. That the occupiers of the said land did not for twenty years before this suit, enjoy, as of right and without interruption, the alleged way.

#### NEW ASSIGNMENT.

50. The Plaintiff as to the                      and                      pleas, says, that he sues not for the trespasses therein admitted, but for trespasses committed by the Defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas.

If the Plaintiff replies and new assigns, the new assignment may be as follows :

51. And the Plaintiff as to the                      and                      pleas, further says that he sues, not only for the trespasses in those pleas admitted, but also for, &c.

If the Plaintiff replies and new assigns to some of the pleas, and new assigns only to the other, the form may be as follows :

52. And the Plaintiff as to the                      and                      pleas, further says that he sues not for the trespasses in the                      pleas (the pleas not replied to) admitted, but for the trespasses in the                      pleas, (the pleas replied to) admitted, and also for, &c.

## C A P . X X I I I .

### An Act respecting Writs of *Mandamus* and Injunction.

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

#### MANDAMUS.

When a *Mandamus* may be obtained on equitable grounds.

1. The Plaintiff, in any action in either of the Superior Courts of Common Law, except replevin or ejectment, may indorse upon the Writ and copy to be served, a notice that the Plaintiff intends to claim a Writ of *Mandamus*, and the Plaintiff may thereupon claim in the declaration, either together with any other demand which may be enforced in such action, or separately, a Writ of *Mandamus* commanding the Defendant to fulfil any duty in the fulfilment of which the Plaintiff is personally interested. 19 V. c. 43, s. 275.

Form of Declaration.

2. The declaration in such action shall set forth sufficient ground upon which the claim is founded, and shall set forth that the Plaintiff is personally interested therein, and that he sustains or may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him and been refused or neglected. 19 V. c. 43, s. 276.

The pleadings to be as in ordinary actions as near as may be.

3. 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; and in case Judgment be given for the plaintiff that a *Mandamus* do issue, the Court in which such Judgment is given, besides issuing execution in the ordinary way for the costs and damages, may also issue a peremptory Writ of *Mandamus* to the Defendant, commanding him forthwith to perform the duty to be enforced. 19 V. c. 43, s. 277.

4. Such Writ need not recite the declaration or other proceedings or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary Writ of Execution, except that it shall be directed to the party and not to the Sheriff, and may be issued in term or vacation and be made returnable forthwith, and no return thereto, except that of compliance, shall be allowed, but time to return it may upon sufficient ground be allowed by the Court or a Judge, either with or without terms. 19 V. c. 43, s. 278.

What the Writ shall require.

5. The Writ of *Mandamus*, so issued as aforesaid, shall have the same force and effect as a Peremptory Writ of *Mandamus*, and in case of disobedience, may be enforced by attachment. 19 V. c. 43, s. 279.

Force and effect of the Writ.

6. The Court may, upon application by the Plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the Plaintiff or some other person appointed by the Court, at the expense of the Defendant; and upon the act being done, the amount of such expense may be ascertained by the Court either by an enquiry in the nature of an assessment of damages or by reference to the proper officer, as the Court or a Judge may order, and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution. 19 V. c. 43, s. 280.

When the Court may direct a substituted performance.

7. Nothing in this Act contained shall take away the Jurisdiction of either of the Superior Courts to grant Writs of *Mandamus*; nor shall any Writ of *Mandamus* issued out of such Courts be invalid by reason of the right of the prosecutor to proceed by action for *Mandamus* under this Act, but the provisions of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative Writ of *Mandamus* issued by either of the Superior Courts. 19 V. c. 43, ss. 281, 282.

Jurisdiction as to Prerogative Writs of *Mandamus* not to be affected.

8. Upon application by motion for any Writ of *Mandamus*, the rule may in all cases be absolute in the first instance, if the Court thinks fit, and the Writ may bear teste on the day of its issuing, and may be made returnable forthwith whether in term or in vacation, but time may be allowed to return it by the Court or a Judge either with or without terms. 19 V. c. 43, s. 282.

Writs may issue in the first instance.

INJUNCTION.

9. In case 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

When a Writ of Injunction may issue by Courts of Law.

like kind arising out of the same contract or relating to the same property or right, and he may also in the same action include a claim for damages or other redress. 19 V. c. 43, s. 283.

The summons and indorsement thereon.

**10.** The Writ of Summons in such action shall be in the same form as the Writ of Summons in a personal action, but on every such Writ and copy thereof, there shall be indorsed a notice, that in default of appearance the Plaintiff may, besides proceeding to Judgment and execution for damages and costs, apply for and obtain a Writ of Injunction. 19 V. c. 43, s. 284.

The proceedings to be similar to those in cases of *Mandamus*.

**11.** The proceedings in such action shall be the same as nearly as may be, and subject to the like control as the proceedings in an action to obtain a *Mandamus* under the provisions hereinbefore contained, and in such action Judgment may be given that the Writ of Injunction do or do not issue as justice may require; and in case of disobedience, such Writ of Injunction may be enforced by attachment by the Court, or when such Court is not sitting, by a Judge. 19 V. c. 43, s. 285.

When Injunction may be had after action brought.

**12.** The Plaintiff may at any time after the commencement of the action, and whether before or after Judgment, apply *ex parte* to the Court or a Judge for a Writ of Injunction to restrain the Defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right; and such Writ may be granted or denied by the Court or Judge upon such terms as to the duration of the Writ—keeping an account—giving security—or otherwise, as to such Court or Judge seems reasonable and just; and in case of disobedience, such Writ may be enforced by attachment by the Court, or when such Court is not sitting, by a Judge.

Writs and orders for Writs to be under the control of the Court.

**13.** Any order for a Writ of Injunction made by a Judge, or any Writ issued by virtue thereof, may be discharged, varied or set aside by the Court on application made thereto by any party dissatisfied with such order. 19 V. c. 43, s. 286.

## C A P . X X I V .

### An Act respecting Arrest and Imprisonment for Debt.

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

#### ARREST AT LAW.

Arrest restricted to \$100.

**1.** No Writ of Capias to arrest and hold to bail shall be issued for a cause of action less than one hundred dollars, but such Writ may be issued when the cause of action equals or exceeds that sum. 22 V. c. 96, ss. 1, 2.



2. No person shall be subject to arrest under any such Writ who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. 22 V. c. 96 s. 2. (1858.)

Privileged persons not to be arrested.

3. No person shall be liable to arrest for non-payment of cost, and no married woman shall be liable to arrest either on Mesne or Final Process. 22 V. c. 33, s. 10. (1859),—*ibid* c. 34, s. 17.

No arrest for costs.  
No married woman to be arrested.

4. No person shall be arrested or imprisoned on any claim or on any Judgment recovered against him as a debtor at the suit of any person for any penalty or sum of money in the nature of a penalty or forfeiture, whether such claim or suit be in the name of such person alone, or in the form of proceeding known as *qui tam &c.*, (notwithstanding any thing to the contrary in any statute providing for the recovery of such penalties or sums by action at law) except in cases and under circumstances where, on claims or judgments for ordinary debts, parties can be arrested or imprisoned, and any person who, on the fourth day of May, one thousand eight hundred and fifty-nine, was under arrest or imprisonment or order for arrest or imprisonment, on any such claim or judgment first in this section referred to, shall, if not already discharged, be forthwith discharged from such arrest or imprisonment or order therefor; but notwithstanding such discharge every such person shall be subject to be arrested again, as in the cases of Judgments for ordinary debts as herein provided. 22 V. c. 33, s. 24. (1859.)

No person to be arrested on judgment against him as a debtor for any penalty;—unless under the same circumstances as in other cases.

5. In case any party or plaintiff being a creditor of or having a cause of action against any person liable to arrest, by the affidavit of himself or of some other individual, shows to the satisfaction of a Judge of either of the Superior Courts of Common Law, or to the Judge or acting Judge of any County Court, that such party or plaintiff has a cause of action against such person to the amount of one hundred dollars or upwards, or that he has sustained damage to that amount, and also by affidavit shows such facts and circumstances as satisfy the said Judge, that there is good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit Canada with intent to defraud his creditors generally or the said party or plaintiff in particular, such Judge may by a special order direct that the person against whom the application is made, as being about to quit Canada with intent as aforesaid, shall be held to bail for such sum as the Judge thinks fit, and thereupon such party or plaintiff, within the time expressed in such order, but not afterwards, may sue out a Writ of Capias and one or more concurrent Writs of Capias in either of the said Superior Courts, or in the County Court, as the case may be, against the person so directed to be held to bail, and the Judge or the acting Judge of any County Court, may grant such orders to hold to bail where process is intended to be sued out

In certain cases defendant may be held to bail on affidavit of certain facts and order of a Judge: Ca. Res. may issue on such order within a limited time.

out of, or an action has been commenced in either of the said Superior Courts as well as in his own Court. 22 V. c. 96, s. 2.

Affidavit need not be at first entitled in any Court.

6. It shall not be necessary that any such affidavit should, at the time of the making thereof, be entitled of or in any Court, but the style and title of the Court out of which the process issues, may be added at the time of suing out the process, and such style and title when so added, shall be, for all purposes and in all proceedings, whether civil or criminal, taken and adjudged to have been part of the affidavit *ab initio*. 22 V. c. 96, s. 2.

Prisoners on mesne process for debt on the first of September, 1858, entitled to discharge, but may be re-arrested on special order, &c.

7. Every person who, on the first day of September, one thousand eight hundred and fifty-eight, was in custody or on bail upon mesne process for any debt or demand, shall be entitled to be discharged upon entering a common appearance to the action; but every such person shall be liable to be detained, or after such discharge to be again arrested, by virtue of any such special order as aforesaid, at the instance of the plaintiff at whose suit he was previously arrested or by any other plaintiff. 22 V. c. 96, s. 9.

#### IN CHANCERY.

In what cases only a Writ of Arrest shall be granted.

8. The Writ of *Ne exeat Provinciâ* shall be called a Writ of Arrest, and no order shall be granted for a Writ of Arrest unless the party applying for the writ has a cause of suit to at least such an amount, and shows by affidavit such facts and circumstances, as this Act requires in the case of a special order for holding a party to bail under the fifth section of this Act. 22 V. c. 33, s. 1. (1859.)

In suits for alimony a Writ of Arrest may be issued.

9. In suits for alimony, instituted after this Act takes effect, the Court or a Judge thereof may, in a proper case, order a Writ of Arrest to issue at any time after the bill has been filed, and shall, in the order, fix the amount of bail to be given by the defendant, in order to procure his discharge. 20 V. c. 56, s. 3.

Limit of bail in suits for Alimony.

10. In case an order is made for a Writ of Arrest, in a suit for alimony, the amount of the bail required shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less at the discretion of the Court. 22 V. c. 33, s. 2. (1859.)

Conditions of bail-bond under Writ of Arrest.

11. The bail or security required to be taken under a "Writ of Arrest" shall not be that the person arrested will not go or attempt to go out of Upper Canada, but shall merely be to the effect that the person arrested will perform and abide by the orders and decrees made or to be made in the suit, or will personally appear for the purposes of the suit at such times and places as the Court may from time to time order, and will, in case

case he becomes liable by law to be committed to close custody, render himself (if so ordered), into the custody of any Sheriff the Court may from time to time direct. 22 V. c. 33, s. 3. (1859.)

WRITS OF CAPIAS AD SATISFACIENDUM.

**12.** In cases in which the Defendant has been held to special bail upon a Writ of *Capias* issued on a Judge's order made under the former Act 22 V. c. 96, (1858,) for the abolition of arrest in civil actions in certain cases, or under this Act, it shall not be necessary before suing out a Writ of *Capias ad Satisfaciendum* to obtain a Judge's order for the issuing thereof, or to make or file any further or other affidavit than that upon which the order authorizing the defendant's arrest was obtained in the first instance; but where the defendant has not been so held to special bail, if the plaintiff in the action by the affidavit of himself or some other party, shows to the satisfaction of a Judge of either of the said Superior Courts of Common Law, or if the case be in a County Court shows to the Judge or acting Judge of such Court, that he has recovered judgment against the defendant for the sum of one hundred dollars or upwards exclusive of costs, and also by affidavit shows such facts and circumstances as satisfy the Judge that there is good and probable cause for believing either that the defendant, unless he be forthwith apprehended, is about to quit Canada with intent to defraud his creditors generally or the said plaintiff in particular, or that the defendant hath parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, such Judge may, by a special order, direct that a *Capias ad Satisfaciendum* may be issued, and such writ may thereupon be issued upon such judgment according to the practice of the said Courts. 22 V. c. 96, s. 6. (1858.)

When writs of *Ca. Sa.* may issue without further affidavit.

When a further affidavit necessary and the contents thereof.

**13.** Process of contempt for non-payment of any sum of money, or for non-payment of any costs, charges or expenses, payable by any decree or order of the Court of Chancery or of a Judge thereof, or by any rule or order of the Court of Queen's Bench or Common Pleas or of a Judge thereof, or by any decree, order or rule of a County Court or of a Judge thereof, is abolished; and no person shall be detained, arrested or held to bail for non-payment of money, unless a special order for the purpose be made on an affidavit or affidavits establishing the same facts and circumstances as are necessary for an order for a Writ of *Capias ad Satisfaciendum*, under this Act; and in such case the arrest when allowed shall be made by means of a Writ of Attachment corresponding as nearly as may be to a Writ of *Capias ad Satisfaciendum*. 22 V. c. 33, s. 4. (1859.)

Process of contempt for non-payment of money, costs, &c., abolished.

Same affidavit required for an arrest in such cases as for a *Ca. Sa.*

**14.** But in case a party be arrested under a Writ of Arrest, it shall not be necessary before suing out a writ under the preceding section of this Act to obtain a Judge's order therefor, or to file any further affidavit than the affidavits on which the order for the Writ of Arrest was obtained. 22 V. c. 33, s. 5. (1859.)

But not when a Writ of Arrest has issued.

Decrees, &c., in Equity for payment of money to be deemed judgments.

**15.** Every decree or order of the Court of Chancery, and every rule or order of the Court of Queen's Bench or Common Pleas, and every decree, order or rule of a County Court, directing payment of money or of costs, charges or expenses, shall, so far as it relates to such money, costs, charges or expenses, be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act; and the said persons shall respectively have the same remedies, and the Courts and Judges and the officers of Justice shall in such cases have the same powers and duties, as in corresponding cases under this Act. 22 V. c. 33 s. 14. (1859.)

#### CUSTODY OF PERSONS ARRESTED.

Person arrested out of his County may be transferred to it, paying the cost.

**16.** In case a person has been heretofore, or may after this Act take effect, be arrested and committed to gaol in any other County than that in which he resided or carried on business at the time, such person shall be entitled to be transferred to the gaol of his own County on prepaying the expense of his removal; and the Sheriff in whose County he was arrested may, if he be satisfied of the facts, transfer him accordingly; but if the Sheriff declines to act without an order of the Court or a Judge, such an order shall be made on the application of the prisoner and notice to the opposite party. 22 V. c. 33, s. 9. (1859.)

Persons imprisoned on the 4th of May, 1859, for non-payment of costs to be discharged.

**17.** Every person who, on the fourth of May, one thousand eight hundred and fifty-nine, was in custody or on bail under process of contempt for non-payment of costs, shall, if not already discharged, be entitled to be discharged therefrom. 22 V. c. 33, s. 10. (1859.)

Persons in custody on the 4th May, 1859, under *Ne Exeat*, &c., to be discharged, subject to this Act.

**18.** Every person who, on the said Fourth of May, was in custody or on bail under a Writ of *Ne Exeat*, or who was in custody or on bail, whether to the limits of any gaol or otherwise under process of contempt for non-payment of money under any award, order, decree, or other proceeding whatever other than costs, charges and expenses, shall, if not already discharged, be entitled to be discharged, but shall be liable to be detained, or after such discharge to be again arrested, by virtue of any such special order as mentioned in the eighth or thirteenth section of this Act.

#### WRITS OF FIERI FACIAS AND VENDITIONI EXPONAS.

Decrees, &c., in Equity to be enforced by Writ of *Fi. Fa.* &c., as at law.

**19.** For the purpose of enforcing payment of any money or of any costs, charges or expenses payable by any decree or order of the Court of Chancery, or any rule or order of the Court of Queen's Bench or Common Pleas, or any decree, order or rule of a County Court, the person to receive payment shall be entitled

entitled to Writs of *Fieri Facias* and *Venditioni Exponas* respectively, against the property of the person to pay, and shall also be entitled to attach and enforce payment of the debts of or accruing to the person to pay, in the same manner respectively and subject to the same rules, as nearly as may be, as in the case of a judgment at law in a civil action; and such writs shall have the like effect as nearly as may be, and the Courts and Judges shall have the same powers and duties in respect to the same and in respect to the proceedings under the same, and the parties and Sheriff respectively shall have the same rights and remedies in respect thereof, and the writs shall be executed in the same manner and subject to the same conditions, as nearly as may be, as in the case of like writs in other cases; but subject to such general orders and rules varying or otherwise affecting the practice in regard to the said matters, as the Courts respectively may from time to time make under their authority in that behalf. 22 V. c. 33, s. 12. (1859.)

Same Rules, &c., to apply as in other cases.

#### PERSON HAVING CARRIAGE OF DECREE.

**20.** In case a decree or order in Chancery, or of a County Court in the exercise of the equitable jurisdiction of such County Court, directs the payment of money into Court or to the credit of any cause, or otherwise than to any person, the person having the carriage of the decree or order, so far as relates to such payment, shall be deemed the plaintiff within the meaning of this Act. 22 V. c. 33, s. 15. (1859.)

Person having carriage of the decree, &c., to be deemed the plaintiff.

#### SEQUESTRATIONS.

**21.** The Court of Chancery may also issue Writs of Sequestration as hitherto or in such cases as by general or other orders the Court may think expedient; and nothing in this Act shall be construed to take away the jurisdiction of the Court under or by means of such writs; and no writ shall issue from Chancery against the lands of the person to pay, but if the decree or order be registered, the Court may enforce the charge thereby created upon real estate, according to the practice of the Court in the case of a charge on real estate created by other means. 22 V. c. 33, s. 13. (1859.)

Power of sequestration not taken from Court of Chancery, &c.

#### COMMON LAW PROCEDURE ACT APPLIED.

**22.** For the purpose of carrying out the provisions of this Act, so far as relates to the Courts of Queen's Bench and Common Pleas, and to the County Courts as Courts of Law, the several provisions of the Common Law Procedure Act shall, so far as applicable and not inconsistent with this Act, apply to this Act, and sections three hundred and thirty-three to three hundred and forty, and section three hundred and forty-four of the said Common Law Procedure Act, shall be deemed incorporated herewith, as if the provisions therein contained had been repeated in this Act and expressly made to apply hereto, and it shall not be necessary to lay before Parliament any rules, orders or regulations made for the purpose of this Act. 22 V. c. 33, s. 18. (1859.)

Certain clauses of the Common Law Procedure Act incorporated with this Act.

Certain powers vested in Court of Chancery.

**23.** The Court of Chancery shall, with reference to the proceedings in the Court of Chancery under this Act, and to proceedings under this Act in the County Courts in the exercise of their equitable jurisdiction, have all the powers which the next preceding section of this Act gives to the Common Law Courts, in respect to the cases to which the sections of the Common Law Procedure Act therein specially mentioned refer. 22 V. c. 33, s. 19. (1859.)

GAOL LIMITS.

Gaol limits.

**24.** The limits of each County for judicial purposes shall be the limits of the Gaols of such County. 19 V. c. 43, s. 301.

Sheriff may take from debtors in execution security to keep the limits.

**25.** The Sheriff of any County may take from any debtor confined in the Gaol thereof in execution or upon Mesne Process, a bond with not less than two or more than four sufficient sureties, to be jointly and severally bound in a penalty of double the amount for which such debtor is so confined, conditioned, except as hereinafter provided, that such debtor shall remain and abide within the limits of such Gaol and shall not depart therefrom, unless discharged from custody in the suit or matter upon which he is so confined by due course of law, and also that such debtor will, during all the time that he is upon the limits subject to such custody, observe and obey all notices, orders or rules of Court touching or concerning such debtor, or his answering interrogatories, or his appearing to be examined *vivâ voce* or his returning and being remanded into close custody, and that upon reasonable notice, to them or any of them, requiring them so to do, they will produce such debtor to the Sheriff, and also that the said debtor will, within thirty days, cause the said bond, or the bond that may be substituted for the same, according to the provisions hereinafter contained, to be allowed by the Judge of the County Court of the County wherein the debtor is confined, and such allowance to be endorsed thereon by the said Judge; and for this purpose the Sheriff shall, upon reasonable notice given by the debtor, cause such first mentioned bond to be produced before the Judge, and upon such allowance being so endorsed, the Sheriff shall be discharged from all responsibility respecting such debtor, unless the debtor be again committed to the close custody of such Sheriff in due form of law. 19 V. c. 43, s. 302,—20 V. c. 57, s. 25.

Surety to make affidavit, &c.

**26.** The Sheriff may also require each surety when there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Upper Canada, stating where, and is worth the sum for which the debtor is in custody, (naming it), and two hundred dollars more, over and above what will pay all his debts, or where there are more than two sureties, then he may require each surety to make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one half the sum for which the debtor is in custody, (naming

(naming it), and two hundred dollars more, over and above what will pay all his debts. 19 V. c. 43, s. 302.

**27.** The application for the allowance aforesaid shall be by motion of the debtor, and four clear days' notice thereof shall be given in writing to the Plaintiff or his Attorney, who at the time of such motion may object to the sufficiency of the sureties; and if the Judge refuses his allowance of the bond, then the debtor may cause another bond made to the Sheriff in the same terms and under the same conditions, to be executed without any further application to the Sheriff, and may move in like manner and upon the like notice for the allowance thereof; and such bond, if allowed and endorsed as aforesaid, shall be substituted for and take place of and have the like effect in all respects, and the like remedies shall be had thereon, as the bond so first given to the Sheriff as aforesaid would have had upon the allowance thereof, and such first given bond shall thereupon become void. 20 V. c. 57, s. 26.

Allowance to be made on motion, &c.

**28.** Upon receipt of such bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of solvency, if required by the Sheriff, the Sheriff may permit and allow the debtor to go out of close custody in Gaol, into and upon the Gaol limits, and so long as such debtor remains within the said limits without departing therefrom, and in all other respects observes, fulfils and keeps on his part the condition of the said bond, the Sheriff shall not be liable to the party at whose suit such debtor is confined, in any action, for the escape of such debtor from Gaol. 19 V. c. 43, s. 303.

On receipt of such bond, Sheriff may allow the debtor the limits without being liable for an escape.

**29.** Persons who, since the fourth of May, one thousand eight hundred and fifty-nine, have given or who, after this Act takes effect, give bail under a Writ of *Capias ad Satisfaciendum*, or under a Writ of Attachment under the thirteenth section of this Act, shall not be bound to remain or abide within the gaol limits, but may depart therefrom at their discretion; and when a person desires to give bail under such a writ, the bond to the Sheriff shall not contain that part of the usual condition which provides that the debtor shall remain and abide within the limits of the gaol or shall not depart therefrom unless discharged from custody by due course of law; but the condition shall provide that the person arrested shall observe and obey all notices, orders and rules of the Court touching or concerning the debtor or person ordered to pay, or his answering interrogatories, or his appearing to be examined *vivá voce* or otherwise, or his returning and being remanded into close custody; and the party or his bail shall not be entitled to claim longer time for so observing or obeying than he would have been entitled to if the party had remained on the limits as heretofore, but the Court may, notwithstanding, grant further time if the Court be of opinion that the same may be done without substantial injury to the interests of the party to receive the money. 22 V. c. 33, s. 6. (1859.)

Conditions of bail-bond under Writ of *Ca. Sa.*—or of Attachment under sect. 13.

Persons bailed to the limits before 4th May, 1859, may surrender themselves or substitute new security.

**30.** Persons who, before the fourth day of May, one thousand eight hundred and fifty-nine, had given bail or security under a Writ of *ne Exeat* or *Capias ad Satisfaciendum*, may surrender themselves into custody, or may substitute for their bonds or other security theretofore given under the writ, a bond or other security to the effect and amount mentioned in the preceding sections of this Act; and thereupon in either case the existing bail or security shall be discharged or released. 22 V. c. 33, s. 7. (1859.)

If the sureties become insolvent, &c., Sheriff may re-take the debtor.

**31.** In case the Sheriff has good reason to apprehend that the sureties or any of them, have, after entering into such bond, become insufficient to pay the amount by them severally sworn to, he may again arrest the debtor, and detain him in close custody. 19 V. c. 43, s. 304.

The sureties may plead such arrest.

**32.** The sureties of the debtor may plead such arrest and detention in bar of any action brought against them upon the bond entered into by them, and such plea, if sustained in proof, shall wholly discharge them from such action; and the debtor may again obtain the benefit of the Gaol limits, on giving to the Sheriff a new bond with sureties as aforesaid. 19 V. c. 43, s. 304.

Limits bonds may be assigned.

**33.** Upon breach of the condition of any such bond, the party, at whose suit the debtor is confined, may require the Sheriff to assign the same to him, and such assignment shall be made in writing, under the seal of the Sheriff, and attested by at least one witness, and the assignee of the Sheriff or the executors or administrators of such assignee, may maintain an action in his or their own names upon such bond, which action the Sheriff shall have no power to release; but upon executing such assignment at such request, the Sheriff shall be thenceforth discharged from all liability on account of the debtor or his safe custody. 19 V. c. 43, s. 305,—20 V. c. 57, s. 25.

The sureties may surrender the debtor and to what Sheriff, &c.

**34.** The sureties of any such debtor may surrender him into the custody of the Sheriff at the Gaol, and the Sheriff, his Deputy or Gaoler shall there receive such debtor into custody, and the sureties may plead such surrender or an offer to surrender and the refusal of the Sheriff, his Deputy or Gaoler to receive the debtor into custody at the Gaol, in bar of any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and such plea, if sustained in proof, shall discharge them from the action; but such debtor may again obtain the benefit of the limits on giving to the Sheriff a new bond, with sureties as aforesaid. 19 V. c. 43, s. 306.

Debtor on limits, bound to answer interrogatories.

**35.** The party at whose suit any debtor is confined may, at any time, while the debtor enjoys the benefit of the limits, file and serve interrogatories, to be answered by the debtor in manner provided for in the Act respecting relief of Insolvent Debtors, being chapter twenty-six, and in case the debtor neglects



or omits, for the space of fifteen days next after service thereof, to answer and file the answers thereto, and to give immediate notice of such filing to the party at whose suit he is in custody, or to the Attorney of that party, the Court or a Judge, as aforesaid, may make a rule or order that such debtor shall be committed to close custody, and the Sheriff, on due notice of such rule or order, shall forthwith take such debtor and re-commit him to close custody until he obtains a rule of Court or Judge's order for again admitting him to the limits, on giving the necessary bond as aforesaid, or until he is otherwise discharged by due course of law. 19 V. c. 43, s. 307.

Or be re-committed.

**36.** A new rule or order may be granted on the debtor shewing that he has filed his answers to such interrogatories, and has given to the Plaintiff or his Attorney ten days' notice thereof, and of his intention to apply. 19 V. c. 43, s. 307.

On answering may be re-admitted to the limits.

**37.** Except as provided in the twenty-first section of this Act, the party at whose suit any debtor is confined in execution, may, whenever such debtor has taken the benefit of the limits, sue out a Writ of *Fieri Facias* against his lands or goods, notwithstanding such debtors having been charged in execution, and such writ shall not be stayed, but shall be proceeded with until executed, although such debtor be re-committed to close custody; but the wearing apparel of the debtor and that of his family, and their beds and bedding, and household utensils, not exceeding together the value of forty dollars, and the tools and implements of the trade of such debtor, not exceeding in value forty dollars, shall be protected from such Writ of *Fieri Facias*. 19 V. c. 43, s. 308.

Plaintiff may have execution against property of debtor on the limits.

#### PERSONS ON THE GAOL LIMITS OF UNITED COUNTIES.

**38.** In case a debtor or other person be (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and such Union be afterwards dissolved, or one or more Counties be separated from such Union, such debtor or person may, notwithstanding, travel and reside in any portion of the said Counties as if no dissolution or separation had taken place, without committing a breach of any Bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits; and in case any such person after the dissolution of the Union be surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested and be imprisoned in the Gaol thereof. 18 V. c. 69, s. 5,—See 22 V. c. 99, s. 57. (1858.)

Privileges of persons admitted to Gaol limits of United Counties, saved on dissolution thereof.

#### DISCHARGE FROM CUSTODY.

**39.** A person arrested under a Writ of *Capias ad Satisfaciendum*, or under a Writ of Attachment, though he be not confined to close custody but has given bail, may apply for and obtain his discharge in the same manner and subject to the same terms and conditions as nearly as may be, as an execution debtor

Person on bail may obtain discharge, &c., as if in close custody.

debtor who is confined to close custody. 22 V. c. 33, s. 8. (1859.)

PRISONERS IN CRIMINAL CUSTODY.

Provisions of this Act not to extend to persons in custody on criminal charges.

**40.** None of the foregoing provisions relative to the discharge from custody or admission to bail, shall extend or be applicable to debtors who are, at the same time, in custody upon any criminal charge. 19 V. c. 43, s. 309.

Judgment creditor may apply to have his judgment debtor examined as to his property, &c.

**41.** In case any party has obtained a judgment in any Court in Upper Canada, such party, or any person entitled to enforce such a judgment, may apply to such Court or to any Judge having authority to dispose of matters arising in such Court, for a rule or order that the judgment debtor shall be orally examined upon oath before the Clerk of the Crown, or before the Judge or Clerk of the County Court within the jurisdiction of which such debtor may reside, or before any other person to be named in such rule or order, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, and as to the property and means he still hath of discharging the said judgment, and as to the disposal he may have made of any property since contracting such debt or incurring such liability; and in case such debtor does not attend as required by the said rule or order, and does not allege a sufficient excuse for not attending, or if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that such debtor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, such Court or Judge may order such debtor to be committed to the Common Gaol of the County in which he resides for any time not exceeding twelve months, or such Court or Judge, may by rule or order, direct that a Writ of *Capias ad Satisfaciendum* may be issued against such debtor, and a Writ of *Capias ad Satisfaciendum* may thereupon be issued upon such judgment, or in case such debtor enjoys the benefit of the gaol limits, such Court or Judge may make a rule or order for such debtor's being committed to close custody under the thirty-fifth section of this Act. 22 V. c. 96, s. 13.—See Ante c. 22, s. 288.

Committal of debtor for non-attendance, refusal to answer, answering unsatisfactorily, &c.

C A P . X X V .

An Act respecting absconding Debtors.

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

WHO IS AN ABSCONDING DEBTOR.

Who to be regarded as an

**1.** If any person resident in Upper Canada indebted to any other person, departs from Upper Canada with intent to defraud his.

his creditors, and at the time of his so departing, is possessed to his own use and benefit, of any real or personal property, credits or effects therein, he shall be deemed an absconding debtor, and his property, credits and effects aforesaid, may be seized and taken for the satisfying of his debts by a Writ of Attachment. 19 V. c. 43, s. 43.

#### AFFIDAVIT TO OBTAIN ORDER FOR ATTACHMENT.

##### 1.—*In the Superior Courts.*

2. Upon affidavit made by any Plaintiff, his servant or agent, that any such person so departing is indebted to such Plaintiff in a sum exceeding one hundred dollars, and stating the cause of action, and that the Deponent hath good reason to believe and doth verily believe that such person hath departed from Upper Canada and hath gone to (stating some place to which the absconding Debtor is believed to have fled or that the Deponent is unable to obtain any information as to what place he hath fled,) with intent to defraud the Plaintiff of his just dues, or to avoid being arrested or served with process, and upon the further affidavit of two other credible persons, that they are well acquainted with the Debtor mentioned in the first named affidavit, and have good reason to believe and do believe that such Debtor hath departed from Upper Canada with intent to defraud the said Plaintiff, or to avoid being arrested or served with process, either of the Superior Courts of Common Law or any Judge thereof, or the Judge of any County Court, may, by rule or order, direct a Writ of Attachment to issue from either of such Superior Courts, and may in such rule or order appoint the time for the Defendants putting in Special Bail, which time shall be regulated by the distance from Upper Canada of the place to which the absconding Debtor is supposed to have fled, having due regard to the means of and necessary time for postal or other communication. 19 V. c. 43, s. 44.

Proceedings upon affidavit that the defendant hath absconded, &c.

Further affidavit.

Writ of Attachment to issue.

3. In cases within the Jurisdiction of a County Court, the Writ of Attachment when issued from either of the Superior Courts, shall be marked in the "Inferior Jurisdiction," and costs shall be governed accordingly. 19 V. c. 43, s. 44.

When to be marked "Inferior Jurisdiction."

##### 2.—*In County Courts.*

4. In case the sum claimed be within the Jurisdiction of the County Courts, any such Court or the Judge or acting Judge thereof, may in like manner by rule or order direct a Writ of Attachment to issue from such Court, and the proceedings thereon shall be the same as in this Act provided. 19 V. c. 43, s. 44,—19 V. c. 90, s. 2.

In cases in County Courts, Judges to order Writs to issue.

#### WRIT OF ATTACHMENT AND SUMMONS.

5. The Writ of Attachment shall also contain a Summons to the absconding debtor, and shall be in the form following: 19 V. c. 43, s. 43.

Contents of.

Upper

Upper Canada, } Victoria, &c.  
 County of        } To the Sheriff of, &c.

(Seal.)

Form of Writ  
 and Summons.

We command you, that you attach, seize and safely keep all the real and personal property, credits and effects, together with all evidences of title or debts, books of account, vouchers and papers belonging thereto, of C. D., to secure and satisfy A. B., a certain debt (or demand) of \$ (or £ ) (*the sum sworn to*) with his costs of suit, and to satisfy the debt and demand of such other creditors of the said C. D., as shall duly place their Writs of Attachment in your hands or otherwise lawfully notify you of their claim, and duly prosecute the same. And we also command the said C. D., that within (*the time named in the Judge's order or rule of Court,*) days after the service of this Writ on him, inclusive of the day of such service, he do cause special bail to be entered for him in our Court (or County Court) of \_\_\_\_\_, in an action to recover \$ (or £ ) (*the sum sworn to*) at the suit of the said A. B.; And we require the said C. D. to take notice, that his real and personal property, credits and effects in Upper Canada have been attached at the suit of the said A. B., and that in default of his putting in special bail as aforesaid, the said A. B. may, by leave of the Court or a Judge, proceed therein to judgment and execution, and may sell the property so attached; And we command you, the said Sheriff, that as soon as you have executed this Writ, you return the same with the inventory and appraisement of what you have attached thereunder.

Witness, &c.

*In the margin.*

Issued from the Office of the Clerk (or Deputy Clerk) of the Crown and Pleas (or of the Clerk of the County Court) in the County of \_\_\_\_\_

(Signed,)

J. H., Clerk, or Deputy Clerk, or  
 Clerk of the County Court.

*Memorandum to be subscribed on the Writ.*

N. B.—This Writ is to be served within six months from the date thereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the Writ before service thereof.*

This Writ may be served out of Upper Canada, and was issued by E. F., of \_\_\_\_\_, Attorney, &c., (*as on a Writ of Summons, under the Common Law Procedure Act.*)

6. Every such Writ shall be dated on the day on which it is issued, and shall be in force for six months from its date, and may be renewed for the purpose of effecting service on the Defendant, in like manner as a Writ of Summons may be renewed under the Common Law Procedure Act. 19 V. c. 43, s. 43.

To be dated on day of issue and to be in force 6 months.

7. Every Writ of Attachment shall issue in duplicate, and shall be so marked by the officer issuing the same (the costs of suing out the same being allowed only as if a single Writ issued,) and one Writ shall be delivered to the Sheriff to whom the same is directed, and the other shall be used for the purpose of effecting service on the Defendant. 19 V. c. 43, s. 44.

Writ of Attachment to issue in duplicate.

#### PROCEDURE.

8. In case it be shewn by affidavit to the Court or a Judge having jurisdiction in the case, that a copy of the Writ was personally served on the Defendant, or that reasonable efforts were made to effect such service, and that such Writ came to his knowledge, or that the Defendant hath absconded in such a manner that after diligent inquiry no information can be obtained as to the place he hath fled to, such Court or Judge, if the Defendant has not put in Special Bail may, either require some further attempt to effect service or may appoint some act to be done which shall be deemed good service, and thereupon, (or on the first application, if the Court or a Judge thinks fit) such Court or Judge may authorize the Plaintiff to proceed in the action in such manner and subject to such conditions as the Court or Judge may direct or impose. 19 V. c. 43, s. 45.

Further proceedings after service, &c.

9. Before the Plaintiff obtains Judgment he shall prove the amount of the debt or damages claimed by him in such action either before a Jury on an assessment, or by reference as provided in the Common Law Procedure Act, according to the nature of the case, and no execution shall issue until the Plaintiff, his Attorney or Agent, has made and filed an affidavit of the sum justly due to the Plaintiff by the absconding Debtor, after giving him credit for all payments and claims which might be set off or lawfully claimed by the Debtor at the time of making such last mentioned affidavit, and the execution shall be indorsed to levy the sum so sworn to with the taxed costs of suit, or the amount of the Judgment including the costs, which ever is the smaller sum of the two. 19 V. c. 43, s. 45.

Plaintiff must prove his claim, &c.

10. The Plaintiff may at any time within six months from the date of the original Writ of Attachment, without further order from the Court or a Judge, issue from the office whence the original Writ issued, one or more Concurrent Writ or Writs of Attachment, to bear teste on the same day as the original Writ, and to be marked by the Officer issuing the same with the word "Concurrent" in the margin, which Concurrent

Plaintiff may obtain concurrent Writs to other Sheriffs.

For attaching property.

Writ or Writs of Attachment may be directed to any Sheriff other than the Sheriff to whom the original Writ was issued, and need not be sued out in duplicate or be served on the Defendant, but shall operate merely for the attachment of his real or personal property, credits or effects in aid of the original Writ. 19 V. c. 43, s. 46.

Court may allow defendant to put in special bail.

**11.** The Court or a Judge at any time before or after final Judgment, but before execution executed, upon an application supported by satisfactory affidavits, accounting for the Defendant's delay and default and disclosing a good defence on the merits, may, having regard to the time of the application and other circumstances, let in the Defendant to put in Special Bail and to defend the action, or may reject the application. 19 V. c. 43, s. 47.

#### BAIL.

Defendant's property to be restored on his putting in special bail.

**12.** The special Bail (whether put in within the time limited by the Writ or within such time as the Court or a Judge directs,) shall be put in and perfected in like manner as if the Defendant had been arrested on a Writ of Capias for the amount sworn to on obtaining the attachment; and after being so put in and perfected the Defendant shall be let in to plead, and the action shall proceed as in ordinary cases begun by Writ of Capias. 19 V. c. 43, s. 48.

Or proceeds it sold.

**13.** Upon the Defendant so putting in and perfecting Special Bail, all his property, credits and effects attached in that suit, (excepting any which may have been disposed of as perishable, and then the net proceeds of the goods so disposed of,) shall be restored and paid to him unless there be some other lawful ground for the Sheriff to withhold or detain the same. 19 V. c. 43, s. 48.

#### WHAT PROPERTY MAY BE ATTACHED.

Sheriff to attach all the property and credits of defendant.

**14.** All the property, credits and effects, including all rights and shares in any Association or Corporation, of an absconding Debtor, may be attached in the same manner as they might be seized in execution; and the Sheriff to whom any Writ of Attachment is directed shall forthwith take into his charge or keeping all such property and effects according to the exigency of the Writ, and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his County, and with their aid he shall make a just and true inventory of all the personal property, credits and effects, evidence of title or debt, books of account, vouchers and papers that he has attached, and shall return such inventory signed by himself and the said freeholders, together with the Writ of Attachment. 19 V. c. 43, s. 49.

Inventory to be made.

## PERISHABLE PROPERTY.

**15.** In case any horses, cattle, sheep, pigs or any perishable goods or chattels, or such as from their nature (as timber or staves) cannot be safely kept or conveniently taken care of, be taken under any Writ of Attachment, the Sheriff who attached the same shall have them appraised and valued, on oath, by two competent persons; and in case the Plaintiff desires it and deposits with the Sheriff a Bond to the Defendant executed by two freeholders (whose sufficiency shall be approved of by the Sheriff,) in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the Defendant, his executors or administrators, together with all costs and damages incurred by the seizure and sale thereof, in case Judgment be not obtained by the Plaintiff against the Defendant, then the Sheriff shall proceed to sell all or any of such enumerated articles at public auction, to the highest bidder, giving not less than six days' notice of such sale, unless any of the articles are of such a nature as not to allow of that delay, in which case the Sheriff may sell such articles last mentioned forthwith; and the Sheriff shall hold the proceeds of such sale for the same purposes as he would hold any property seized under the attachment. 19 V. c. 43, s. 50.

How perishable goods shall be dealt with.

Sheriffs to hold proceeds.

**16.** If the Plaintiff, after notice to himself or his Attorney of the seizure of any articles enumerated in the last preceding section, neglects or refuses to deposit such a Bond, or only offers a Bond with sureties insufficient in the judgment of the Sheriff, then, after the lapse of four days next after such notice, the Sheriff shall be relieved from all liability to such Plaintiff in respect to the articles so seized, and the said Sheriff shall forthwith restore the same, to the person from whose possession he took such articles. 19 V. c. 43, s. 51.

Such goods to be restored if plaintiff fail to give sufficient security.

## WHEN DIVISION COURT ATTACHMENTS SUPERSEDED.

**17.** If any Sheriff to whom a Writ of Attachment is delivered for execution, finds any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding Debtor named in such Writ of Attachment, in the hands, or in the custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court by virtue of any Warrant or Warrants of Attachment issued under the Division Courts Act, such Sheriff shall demand and take from such Constable, Bailiff or Clerk, all such property or effects, or the proceeds of any part thereof as aforesaid, and such Constable, Bailiff or Clerk, on demand by such Sheriff and notice of the Writ of Attachment, shall forthwith deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value of the amount thereof, to be recovered by such Sheriff, with costs of suit, and

Proceeding if the Sheriff find property in the hands of a Bailiff or Clerk of a Division Court.

Creditor in Division Court may proceed to judgment.

to be by him accounted for after deducting his own costs, as part of the property and effects of the absconding Debtor ; but the Creditor or Creditors who have duly sued out such Warrant or Warrants of Attachment may proceed to Judgment against the absconding Debtor in the Division Court, and on obtaining Judgment, and serving a memorandum of the amount thereof, and of the costs to be certified under the hand of the Clerk of the Division Court, every such Creditor shall be entitled to satisfaction in like manner as, and in rateable proportion with, the other Creditors of the absconding Debtor who obtain Judgment as hereinafter mentioned: 19 V. c. 43, s. 56.

#### SHERIFF'S COSTS.

Sheriff's costs, and how paid.

**18.** The costs of the Sheriff for seizing and taking charge of property, credits and effects under a Writ of Attachment, including the sums paid to any persons for assisting in taking an inventory, and for appraising (which shall be paid for at the rate of one dollar for each day actually required for and occupied in making such inventory or appraisement) shall be paid in the first instance by the Plaintiff, and may, after having been taxed, be recovered by the Sheriff by action in any Court, having jurisdiction for the amount, and such costs shall be taxed to the party who pays the same as part of the disbursements in the suit against the absconding Debtor and be so recovered from him. 19 V. c. 43, s. 54.

#### APPRAISEMENT.

New Writ not to make new Inventory requisite.

**19.** The Sheriff having made an inventory and appraisement on the first Writ of Attachment against any absconding Debtor, shall not be required to make a new inventory and appraisement on a subsequent Writ of Attachment coming into his hands, nor shall he be allowed any charge for an inventory or appraisement except upon the first Writ. 19 V. c. 43, s. 54.

#### COSTS IN CASE OF ATTACHMENTS NOT WARRANTED.

When Defendant to recover costs of defence.

**20.** If at any time before execution issues, it appears to the Court upon motion and upon hearing the parties by affidavit, that the Defendant was not an absconding Debtor within the true meaning of this Act, at the time of the suing out of the Writ of Attachment against him, such Defendant shall recover his costs of defence, and the Plaintiff shall, by rule of Court, be disabled from taking out any Writ of Execution for the amount of the verdict rendered or ascertained upon reference or otherwise recovered in such action, unless the same exceeds, and then for such sum only as the same exceeds, the amount of the taxed costs of the Defendant, and in case the sum so recovered is less than the taxed costs of the Defendant, then the Defendant shall be entitled, after deducting the amount of the sum recovered from the amount of such taxed costs,



costs, to take out execution for the balance in like manner as a Defendant may now by law have execution for costs in ordinary cases. 19 V. c. 43, s. 48.

PENDING SUITS TO CONTINUE.

**21.** Any person who has commenced a suit in any Court of Record of Upper Canada, the process wherein was served or executed before the suing out of a Writ of Attachment against the same defendant as an absconding Debtor, may, notwithstanding the suing out of the Writ of Attachment, proceed to Judgment and execution in his suit in the usual manner; and if he obtains execution before the Plaintiff in any such Writ of Attachment, he shall have the full advantage of his priority of execution, in the same manner as if the property and effects of such absconding Debtor still remained in his own hands and possession, but if the Court or a Judge so orders subject to the prior satisfaction of all costs of suing out and executing the Attachment. 19 V. c. 43, s. 55.

Persons having previously commenced suits against the same defendant, may proceed to judgment, &c.

FRAUDULENT JUDGMENTS.

**22.** In case it appears to the Court in which any such prior action has been brought or to a Judge thereof, that such judgment is fraudulent, or that such action has been brought in collusion with the absconding debtor, or for the fraudulent purpose of defeating the just claims of his other creditors, such Court or Judge may, on the application of the plaintiff on any Writ of Attachment, set aside such judgment and any execution issued thereon or stay proceedings therein. 19 V. c. 43, s. 55.

If such suit be fraudulent or collusive.

HOW DEBTS ATTACHED AND LIABILITY OF DEBTOR.

**23.** In case notice in writing of the Writ of Attachment has by the Sheriff, or by or on behalf of the plaintiff in such Writ, been duly served upon any person owing any debt or demand to, or who has the custody or possession of any property or effects of, an absconding debtor, and in case such person after such notice pays any such debt or demand or delivers any such property or effects to such absconding debtor, or to any person for the individual use and benefit of such absconding Debtor, he shall be deemed to have done so fraudulently, and if the Plaintiff recovers Judgment against the absconding Debtor, and the property and effects seized by the Sheriff are insufficient to satisfy such Judgment, such person shall be liable for the amount of such debt or demand, and for such property and effects or the value thereof. 19 V. c. 43, s. 52.

Proceedings after notice of the seizure.

**24.** If after notice as aforesaid of a Writ of Attachment, any person indebted to the absconding Debtor, or having custody of his property as aforesaid, be sued for such debt, demand

Defendant's debtor sued by him after the seizure, may

obtain stay of proceedings.

demand or property by the absconding debtor, or by any person to whom the absconding Debtor has assigned such debt or property since the date of the Writ of Attachment, he may, on affidavit, apply to the Court or a Judge, to stay proceedings in the action against himself, until it be known whether the property and effects so seized by the Sheriff, be sufficient to discharge the sum or sums recovered against the absconding Debtor, and the Court or Judge may make such rule or order in the matter as the Court or Judge thinks fit, and if necessary may direct an issue to try any disputed question of fact. 19 V. c. 43, s. 52.

#### WHEN SHERIFF MAY SUE FOR OUTSTANDING DEBTS.

Debtor of defendant may be sued if defendant's property seized be not sufficient to satisfy plaintiff.

**25.** If the real and personal property, credits and effects of any absconding Debtor attached by any Writ of Attachment as aforesaid, prove insufficient to satisfy the executions obtained in the suit thereon against such absconding Debtor, the Sheriff having the execution thereof may, by rule or order of the Court or a Judge, to be granted on the application of the Plaintiff, in any such case, sue for and recover from any person indebted to such absconding Debtor, the debt, claim, property or right of action attachable under this Act and owing to or recoverable by such absconding Debtor, with costs of suit, in which suit the Defendant shall be allowed to set up any defence which would have availed him against the absconding Debtor at the date of the Writ of Attachment; and a recovery in such suit by the Sheriff shall operate as a discharge as against such absconding Debtor; and such Sheriff shall hold the moneys recovered by him as part of the assets of such absconding Debtor, and shall apply them accordingly. 19 V. c. 43, s. 53.

#### FORM OF DECLARATION.

Averment to be inserted in Sheriff's declaration.

**26.** The declaration in any such action by the Sheriff shall contain an introductory averment to the effect following :

A. B., Sheriff of, (&c.) who sues under the provisions of the law respecting absconding Debtors, in order to recover from C. D., Debtor to E. F., an absconding Debtor, the debt due (*or other claim, according to the facts*) by the said C. D., to the said E. F., complains, &c. 19 V. c. 43, s. 53.

#### SHERIFF'S INDEMNITY.

Sheriff not bound to sue until creditor gives bond to indemnify him.

**27.** The Sheriff shall not be bound to sue any party as aforesaid until the attaching creditor gives his bond with two sufficient sureties payable to such Sheriff by his name of office in double the amount or value of the debt or property sued for, conditioned to indemnify him from all costs, losses and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof. 19 V. c. 43, s. 53.

**28.** In the event of the death, resignation or removal from office of any Sheriff after such action brought, the action shall not abate, but may be continued in the name of his successor to whom the benefit of the bond so given shall enure as if he had been named therein, and a suggestion of the necessary facts as to the change of the Sheriff as Plaintiff shall be entered of record. 19 V. c. 43, s. 53.

Sheriff's successor may continue the action.

#### WHEN DISTRIBUTION TO BE RATEABLE.

**29.** When several persons sue out Writs of Attachment against an absconding Debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be rateably distributed among such of the Plaintiffs in such Writs as obtain Judgments and sue out execution, in proportion to the sums actually due upon such Judgments, and the Court or a Judge may delay the distribution, in order to give reasonable time for the obtaining of Judgment against such absconding Debtor. 19 V. c. 43, s. 57.

Proceedings if several persons take out Writs against the same absconding debtor.

#### WHEN JUDGMENT CREDITOR IN DIVISION COURT TO PARTICIPATE.

**30.** Every Creditor who produces a certified memorandum from the Clerk of any Division Court, of his Judgment as aforesaid, shall be considered a Plaintiff in a Writ of Attachment who has obtained Judgment and sued out execution, and shall be entitled to share accordingly. 19 V. c. 43, s. 57.

Creditors under Division Court judgments to share *pari passu*.

**31.** In case the property and effects of the absconding Debtor be insufficient to satisfy the sums due to such Plaintiffs, none shall be allowed to share, unless their Writs of Attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first Writ of Attachment, or in case of a Warrant of Attachment, unless the same was placed in the hands of the Constable or Bailiff before or within six months after the date of the first Writ of Attachment. 19 V. c. 43, s. 57.

Who to be entitled to share if the property proves insufficient to pay all.

#### SURPLUS TO BE RESTORED.

**32.** If after the period of one month next following the return of any execution against the property and effects of any absconding Debtor, or after a period of one month from a distribution under the order of the Court or a Judge, whichever last happens, and after satisfying the several Plaintiffs entitled, there be no other Writ of Attachment or execution against the same property and effects in the hands of the Sheriff, then, all the property and effects of the absconding Debtor, or unappropriated moneys the proceeds of any part of such property and effects, remaining in the hands of the Sheriff, together with all books of account, evidences of title or of debt, vouchers and papers whatsoever belonging thereto, shall be

When all the seizing creditors are satisfied, the remaining property to be delivered up.

be delivered to the absconding Debtor or to the person or persons in whose custody the same were found, or to the authorized Agent of the absconding Debtor, and thereupon the responsibility of the Sheriff in respect thereto shall determine. 19 V. c. 43, s. 58.

## C A P . X X V I .

### An Act respecting relief of Insolvent Debtors.

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

#### INSOLVENT DEBTORS IN EXECUTION.

##### *Weekly allowance to Debtors in close custody.*

In what cases debtors in close custody to be entitled to weekly allowance.

1. If a debtor in close custody :

1. Upon *mesne* process ; or

2. In execution ; or

3. Upon an attachment or other process, for non-payment of costs, or for non-payment of any sum of money awarded, or for the non-payment of any claim in the nature of a debt or demand due, being a sum certain or capable of being ascertained by computation and not in the nature of a penalty to enforce the doing of some act other than the payment of a sum of money, (in which several cases the debtor shall be deemed to be a prisoner in execution,) makes oath :

1. That he is a prisoner in close custody, setting forth on which of the causes of detention above specified ; and

2. That he is unable to find security for the limits ; and

3. Is not worth the sum of five pounds ; and

4. In case he is in custody on *mesne* process that he is unable to procure bail to the action, and that he does not believe the demand of the Plaintiff to be just, and for that cause, and no other, resists payment of the same and refuses to confess judgment for the sum sworn to,—the Court from which the process issued, or any Judge having authority to dispose of matters arising in suits in such Court, shall make a rule or order on the Plaintiff at whose suit the debtor is detained, to pay to such debtor on the third Monday after the service of such rule or order, and upon each Monday thereafter, so long as such debtor is detained in prison at the suit of such Plaintiff for such cause, the sum of two dollars, and such payment shall

The allowance when payable.

shall be made to the debtor or to the Gaoler in whose custody he is, for the use of such debtor. 19 V. c. 43, s. 295.

2. In default of such payment, the debtor, on his affidavit of the default and after service of a rule *nisi* or Judge's Summons, to be obtained on such affidavit, shall, unless sufficient cause is shewn, to the contrary, be discharged from custody by rule or order; but such discharge shall not, in case the debtor was confined on *Mesne* Process, prevent the Plaintiff from proceeding to judgment and execution against the body, lands or goods according to the practice of the Court, and in case the debtor is a prisoner in execution, such discharge shall not be a release or satisfaction of the Judgment or other debt or demand, nor shall such discharge, for the non-payment whereof the debtor was in custody, deprive the Plaintiff of any remedy against the lands or goods of such debtor. 19 V. c. 43, s. 295.

When debtor entitled to be discharged, if not paid.

3. When a debtor applies for the weekly allowance, or to be discharged from custody for the non-payment thereof, the Plaintiff may file interrogatories for the purpose of discovering any property or effects such debtor may be possessed of or entitled to, or which may be in the possession or under the control of some other person for his use or benefit, or which he may have fraudulently disposed of to injure his creditor, and the Plaintiff may serve a copy of such interrogatories on such debtor, and thereupon, and until the debtor has fully answered the same upon oath to the satisfaction of the Court or Judge, and filed his answers and given sufficient notice of such filing to the Plaintiff or his Attorney, no rule or order for the payment of such weekly allowance shall be made, or if previously made, no order for his discharge for non-payment thereof shall be made. 19 V. c. 43, s. 296.

Debtor not entitled to allowance or to his discharge in default of payment until he has answered interrogatories touching his property.

4. If such debtor has obtained an order for payment of the weekly allowance, the Plaintiff may at any time file and serve such interrogatories, and the Court from which the process issued, or a Judge, on application of the Plaintiff, may stay further payment until the debtor has sworn to and filed his answers, and has given to the Plaintiff or his Attorney four clear days' notice thereof. 19 V. c. 43, s. 297.

Filing interrogatories to debtor.

5. In case such debtor be a prisoner in close custody in several suits or matters, he must make all the Plaintiffs, in such suits or matters, parties to his application for the weekly allowance, and he shall only be entitled to one weekly sum of two dollars, although in custody in several suits and matters; and in any such case, if the weekly allowance be unpaid, the debtor shall have the same right as when in custody in one suit only, to be discharged from custody in all the suits or matters named in the order for payment, and the Plaintiffs named in such order must all be made parties on any application for the debtor's discharge on account

Defendant in custody on several Writs, only entitled to one allowance, &c.

of

of non-payment, and all such Plaintiffs must join in administering interrogatories to the Defendant, as if they were Plaintiffs in one suit, and such Plaintiffs shall regulate among themselves the apportionment of the weekly allowance and the arrangement for payment thereof. 19 V. c. 43, s. 298.

Allowance may be recovered from debtor as costs.

6. The Plaintiff shall be entitled to recover from his debtor all sums paid to him for weekly allowance while a prisoner on *Mesne* Process, and upon proof of the amount of such payment before the proper taxing Officer, such sums shall be allowed as disbursements in the suit and be taxed as part of the costs thereof. 19 V. c. 43, s. 299.

A debtor in custody in execution, may apply to be discharged: and after what notice, &c.

7. In case any debtor, according to the intent and meaning of this Act, who is or may be confined in close custody in execution at the time of, or after the passing of this Act, gives to the party at whose suit he is a prisoner or to his Attorney, a notice in writing that he will, after the expiration of ten days from the day of the service of such notice, apply to be discharged from custody, the Plaintiff, at whose suit he is confined, may file interrogatories for the purpose of discovering any property or effects which such debtor may be possessed of or entitled to, or which may be in the possession or under the control of some other person for the use or benefit of such debtor, or which such debtor, having been in possession of, may have fraudulently disposed of to injure his creditor, and touching such debtor's estate and effects, and the circumstances under which he contracted the debt or incurred the liability which was the subject of the action in which Judgment has been rendered against him, and as to the means and expectations such debtor then had, and as to the property and means he still hath, and as to the disposal he may have made of any of his property, and may serve a copy of such interrogatories on such debtor; or the plaintiff, at his option, may cause such debtor to be examined *vivâ voce* upon oath before the Judge of the County Court in the County in which such debtor is confined, or before some one to be appointed in that behalf by such County Judge, upon and touching all or any of the matters aforesaid; and such County Judge may issue an order to the Sheriff or Gaoler having the custody of such debtor, to bring such debtor before him or before some person to be named in such order, for the purpose of being so examined, and such Sheriff or Gaoler shall take such debtor before such Judge or person appointed as aforesaid, for examination under the authority of this Act, in the same manner as if such Sheriff or Gaoler were acting in obedience to a Writ of *Habeas Corpus ad Testificandum*. 22 V. c. 96, s. 11.

Examination of such debtor as to his property, &c., by interrogatories.

Or *vivâ voce* before County Judge.

Debtor to be taken before the Judge upon his order.

Application of such debtor for discharge on his having complied with cer-

8. After the expiration of ten days from the day of the service of a notice by a debtor of his intention to apply for his discharge from custody under the next preceding section, and upon proof of such notice, and upon such debtor's making oath that

that he is not worth twenty dollars exclusive of his necessary wearing apparel, the bed and bedding of such debtor or his family, and one stove and cooking utensils of such debtor, and also the tools and implements of his trade not exceeding the value of sixty dollars, and that he hath answered all interrogatories filed by the Plaintiff, and hath given due notice of such answers (or if no interrogatories have been served, that he hath not been served with any interrogatories), and that he has submitted himself to be examined pursuant to the order of the County Judge (or if such order has not been served, that he has not been served with any such order), such debtor may apply to the Court from which the process on which he is confined issued, or to any Judge having authority to dispose of matters arising in suits in such Courts, for a rule or summons to shew cause why he should not be discharged from custody, and where there upon the return of such rule or summons, and where there are interrogatories if the answers thereto are deemed sufficient by such Court or Judge, or where such examination has taken place if the matter thereof be deemed satisfactory by such Court or Judge, such debtor shall be by rule or order discharged from custody, and such discharge shall have the same and no other effect as a discharge for non-payment of the weekly allowance. 22 V. c. 96, s. 12.

tain require-  
ments, and  
making a cer-  
tain affidavit.

Discharge, and  
its effect.

9. In case the Plaintiff has already filed interrogatories, or caused the debtor to be examined *vivá voce*, and in case on the return of the rule or summons, further inquiry appears requisite for the ends of Justice, the Court or Judge may allow the Plaintiff a reasonable time to file further interrogatories, or to cause such debtor to be further examined *vivá voce*, and may allow a reasonable time for the debtor to answer them or to submit to such further examination, before the rule or summons be finally disposed of.

Further exami-  
nation of debtor  
may be ordered.

10. The Court or Judge may make it a condition of the debtor's discharge, that he shall first, by an assignment or conveyance which shall be approved by the Court or Judge, assign and convey to the party at whose suit he is in custody, any right or interest which he may have or be presumed to have in and to any property, real or personal, credits and effects, other than the wearing apparel, bed, bedding, stove, cooking utensils, tools and implements of trade before mentioned.

Discharge may  
be on condition  
of assignment  
by debtor.

11. In case it appear to the Court or Judge that the debt for which such debtor is confined was contracted by any manner of fraud or breach of trust, or under false pretences, or that such debtor wilfully contracted such debt or incurred such liability without having had at the same time a reasonable assurance of being able to pay or discharge the same, or that he is confined by reason of any Judgment in an action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the Court or Judge

Re-committal  
of such debtor  
for not more  
than 12 months,  
in cases of  
fraud, seduc-  
tion, libel, &c.

Judge may order the Applicant to be recommitted to close custody for any period not exceeding twelve months, and to be then discharged. 22 V. c. 96, s. 12.

Debtor unduly obtaining discharge may be re-taken in execution.

**12.** In case any discharge granted under this Act has been unduly or fraudulently obtained by any false allegation of circumstances which, if true, might have entitled the debtor to be discharged by virtue of this Act, such debtor shall, upon the same being made to appear to the satisfaction of such Court or a Judge as aforesaid, be liable to be again taken in execution and remanded to his former custody by rule or order of such Court or Judge; but no sheriff or gaoler shall be liable as for an escape of such debtor in respect of his enlargement during the time he has been at large by means of such his undue discharge as aforesaid. 22 V. c. 96, s. 14.

Saving Sheriff, &c.

Person on bail may obtain discharge, &c., as if in close custody.

**13.** A person arrested under a Writ of *Capias ad Satisfaciendum*, or under a Writ of Attachment, though he be not confined to close custody but has given bail, may apply for and obtain his discharge in the same manner and subject to the same terms and conditions, as nearly as may be, as an execution debtor who is confined to close custody. 22 V. c. 33, s. 8. (1859.)

False swearing &c., on any examination to be perjury.

**14.** Every person who, upon any examination upon oath or affirmation, or in any affidavit made or taken in any proceedings under this Act, wilfully and corruptly gives false evidence, or wilfully and corruptly swears or affirms any thing which shall be false, and who is thereof convicted, shall be liable to the penalties of wilful and corrupt perjury. 22 V. c. 96, s. 15.

Power for making Rules, Forms, &c.

**15.** The Common Law Procedure Act shall so far as applicable apply to this Act, and all the powers conferred on the Judges of the Superior Courts by the said Act, shall be and are hereby extended to the making from time to time of all rules and forms of proceeding necessary for giving effect to this Act. 22 V. c. 96, s. 16. (1858.) 22 V. c. 33, s. 18. (1859.)

Debtors in custody on criminal charges, excepted.

**16.** None of the foregoing provisions relative to the weekly allowance, or discharge from custody on account of insolvency, shall extend or be applicable to debtors who are at the same time in custody upon any criminal charge. 19 V. c. 43, s. 309.

#### FRAUDULENT PREFERENCE.

Confessions or warrants to confess judgment given by Insolvents to defeat or delay creditors or to give one preference over the other to be void.

**17.** In case any person being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntary or by collusion, with a creditor or creditors, gives a confession of Judgment, *Cognovit Actionem* or Warrant of Attorney to confess judgment with intent, in giving such confession, *Cognovit Actionem* or Warrant of Attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *Cognovit Actionem*



or Warrant of Attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or Writ of Execution. 22 V. c. 96, s. 18.

**18.** In case any person being at the time in insolvent circumstances or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, makes or causes to be made any gift, conveyance, assignment or transfer of any of his goods, chattels or effects, or delivers or makes over, or causes to be delivered or made over, any bills, bonds, notes or other securities or property, with intent to defeat or delay the creditors of such person, or with intent of giving one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such gift, conveyance, assignment, transfer or delivery, shall be null and void as against the creditors of such person; but nothing herein contained shall invalidate or make void any deed of assignment made and executed by any debtor for the purpose of paying and satisfying rateably and proportionably, and without preference or priority, all the creditors of such debtor their just debts; and nothing herein contained shall invalidate or make void any *bonâ fide* sale of goods in the ordinary course of trade or calling to innocent purchasers. 22 V. c. 96, s. 19.

Assignments, transfers, &c., made by insolvents to defeat creditors or to give preference shall be void.

**19.** Any person who destroys, alters, mutilates or falsifies any of his books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or any one or more of them, shall be deemed guilty of a misdemeanor, and on being convicted thereof shall be liable to be imprisoned in any common gaol for any term not exceeding six months, and such offence may be tried before any Court of Oyer and Terminer or General Gaol Delivery. 22 V. c. 96, s. 20.

Destroying or altering books, &c., to defraud creditors, to be a misdemeanor.

Punishment.

**20.** Any person who makes or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of any of his lands, hereditaments, goods or chattels, or who removes, conceals, or disposes of any of his goods, chattels, property or effects of any description with intent to defraud his creditors or any of them, and any person who receives such property, real or personal, with such intent, shall be deemed guilty of a misdemeanor, and on being convicted thereof shall be liable to be imprisoned for any term not exceeding twelve months, and to be fined in any sum not exceeding eight hundred dollars; and such offence may be tried before any Court of Oyer and Terminer or General Gaol Delivery. 22 V. c. 96, s. 21.

Making assignments, or concealing or disposing of goods to defraud creditors, to be a misdemeanor.

Punishment.

**21.** This Act may be known and cited as "The Indigent Debtor's Act." Short Title.

## CAP. XXVII.

## An Act respecting Ejectment.

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

**How action to be commenced.** **1.** The action of Ejectment shall be commenced by Writ, directed to the person in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the Writ with reasonable certainty. 19 V. c. 43, s. 220.

## WRIT.

**Contents of Writ.** **2.** The Writ shall state the names of all the persons in whom the title is alleged to be, and shall command the persons to whom it is directed, to appear in the Court from which it is issued, within sixteen days after service thereof, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession.

**Teste and out of what office to issue.**  
**Duration and contents of.** **3.** The Writ shall bear teste of the day on which it issues, and shall be issued out of the proper office in the County where in the lands lie, and shall be in force for three months, and shall be in the form No. 1, or to the like effect, and the name and abode of the Attorney issuing the same or (if no Attorney) the name and residence of the party shall be endorsed thereon, in like manner as the endorsements on Writs of Summons in a personal action, and the same proceedings may be had to ascertain whether the Writ was issued by the authority of the Attorney whose name appears indorsed thereon, and who and what the Claimants are, and their abode, and as to staying the proceedings upon Writs issued without authority, as in the case of Writs in personal actions. 19 V. c. 43, s. 221.

## NOTICE.

**Notice of plaintiffs, title to be attached to the Writ.** **4.** To the Writ and to every copy thereof served on any party, shall be attached a notice of the nature of the title intended to be set up by the Claimant, as for example, by grant from the Crown, or by deed, lease or other conveyance derived from or under the grantee of the Crown, or by marriage, descent or devise, stating to or from whom, or by length of possession, or otherwise, according to the nature of the Claimant's title, stating it with reasonable certainty. 19 V. c. 43, s. 222.

**Such notice limited to one claim of title.** **5.** Such notice shall not contain more than one mode in which title is set up, without leave of the Court or a Judge, and at the trial the Claimant shall be confined to proof of the title set up in the

the notice ; But the Claimant shall not be required to set out in such notice the date or particular content of any Letter Patent, Deed, Will or other instrument or writing, which shows or supports his title, or the date of any marriage or death, unless it be specially directed by order of the Court or a Judge. 19 V. c. 43, s. 222.

## SERVICE.

6. The Writ shall be served in the same manner as a Service of Writ. declaration in Ejectment was formerly served, or in such manner as the Court or a Judge may order. 19 V. c. 43, s. 223.

7. In case of a vacant possession, service may be by posting a copy of the writ and notice upon the door of the dwelling house or other conspicuous part of the property. 19 V. c. 43, s. 223. If possession vacant.

## APPEARANCE.

8. The persons named as Defendants in the Writ, or any of them, may appear within the time appointed ; and with the appearance shall file a notice addressed to the Claimant, stating that besides denying the title of the Claimant, the party asserts title in himself, or in some other person, (stating who) under whom he claims, and setting forth the mode in which such title is claimed, in like manner, to the same extent, and subject to the same conditions, rules and restrictions as are hereinbefore set forth in respect to the notice of a Claimant's title, and the giving proof thereof at the trial. 19 V. c. 43, s. 224. When tenant to appear and notice to be thereupon given.

9. Any other person not named in the Writ, may, by leave of the Court or a Judge, appear and defend, on filing an affidavit shewing that he is in possession of the land either by himself or his tenant. 19 V. c. 43, s. 225. Landlords may appear.

10. All appearances shall be entered and all subsequent proceedings conducted in the Office from which the Writ issued. 19 V. c. 43, s. 226. In what office appearance, and proceedings to be entered.

11. Any person appearing to defend as landlord in respect of property whereof he is in possession, in person or by his tenant, shall state in his appearance that he appears as landlord, and he may set up any defence which a landlord appearing in an Ejectment has heretofore been allowed to set up, and no other. 19 V. c. 43, s. 227. What landlords to do if they appear.

## DEFENCE.

12. Any person appearing to such Writ may limit his defence to a part only of the property mentioned therein describing that part with reasonable certainty in a notice entitled in the Court and cause, and signed by him or his Attorney, which notice must be served within four days after appearance, upon The defence may be limited if notice given.

upon the Attorney whose name is endorsed on the Writ if any, and if none, then filed in the proper Office; and an appearance without such notice conining the defence to a part, shall be deemed an appearance to defend for the whole. 19 V. c. 43, s. 228.

If notice too vague, a letter may be ordered.

**13.** Want of "*reasonable certainty*" in the description of the property or part of it, in the Writ, or in the notice of defence, or in the notice of the title given by either party, shall not nullify them, but shall only be ground for an application to a Judge for better particulars of the land claimed or defended, or of the title thereto, which a Judge may order in all cases. 19 V. c. 43, s. 229.

Defence of persons out of possession may be restrained.

**14.** The Court or a Judge may strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants. 19 V. c. 43, s. 230.

#### JUDGMENT BY DEFAULT.

Judgment in case of non-appearance or defence for part only.

**15.** In case no appearance be entered within the time appointed, or if an appearance be entered, but the defence be limited to part only, the Plaintiff may sign a Judgment that the person whose title is asserted in the Writ shall recover possession of the land, or of the part thereof to which the defence does not apply, which Judgment if for all may be in the form No. 2, or to the like effect, and if for part, may be in the form No. 3, or to the like effect. 19 V. c. 43, s. 231.

Form of.

#### ISSUE.

If appearance is entered, plaintiff may make up issue.

**16.** In case an appearance be entered, the Claimants or their Attorney, may, without any pleadings, make up an issue by setting forth the Writ and stating the fact of the appearance with its date, and the notice limiting the defence, if any, of each of the persons defending, so that it may appear for what defence is made, and directing the Sheriff to summon a Jury; and such issue, in case defence is made for the whole, may be in the form No. 4, or to the like effect, and in case defence is made for part, may be in the form No. 3, or to the like effect. 19 V. c. 43, s. 232.

Form of.

#### VEXATIOUS DEFENCES.

Provision respecting Vexatious defences without merits.

**17.** It being desirable in actions of Ejectment brought against persons who are merely intruders not to prevent Claimants from recovering land to which they have just Claim on account of some want of technical form in their title, or some imperfection not affecting the merits of their case and of which mere Strangers to the title having no Claim or colour of legal Claim to the possession should not be permitted to take advantage; the Claimant or his attorney, in any action of Ejectment,

Ejectment, may serve a notice upon the Defendant in words or to the effect following :

Take notice that I claim the premises for which this action is brought as the *bonâ fide* purchaser thereof, from A. B. , or as heir at law of A. B., of , (or otherwise, as the case may be,) and that you will be required to show upon the trial of this cause what legal right you have to the possession of the premises. 4 W. 4, c. 1, s. 52. Form of notice.

18. If upon the trial of such Ejectment, the evidence of title given by the Claimant satisfies the Court and Jury that he is entitled in justice to be regarded as the proprietor of the land, or is entitled to the immediate possession thereof for any term of years, but that he cannot shew a perfect legal title by reason of some want of legal form in some instrument produced, or by reason of the defective registration of some will or instrument produced, or from any cause not within the power of the Claimant to remedy by using due diligence, the Jury, under the direction of the Court, may find a verdict for the Claimant, unless the Defendant, or his counsel, upon being required by the other party so to do, gives such evidence of title as shews that he is the person legally entitled, or that he does *bonâ fide* claim to be the person legally entitled to the land, by reason of the defect in the title of the Claimant, or that he holds, or does *bonâ fide* claim to hold, under the person so entitled. Formal defects in plaintiff's title aided, when and how.

19. When a verdict is rendered under the authority of the foregoing provision, it shall be endorsed as given under the seventeenth and eighteenth sections of this Act, and it shall be stated in the *postea* and entry of the judgment to have been so given ; and in any action thereafter brought for the *mesne* profits, such judgment in Ejectment shall not be evidence to entitle the Claimant to recover. 4 W. 4, c. 1, s. 52. The verdict to be endorsed as rendered under this Act.

#### SPECIAL CASES.

20. By consent of the parties and by leave of a Judge, a special case may be stated as in other actions. 19 V. c. 43, s. 233. A special case may be stated.

#### QUESTIONS OF FACT.

21. If no special case be agreed to, the Claimants may proceed to trial in the same manner as in other actions, and the particulars of the claim and defence and of the notices of Claimant and Defendant of their respective titles, if any, or copies thereof, shall be annexed to the record by the Claimants ; and except in the cases hereinafter mentioned, the question at the trial shall be whether the statement in the Writ of the title of the Claimants is true or false, and if true, then which of the Claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question ; and Questions to be tried if no special case agreed upon.

Form of entry of verdict.

the entry of the verdict may be made in the form No. 5, or to the like effect, with such modifications as may be necessary to meet the facts. 19 V. c. 43, s. 234.

If claimant was entitled at service of Writ, but not afterwards.

**22.** In case the title of the Claimant as alleged in the Writ existed at the time of service thereof, but had expired before the trial, the Claimant shall, notwithstanding, be entitled to a verdict, according to the fact, that he was entitled at the time of serving the Writ, and to judgment for his costs of suit. 19 V. c. 43, s. 235.

#### PLACE OF TRIAL MAY BE CHANGED.

Court may alter place of trial on affidavit.

**23.** On the application of either party, and on grounds shewn by affidavit, the Court or a Judge may order that the trial shall take place in any County other than that in which the *Venue* is laid, and such order being suggested on the record, the trial may be had accordingly. 19 V. c. 43, s. 236.

#### FAILURE OF CLAIMANT OR DEFENDANT TO APPEAR.

Defendant appearing and claimant making default, and *vice versa*.

**24.** If the Defendant appears, and the Claimant does not appear at the trial, the Claimant shall be non-suited, and if the Claimant appear and the Defendant does not appear, the Claimant shall be entitled to recover without any proof of his title. 19 V. c. 43, s. 237.

#### SPECIAL VERDICT.

Special verdict, &c.

**25.** The Jury may find a special verdict, and either party may tender a bill of exceptions. 19 V. c. 43, s. 238.

#### JUDGMENTS.

##### 1.—UPON A FINDING FOR THE PLAINTIFF.

Judgment if claimant recover.

**26.** Upon a finding for the Claimant, Judgment may be signed and execution issued for the recovery of possession of the property or of such part thereof as the Jury have found the Claimant entitled to, and for costs, within the time (not exceeding the fifth day in Term next after the verdict) ordered by the Court or Judge who tried the cause, and if no such order be made, then on the fifth day in Term next after the verdict. 19 V. c. 43, s. 239.

##### 2.—UPON A FINDING FOR DEFENDANT.

Execution and costs.

**27.** Upon a finding for the Defendants, or any of them, Judgment may be signed and execution for costs issued against the Claimants named in the Writ, within the same time, and in like manner as upon a finding for the Claimant. 19 V. c.

Costs to defendant, if claimant fail.

43, s. 240.

## EXECUTIONS.

**28.** Upon Judgment for recovery of possession and costs, there may be either one Writ or separate Writs of Execution for the recovery of possession, and for the costs, at the election of the Claimant. 19 V. c. 43, s. 241.

One or more Writs of Execution may issue.

## JOINT-TENANTS, &amp;C.

**29.** In case the action has been brought by some or one of several persons entitled as joint tenants, tenants in common or coparcenary, any joint tenant, tenant in common or coparcener in possession, may, at the time of appearance or within four days after, give notice in the same form as the notice of a limited defence, that he or she defends as such and admits the right of the Claimant to an undivided share of the property (stating what share), but denies any actual ouster of him, from the property, and may within the same time file an affidavit, stating with reasonable certainty, that he or she is joint tenant, tenant in common or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the Claimant, and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue, the additional question of whether an actual ouster had taken place shall be determined. 19 V. c. 43, s. 242.

As to defendants being joint tenants, tenants in common, &c., admitting right of claimant to, &c.

**30.** If upon the trial of such issue as last aforesaid, it be found that the Defendant is joint tenant, tenant in common, or coparcener with the Claimant, then the question whether an actual ouster had taken place shall be tried, and unless such actual ouster be proved the Defendant shall be entitled to Judgment and costs; but if it be found either that the Defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster had taken place, then the Claimant shall be entitled to Judgment for the recovery of possession and costs. 19 V. c. 43, s. 243.

Question to be tried if such joint tenancy &c., with claimant be found, &c., and the contrary.

## DEATH NOT TO ABATE SUIT.

**31.** The death of a Claimant or Defendant shall not cause the action to abate, but it may be continued as hereinafter provided. 19 V. c. 43, s. 244.

Death of either party not to abate action, &c.

**32.** In case of the death of a Claimant, if the right of the deceased Claimant survives to another Claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant; and if such a suggestion be made before the trial, then the surviving Claimant shall have a verdict, and recover such Judgment as aforesaid, upon proof that he was entitled to bring the action either separately or jointly with the deceased Claimant. 19 V. c. 43, s. 245.

Right of one claimant surviving to another.

If the right of the deceased claimant does not survive to another, &c.

**33.** In case of the death before trial of one of several Claimants, whose right does not survive to another or others of the surviving Claimants, and the legal representative of the deceased Claimant does not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant for such share of the property as he is entitled to and costs 19 V. c. 43, s. 246.

One or more of several claimants dying after verdict for them but before execution.

**34.** In the case of a verdict for two or more Claimants, if one of such Claimants dies before execution executed, the other Claimant may, whether the legal right to the property survives or not, suggest the death in manner aforesaid, and proceed to Judgment and execution for the recovery of possession of the entirety of the property and the costs; but this shall not affect the right of the legal representative of the deceased Claimant, or the liability of the surviving Claimant to such legal representative, and the entry and possession of such surviving Claimant under such execution shall be considered an entry and possession on behalf of such legal representative in respect of the share of the property to which he is entitled as such representative, and the Court may direct possession to be delivered accordingly. 19 V. c. 43, s. 247.

Death of sole claimant, or one whose right does not survive to another.

**35.** In case of the death of a sole Claimant, or in case of the death 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 if in case of a sole Claimant the suggestion be made after trial and before execution executed by delivery of possession thereunder, and the suggestion be denied by the Defendant within eight days after notice thereof, or such further time as the Court or a Judge may allow, then such suggestion shall be tried, and if upon the trial thereof, a verdict passes for the person making the suggestion, he shall be entitled to such Judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by the suggestion, and in case of a verdict for the Defendant, the Defendant shall be entitled to such Judgment as aforesaid for costs. 19 V. c. 43, s. 248.

Death of one of several joint defendants.

**36.** In case of the death before or after Judgment of one of several Defendants who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but



but only be subject to be set aside if untrue, and the action may proceed against the surviving Defendant to Judgment and execution. 19 V. c. 43, s. 249.

**37.** In case of the death of a sole Defendant, or of all the Defendants before trial, a suggestion may be made of the death, and such suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Claimants shall be entitled to Judgment for recovery of possession of the property, unless some other person appears and defends within a time appointed for that purpose, by the order of the Court or a Judge, made upon the application of the Claimants.

Death of sole defendant or of all the defendants before trial.

**38.** The Court or a Judge upon such suggestion being made, and upon such application as aforesaid, may order that the Claimants shall be at liberty to sign Judgment at such time as the Court or a Judge thinks fit, unless the person then in possession by himself or his tenant, or the legal representative of the deceased Defendant, appears within such time and defends the action; and such order may be served in the same manner as the Writ, and in case such person appears and defends, the same proceedings may be taken against such new Defendant as if he had originally appeared and defended the action, and if no appearance be entered and defence made, then the Claimant may sign Judgment pursuant to the order. 19 V. c. 43, s. 250.

After suggestion, judgment may be signed at the time limited by Judge's order.

**39.** In case of the death of a sole Defendant or of all the Defendants, after verdict, the Claimants shall nevertheless be entitled to Judgment as if no such death had taken place, and may proceed by execution for recovery of possession without suggestion or revivor, and may proceed for the recovery of the costs in like manner as upon any other Judgment for money, against the legal representatives of the deceased Defendant. 19 V. c. 43, s. 251.

Death of sole defendant or of all the defendants after verdict.

**40.** In case of the death, before trial, of one of several Defendants who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, the same proceedings may be taken as to such portion as in the case of a sole Defendant, or the Claimant may proceed against the surviving Defendants in respect of the portion of the property for which they defend. 19 V. c. 43, s. 252.

Death before a trial of a defendant defending separately for part.

**41.** In case of the death, before trial, of one of several Defendants, who defends separately in respect to property for which the surviving Defendants also defend, the Court or a Judge, upon the application of the person in possession of the property at the time of the death, or the legal representative of the deceased Defendant, may at any time before trial allow such person or representative to appear and defend on such terms as appear reasonable and just, and if no such application be made

Death before a trial of the defendant who defends separately but for property for which others also defend.

made or leave granted, the Claimant suggesting the death in manner aforesaid, may proceed against the surviving Defendants to Judgment and execution. 19 V. c. 43, s. 253.

## DISCONTINUING.

Claimant may discontinue as to one or more defendants.

**42.** The Claimant may at any time discontinue the action as to one or more of the Defendants, by giving to the Defendant or his Attorney a notice, headed in the Court and cause, and signed by the Claimant or his Attorney, stating that he discontinues such action, and thereupon the Defendant, on receiving such notice, may forthwith sign Judgment for costs in the form No. 6, or to the like effect. 19 V. c. 43, s. 254.

One of several claimants may discontinue.

**43.** In case one of several Claimants desires 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 therefor on such terms as to the Court or Judge seems fit, and the action shall thereupon proceed at the suit of the other Claimants. 19 V. c. 43, s. 255.

## CLAIMANT NOT PROCEEDING TO TRIAL.

Claimant not proceeding to trial in due time after notice.

**44.** If after appearance entered, the Claimant without going to trial, allows to elapse the time fixed by the practice of the Court for going to trial in ordinary cases after issue joined, the Defendant may give twenty days' notice to the Claimant to proceed to trial at the Assizes next after the expiration of the notice, and if the Claimant afterwards neglects to give notice of trial for such Assizes, or to proceed to trial in pursuance of the said notice given by the Defendant, and the time for going to trial has not been extended by the Court or a Judge, the Defendant may sign Judgment in the form No. 7, and recover the costs of the defence. 19 V. c. 43, s. 256.

## CONFESSION OF ACTION.

Sole defendant, or all the defendants, may confess the action as to the whole or part of the property.

**45.** A sole Defendant or all the Defendants may confess the action as to the whole or a part of the property, by giving to the Claimant a notice headed in the Court and cause, signed by the Defendant or Defendants, and the signature attested by his or their Attorney, and thereupon the Claimant may forthwith sign Judgment and issue execution for the recovery of possession and costs, in the form No. 8, or to the like effect. 19 V. c. 43, s. 257.

And so may one of several defendants defending for a part for which others do not defend.

**46.** In case one of several Defendants who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, desires to confess the Claimant's title to such portion, he may give a like notice to the Claimant, and thereupon the Claimant may forthwith sign Judgment and issue execution for the recovery of possession of such portion of

of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue. 19 V. c. 43, s. 258.

**47.** In case one of several Defendants who defends separately in respect of property for which other Defendants also defend, desires to confess the Claimant's title, he may give a like notice thereof, and thereupon the Claimant may sign Judgment against such Defendant for the costs occasioned by his defence, and may proceed in the action against the other Defendants to Judgment and execution. 19 V. c. 43, s. 259.

And if others defend as to the same part.

#### ENROLLING PROCEEDINGS.

**48.** It shall not be necessary before issuing execution on any Judgment in Ejectment to enter the proceedings upon any roll, but an *incipitur* thereof may be made upon paper, shortly describing the nature of the Judgment, and the Judgment may thereupon be signed, and costs taxed and execution issued; but the proceedings shall be entered on the roll whenever the same becomes necessary for the purpose of evidence or of appealing, or the like. 19 V. c. 43, s. 260.

Proceedings need not be enrolled before execution.

#### EFFECT OF JUDGMENT.

**49.** The effect of a Judgment in Ejectment shall be the same as that of a Judgment in Ejectment obtained before the tenth day of August, one thousand eight hundred and fifty-six. 19 V. c. 43, s. 261.

Effect of judgment.

#### PENALTY ON TENANT NOT INFORMING LANDLORD.

**50.** Every tenant to whom a Writ in Ejectment has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his bailiff or receiver, and if he omits so to do he shall forfeit to the person of whom he holds, the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant, to be recovered by action in any Court of Common Law having jurisdiction for the amount. 19 V. c. 43, s. 262.

Penalty on tenant receiving Writ of Ejectment and not notifying his landlord.

#### EJECTMENT BY LANDLORD.

**51.** In all cases between landlord and tenant, as often as it happens that one half year's rent is in arrear, and the landlord or lessor to whom the same is due, hath right by law to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a Writ in Ejectment for the recovery of the demised premises, or in case the same cannot legally be served or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case

Landlord having power to re-enter for non-payment of rent, may recover possession by ejectment.

case such action in Ejectment be not for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in the Writ, and such affixing shall be deemed legal service thereof, which service or affixing of the Writ shall stand instead and in place of a demand and re-entry. 19 V. c. 43, s. 263.

And how such right shall be exercised.

**52.** In case of Judgment against the Defendant for non-appearance, if it be shown, by affidavit, to the Court wherein the action is depending, or be proved upon the trial in case the Defendant appears, that half a year's rent was due before the said Writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover Judgment and have execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made; But if a verdict pass for the Defendant, or if the Claimant be nonsuited, the Defendant shall recover his costs. 19 V. c. 43, s. 263.

Consequences of the exercise of such right.

**53.** In case the lessee or his assignee, or other person claiming or deriving title under the said lease, permits and suffers Judgment to be had on such trial and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after execution executed, then and in every such case the said lessee and his assignee and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing a Writ of appeal for reversal of such Judgment, and the said landlord or lessor shall from thenceforth hold the demised premises discharged from such lease. 19 V. c. 43, s. 263.

As to mortgagees of lease.

**54.** Nothing hereinbefore contained shall bar the right of any mortgagee of such lease or any part thereof, who is not in possession, so as such mortgagee do, within six months after such Judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion, and perform all covenants and agreements which on the part and behalf of the first lessee are to be or ought to be performed. 19 V. c. 43, s. 263.

#### RELIEF OF TENANTS IN EQUITY.

Proceedings if the tenant ejected seek relief in Equity.

**55.** In case the said lessee, his assignee or other person claiming any right, title or interest in law or equity of, in or to the said lease, proceeds for relief in any Court of Equity within the time aforesaid, such person shall not have or continue any injunction against the proceedings at law on such Ejectment, unless, within forty days next after a full and perfect answer has been made by the Claimant in such Ejectment, he brings into

into Court and lodges with the proper officer such sum of money as the lessor or landlord in his answer swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain until the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity are taken within the time aforesaid and after execution has been executed, the lessor or landlord shall be accountable only for so much as he really and *bonâ fide* without fraud, deceit, or wilful neglect, has made of the demised premises from the time of his entering into the actual possession thereof, and if what he has so made be less than the rent reserved on the said lease, then the said lessee or his assignee, before being restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the lands. 19 V. c. 43, s. 264.

If such proceedings be after execution executed.

#### STAY OF PROCEEDINGS IF RENT PAID.

**56.** If the tenant or his assignee at any time before the trial in the Ejectment, pays or tenders to the lessor or landlord, or to his Attorney in the cause, or pays into the Court wherein the cause is depending, all the rent and arrears together with the costs, all further proceedings on the Ejectment shall cease; and if such lessee or his assigns, upon such proceeding as aforesaid, be relieved in equity, he and they shall have, hold and enjoy the demised lands according to the lease thereof made, without any new lease. 19 V. c. 43, s. 265.

Discontinuance if tenant pay arrears of rent and costs before trial, &c.

If he be relieved in Equity.

#### IF TENANT REFUSES TO GO OUT.

**57.** 1. In case the term or interest of any tenant of any lands, tenements or hereditaments, holding the same under a lease or agreement in writing for any term or number of years certain, or from year to year, expires or is determined either by the landlord or tenant by regular notice to quit; and 2. in case a lawful demand of possession in writing made and signed by the landlord or his agent, be served personally upon the tenant or any person holding or claiming under him, or be left at the dwelling house or usual place of abode of such tenant or person; and 3. in case such tenant or person refuses to deliver up possession accordingly, and the landlord thereupon proceeds by action of Ejectment for recovery of possession, he may, at the foot of the Writ in Ejectment, address a notice to such tenant or person, requiring him to find such bail, if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified. 19 V. c. 43, s. 266.

Proceedings when the time for which any tenant holds the lands leased has expired, and the tenant refuses to deliver possession after notice.

**58.** Upon the appearance of the party, or in case of non-appearance, then on making and filing an affidavit of service of the Writ

Circumstances under which

Writ

landlord may give notice to tenant to find security.

Writ and notice, and on the landlords producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, (as the case may be,) and that possession has been lawfully demanded in manner aforesaid, the landlord may move the Court or apply to a Judge at Chambers for a rule or summons for such tenant or person, to shew cause, within a time to be fixed by the Court or Judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient securities, in a reasonable sum, conditioned to pay the costs and damages which may be recovered by the Claimant in the action, and the Court or Judge, upon cause shewn or upon affidavit of the service of the rule or summons in case no cause be shewn, may make the same absolute in whole or in part, and order such tenant or person within a time to be fixed upon a consideration of all the circumstances, to find such bail with such conditions and in such manner as shall be specified in the said rule or summons, or the part of the same so made absolute. 19 V. c. 43, s. 266.

If not given when ordered, Judgment may be signed.

**59.** In case the party neglects or refuses to comply with such rule or order, and gives no ground to induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord, upon filing an affidavit that such rule or order has been made and served and not complied with, may sign Judgment for the recovery of possession and costs of suit, in the form marked No. 9, or to the like effect. 19 V. c. 43, s. 266.

#### MESNE PROFITS.

Court may allow proof of mesne profits at trial, the landlord having first established his right to recover possession, &c.

**60.** Whenever it appears on the trial of an Ejectment at the suit of a landlord against a tenant, that the tenant or his Attorney has been served with due notice of trial, the Judge before whom the cause comes on to be tried, shall, (whether the Defendant appears upon the trial or not,) permit the claimant, after proof of his right to recover possession of the whole or any part of the premises mentioned in the Writ, to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein, and if on the trial the Jury find for the Claimant, they shall give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have Judgment within the time hereinbefore provided, not only for the recovery of possession and costs, but also for the mesne profits

profits found by the Jury; and the landlord may after the verdict bring an action for the mesne profits which accrue from the time of the verdict, or from the day so specified therein, down to the day of the delivery of possession of the premises recovered in the Ejectment. 19 V. c. 43, s. 267.

As to mesne profits after verdict, &c.

#### SPEEDY EXECUTION.

**61.** If upon the trial of any case in which such security has been given as aforesaid, a verdict passes for the Claimant, the Judge before whom the trial is had may (unless it appears to him, that the finding of the Jury is contrary to the evidence or that the damages given are excessive,) order that Judgment may be entered and execution issued in favour of the Claimant at the expiration of six days next after the giving of such verdict. 19 V. c. 43, s. 268.

Court may order execution within six days in cases where security is given, unless, &c.

#### RECOGNIZANCES.

**62.** All recognizances and securities entered into in pursuance of this Act, shall be taken respectively in such manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the Superior Courts of Common Law, and subject to the like fees and charges; but no action or other proceeding shall be commenced upon any such recognizance or security after six months from the time when the possession of the premises or any part thereof has actually been delivered to the landlord. 19 V. c. 43, s. 269.

All recognizances, &c., to be taken in like manner as bail in the Superior Courts, with like fees, &c.

Limitation of actions upon such recognizance, &c.

#### TENANTS OVERHOLDING WRONGFULLY.

**63.** In case a tenant after the expiration of his term, (whether the same was created by writing or parol,) wrongfully refuses, upon demand made in writing, to go out of possession of the land demised to him, his landlord, or the agent of his landlord, may apply to either of the Superior Courts of Common Law in Term, or to a Judge thereof in vacation, setting forth, on affidavit, the terms of the demise, if by parol, and annexing a copy of the instrument containing such demise, if in writing, and also a copy of the demand made for the delivery up of possession, and stating also the refusal of the tenant to go out of possession, and the reason given for such refusal, (if any were given,) adding such explanation in regard to the ground of refusal as the truth of the case may require; and if upon such affidavit it appears to the Court or Judge that the tenant wrongfully holds over, without colour of right, such Court or Judge may order a writ to issue in the name of the Queen, and tested in the name of the Chief Justice or Senior Puisne Judge of such Court on the day that the same actually issues, directed to such person as the Court or Judge appoints, and commanding him to issue his precept to the Sheriff of the County in which

More easy remedy against tenants who wrongfully hold over.

Application to a Superior Court or to a Judge in vacation.

Writ to issue.

which the land is situated, for the summoning of a Jury of twelve men, to come before the Commissioner at a day and place by such Commissioner named, to inquire and say upon their oaths whether the person complained of was tenant to the complainant for a term which has expired, and whether he does wrongfully refuse to go out of possession, having no right, or colour of right, to continue in possession, or how otherwise, which writ shall be made returnable whenever the same has been duly executed, before any one of the Judges of the said Court.

Notice of holding inquisition.

**64.** Notice in writing of the time and place of holding such inquisition shall be by the landlord served upon the tenant, or left at his place of abode, at least three days before the day appointed, to which notice shall be annexed a copy of the affidavit on which the writ was obtained, and of the papers attached thereto.

Commissioners to be sworn.

**65.** Before any Commissioner holds an inquisition under this Act, he shall take the following oath before some one of the Justices of the Peace in and for the County in which the inquisition is holden, which oath shall be indorsed on the said writ, that is to say :

Oath.

" I, A. B., do solemnly swear, that I will impartially, and to the best of my judgment, discharge my duty as Commissioner under this writ. So help me God." 4 W. 4, c. 1, s. 56.

Jury to be sworn.

**66.** The Commissioner shall administer an oath or affirmation to the persons summoned on such Jury, well and truly to try, and a true verdict to give, upon the matters and things in the said writ contained, according to the evidence; and shall also administer an oath or affirmation to the witnesses produced by either party.

And witnesses.

Verdict.

**67.** The Jurors shall, under their hands, either with or without their seals, endorse their finding upon the back of the writ, or return the same upon a paper attached thereto by such Commissioner.

Evidence to be returned with commission.

**68.** When executed, the writ and all the evidence, shall be certified and returned by the Commissioner to be filed with the commission and the proceedings thereupon in the office of the Clerk of the Crown and Pleas, at Toronto, from which the writ issued, and if upon such return and a consideration of the evidence, it appears to the Court or to a Judge in Chambers, that the case is clearly one coming within the true intent and meaning of the sixty-third section of this Act, such Court or Judge may issue a precept to the Sheriff, in the Queen's name, commanding him forthwith to place the landlord in possession of the premises in question. 4 W. 4, c. 1, s. 53.

When landlord to be placed in possession.



**69.** When such precept has been made by a Judge, the Court may, on motion before the end of the second term after the issue of such precept, examine into the proceedings, and, if they find cause, set aside the same, and may issue a precept to the Sheriff, if necessary, commanding him to restore the tenant to his possession, in order that the question of right, if any appear, may be tried as in other cases of Ejectment. 4 W. 4, c. 1, s. 54.

The Court may revise the proceedings.

And if proper, order tenant to be restored to possession.

**70.** The Judges of the Superior Courts of Common Law, in term time or in vacation, may make and from time to time alter and amend the form of the writ, inquisition and return, and of the precepts to be issued under the sixty-third and following sections of this Act, and may make such orders respecting costs as to them seems just, and may make order respecting the issue of a writ to the Sheriff, commanding him to levy costs of the goods and chattels of the landlord or tenant, or person liable thereto, or (subject to the provisions of the Act respecting Arrest and Imprisonment for Debt) respecting the issue of an attachment for the non-payment thereof against the party liable to pay costs, as to them seems just. 4 W. 4, c. 1, s. 55,—22 V. c. 33, s. 4. (1859.)

The Judges may devise forms of proceedings, and make orders respecting costs and enforce their payment.

**71.** If any person, required by notice from any such Commissioner to attend as a witness upon the inquisition refuses or wilfully omits to attend, he shall be liable to be committed upon the warrant of the Commissioner to the Common Gaol of the County for a term not exceeding one month. 4 W. 4, c. 1, s. 57.

Punishment if witness does not attend.

**72.** If any witness sworn (*or* affirmed) and examined before a Commissioner holding an inquisition as aforesaid, wilfully swears or affirms falsely, he shall be liable to the penalties of wilful and corrupt perjury. 4 W. 4, c. 1, s. 57.

Perjury.

**73.** Except as hereinbefore expressly enacted, nothing herein contained shall prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for. 19 V. c. 43, s. 270.

All other remedies of landlords saved.

#### MORTGAGES.

**74.** In case an action of Ejectment be brought by any mortgagee or his assignees for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit be then depending in the Court of Chancery for or touching the foreclosing or redeeming the same, if the person having right to redeem, appears and becomes Defendant in such action, at any time pending the action, and pays unto such mortgagee, or in case of his refusal to accept brings into the Court where the action is depending, all the principal moneys, and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity thereupon, (such money for principal, interest and costs, to be ascertained and computed by the Court where the action is pending, or by the proper officer

Action of ejectment brought by mortgagee.

by

Discharge of mortgage.

by such Court to be appointed for that purpose), the moneys so paid or brought into such Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall discharge every such mortgagor or Defendant of and from the same accordingly, and shall by rule of the same Court compel such mortgagee to assign, surrender or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments unto the mortgagor who has paid or brought such moneys into the Court, or to such other person as he, for that purpose, nominates and appoints. 19 V. c. 43, s. 271.

Not to extend to cases where the right to redeem or the sum due is contested.

**75.** In case the person against whom the redemption is prayed, insists (by writing under his hand or the hand of his Attorney, Agent or Solicitor,) that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side, and delivers such writing to the Attorney or Solicitor for the other side, before the money is brought into Court, or in case the right of redemption to the mortgaged lands and premises in question in any cause or suit be contravened or questioned by or between different Defendants in the same cause or suit, nothing in the last preceding section contained shall extend to any such cause or suit, nor shall any thing therein contained be of any prejudice to any subsequent mortgage or subsequent encumbrance. 19 V. c. 43, s. 272.

#### SECURITY FOR COSTS.

When the claimant in subsequent action for the same property may be ordered to give security for costs.

**76.** If any person brings an action of Ejectment after a prior action of Ejectment has been unsuccessfully brought by him or by any person through or under whom he claims, against the same Defendant or against any person through or under whom he defends, the Court or a Judge may, on the application of the Defendant at any time after his appearance entered, order that the Claimant shall give to the Defendant security for the payment of costs, and that all further proceedings in the cause shall be stayed until such security be given, whether the prior action was disposed of by discontinuance or by non-suit, or by Judgment for the Defendant. 19 V. c. 43, s. 273.

#### JURISDICTION OF THE COURT OVER PROCEEDINGS.

Court may exercise the same jurisdiction as formerly over proceedings in ejectment.

**77.** The several Courts and the Judges thereof respectively, may and shall exercise over the proceedings in Ejectment under this Act, the like jurisdiction as formerly exercised in the old action of ejectment, so as to ensure a trial of the title and of actual ouster when necessary, and for all other purposes for which such jurisdiction might have been exercised. 19 V. c. 43, s. 274.

**78.** No writ of right patent, writ of right *quia dominus remisit curiam*, writ of right close, writ of right *de rationabili parte*, writ of right upon disclaimer, writ of right of ward, writ of *cessavit, quod permittat*, formedon in descender, remainder, or in reverter, writ of Assize of novel disseisin, nuisance, or mort d'ancestor, writ of entry sur disseisin in the *quibus*, in the *per*, in the *per* and *cui*, or in the post, writ of entry *sur* intrusion, writ of entry *sur* alienation, *dum fuit non compos mentis, dum fuit infrà aetatem, dum fuit in prisona, ad communem legem, in casu proviso, in consimili casu, cui in vita, sur cui in vita, cui ante divortium, or sur cui ante divortium*, writ of entry *sur* abatement, writ of entry *quare ejecit infrà terminum, or ad terminum qui præterit, or causa matrimonii prælocuti*, writ of aiel, besaiel, tresaiel, cosinage, or *nuper obiit*, writ of waste, writ of partition, except such as authorized by Statute of this Province; writ of *disceit*, writ of *quod ei deforceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia claudenda*, and no other action, real or mixed, (except a writ of dower, or writ of dower *undè nihil habet*, or an Ejectment); and (except a plaint for dower,) no plaint in the nature of any such writ or action, shall be brought. 4 W. 4, c. 1, s. 39.

Real actions  
abolished.

Exceptions.

**79.** When on the first day of January, one thousand eight hundred and thirty-six, any person whose right of entry to any land had been taken away, by any descent cast, discontinuance or warranty, might have maintained any such writ or action, as aforesaid, in respect of such land, such writ or action may be brought after the said first day of January, one thousand eight hundred and thirty-six, but only within the period during which, by virtue of the provisions of the Act respecting the limitation of actions and suits relating to real property, &c., an entry might have been made upon the same land by the person bringing such writ or action, if his right of entry had not been so taken away. 4 W. 4 c. 1, s. 41.

Saving certain  
rights of per-  
sons whose  
right of entry  
had been taken  
away on the 1st  
January, 1836.

**80.** No descent cast, discontinuance or warranty, which may have happened or been made since the first day of July, one thousand eight hundred and thirty-four, or which may happen or be made, shall toll or defeat any right of entry or action for the recovery of land. 4 W. 4 c. 1, s. 42.

No descent,  
warranty, &c..  
to bar a right  
of entry.

**81.** The following forms are those referred to in the foregoing sections of this Act.

### FORMS.

#### No. 1.—(Vide Section 3.)

Victoria, &c.,

To X., Y. and Z., and all persons entitled to defend the possession of (*describe the property with reasonable certainty*), in the  
the

the Township of \_\_\_\_\_, in the County of \_\_\_\_\_, to the possession whereof A. B., and C., some or one of them claim to be (or to have been on and since the \_\_\_\_\_ day of \_\_\_\_\_, A. D., \_\_\_\_\_) entitled, and to eject all other persons therefrom.

These are to will and command you or such of you as deny the alleged title, within sixteen days of the service hereof, to appear in our Court of \_\_\_\_\_, to defend the said property or such part thereof as you may be advised, in default whereof Judgment may be signed, and you turned out of possession.

Witness, &c.

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No. 2.—(Vide Section 15.)

In the Q. B., (or C. P.)

The \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_ (date of the Writ.)

County of \_\_\_\_\_, } On the day and year above written, a Writ of  
to wit: } our Lady the Queen issued out of this Court in  
these words, that is to say:

Victoria, &c., (copy the Writ,) and as no appearance has been entered or defence made to the said Writ, therefore it is considered that the said (insert the names of the persons in whom title is alleged in the Writ,) do recover possession of the land in the said Writ mentioned, with the appurtenances.

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No. 3.—(Vide Sections 15 and 16.)

In the Q. B., (or C. P.)

On the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, (date of the Writ.)

County of \_\_\_\_\_, } On the day and year above written, a Writ of  
to wit: } our Lady the Queen issued out of this Court, in  
these words, that is to say:

Victoria, &c., (copy the Writ,) and C. D. has on the \_\_\_\_\_ day of \_\_\_\_\_, appeared by \_\_\_\_\_, his Attorney (or in person,) to the said Writ, and has defended for a part of the land in the Writ mentioned, that is to say, (state the part,) and no appearance has been entered or defence made to the said Writ, except as to the said part; Therefore, it is considered that the \_\_\_\_\_

the said A. B., (*the Claimant*), do recover possession of the land in the said Writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a Jury come, &c.

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No. 4.—(*Vide* Section 16.)

In the Q. B., (*or* C. P.)  
 On the            day of            , one thousand eight hundred  
 and            , (*date of the Writ.*)

County of    , } On the day and year above written, a Writ of  
 to wit:        } our Lady the Queen issued out of this Court, in  
 these words, that is to say :

Victoria, &c , (*Copy the Writ,*) and C. D. has on the  
 day of            , appeared by            , his Attorney, (*or*  
*in person,*) to the said Writ, and defended for the whole of the  
 land therein mentioned ; Therefore, let a Jury come, &c.

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No. 5.—(*Vide* Section 21.)

Afterwards on the            day of            , A. D.,  
 before            Justice of our Lady the Queen, assigned to  
 take the assizes in and for the within County, came the parties  
 within mentioned, and a Jury of the said County being sworn  
 to try the matters in question between the said parties, upon  
 their oath, say : that A. B. (*the Claimant,*) within mentioned, on  
 the            day of            , A. D.,            was and still  
 is entitled to the possession of the land within mentioned, as  
 in the Writ alleged ; Therefore, &c.

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No. 6.—(*Vide* Section 42.)

In the Q. B., (*or* C. P.)

On the            day of            , one thousand eight hundred  
 and            , (*date of the Writ.*)

County of    , } On the day and year above written, a Writ of  
 to wit:        } our Lady the Queen issued out of this Court in  
 these words, that is to say :

Victoria, &c., (*Copy the Writ,*) and C. D. has on the  
 day of            , appeared by            , his Attorney, (*or in*  
*person,*) to the said Writ, and A. B. has discontinued the  
 action ;

action; Therefore, it is considered that the said C. D. be acquitted, and that he recover against the said A. B., \$ (or £ ) for his costs of defence.

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No. 7.—(Vide Section 44.)

In the Q. B., (or C. P.)

On the                    day of                    , one thousand eight hundred and                    , (date of Writ.)

County of                    , } On the day and year above written, a Writ of  
to wit :                    } our Lady the Queen issued out of this Court, in  
these words, that is to say :

Victoria, &c., (copy the Writ,) and C. D. has on the day of                    , appeared by                    , his Attorney, (or in person,) to the said Writ, and A. B., has failed to proceed to trial, although duly required so to do; Therefore it is considered that the said C. D. be acquitted, and that he do recover against the said A. B. \$ (or £ ) for his costs of defence.

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No. 8.—(Vide Section 45.)

In the Q. B., (or C. P.)

The                    day of                    , one thousand eight hundred and                    , (date of the Writ.)

County of                    , } On the day and year above written, a Writ of  
to wit :                    } our Lady the Queen issued out of this Court in  
these words, that is to say :

Victoria, &c., (copy the Writ,) and C. D., has on the day of                    , appeared by                    , his Attorney, (or in person,) to the said Writ, and the said C. D. has confessed the said action (or has confessed the said action as to part of the said land, that is to say : (state the part) ; Therefore, it is considered that the said A. B. do recover possession of the land in the said Writ mentioned, (or of the said part of the said land,) with the appurtenances, and \$ ( or £ ) for costs.

---

No. 9.—(Vide Section 59.)

In the Q. B., (or C. P.)

The                    day of                    , one thousand eight hundred and                    , (date of Writ.)

County

County of , } On the day and year above written, a Writ  
to wit : } of our Lady the Queen issued out of this Court,  
with a notice thereunder written, the tenor of which Writ and  
notice follows in these words, that is to say :

(*Copy the Writ and notice, which latter may be as follows :*)

Take notice that you will be required, if ordered by the Court or a Judge, to give bail by yourself and two sufficient sureties, conditioned to pay the costs and damages which shall be recovered in the action.

And C. D. has appeared by , his Attorney, (or in person,) to the said Writ, and has been ordered to give bail pursuant to the Statute, and has failed so to do ; Therefore, it is considered that the said (*landlord's name*) do recover possession of the land in the said Writ mentioned, with the appurtenances, together with \$ (or £ ,) for costs of suit.

## C A P . X X V I I I .

### An Act respecting the Procedure in Actions of Dower.

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

#### ACTION OF.

**1.** The action of dower at law shall be commenced by filing a declaration or plaint (in the form heretofore used) in the office of one of the Clerks of the Crown and Pleas, or of the Deputy Clerk of the Crown and Pleas, in the County where the action is brought. 13, 14 V. c. 58, s. 1.

Action of dower commenced by declaration.

#### VENUE.

**2.** An action of dower shall be brought in the County or United Counties wherein the lands or tenements of which dower is sought to be recovered are situate, and the declaration may be served on the tenant of the freehold in any part of Upper Canada.

Venue.

#### SERVICE.

**3.** A copy of such declaration and of the notice herein-after prescribed may be served by any literate person personally, within one year from the filing thereof on the tenant of the freehold, if within the jurisdiction of the Court, and if not, then upon the tenant of the land of which dower is demanded, and if such tenant do not plead agreeably to the notice, the demandant therein, upon affidavit of the due service of such declaration and notice being filed, may proceed thereon as in personal actions. 13, 14 V. c. 58, s. 2.

Time and manner of serving declaration and notice.

Form of notice. 4. The notice referred to in the last section may be in the following form :

In the Queen's Bench, (or Common Pleas,)

A. B., who was (or is, *as the case may be*,) the widow of C. D., deceased, demandant, and E. F., tenant.

Take notice that a declaration, of which the annexed is a true copy, was this day filed in the Office of the Clerk of the Crown and Pleas (or Deputy, *as the case may be*,) at \_\_\_\_\_, in the County of \_\_\_\_\_, (or United Counties of \_\_\_\_\_, *as the case may be*,) and unless you plead thereto within twenty days from the service hereof, judgment will be signed against you by default, and subsequent proceedings and execution thereof follow thereon, according to law.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

J. K., Attorney, &c., residing at \_\_\_\_\_, in the County of \_\_\_\_\_, (or United Counties of \_\_\_\_\_, *as the case may be*.)

To E. F., of the Town of \_\_\_\_\_, (as the case may be,) the above tenant.

#### VACANT POSSESSION.

Proceedings if possession vacant.

5. If the land of which dower is demanded be vacant, and the tenant of the freehold cannot be personally served with a declaration as hereinbefore provided, then service may be made as in actions of Ejectment; but such service when not personal upon the tenant, must be allowed by the Court or a Judge thereof, and after filing the declaration and the affidavit of such service, and the order or rule of allowance thereof, the demandant may, after the time for pleading has expired, proceed thereon as if personal service had been effected. 13, 14 V. c. 58, s. 3.

What to be proved if defendant does not appear.

6. When the tenant of the land has not been personally served with the declaration, and the demandant proceeds to the trial of the right of dower in the land, the demandant, before the entry of any verdict in favor of such right, shall prove the marriage, *seisin*, and death of the husband, in the same manner as if the tenant had pleaded, traversing such marriage, *seisin*, and death. 13, 14 V. c. 58, s. 4.

#### COSTS.

When costs shall be allowed.

7. In case it appears on the trial that a demand in writing had been made of the dower claimed from the tenant one month before action brought, and that the action was brought within



within a year from such demand, costs shall be allowed to the demandant, whether damages be recoverable or not, in the same manner as costs are allowed to a Plaintiff or Defendant in personal actions; but if it appears on the trial, that the tenant offered to assign the dower demanded before action brought, the demandant shall not recover costs. 13, 14 V. c. 58, s. 5.

#### TENANT TO NOTIFY LANDLORD.

8. In case a declaration or plaint in dower be delivered to any tenant not being the tenant of the freehold, such tenant shall forthwith give notice thereof to his landlord, or to the servant, attorney, agent, bailiff or receiver of his landlord, under the penalty of forfeiting to the person of whom he holds, three years improved or rack-rent of the premises so demised, holden, or in the possession of such tenant, to be recovered by action of debt in any Court of Record in Upper Canada. 13, 14 V. c. 58, s. 6.

Tenant in possession to give notice to landlord.

#### OCCUPANT NOT BEING TERRE TENANT.

9. A recovery had against a mere occupier of the land, and without notice to the *terre tenant*, shall have no greater effect than a recovery in Ejectment for the quantity of land assigned as dower in such recovery would have had. 13, 14 V. c. 58, s. 6.

Effect of a recovery against a mere occupant not being *terre tenant*.

### C A P . X X I X .

#### An Act relating to Replevin.

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

#### WHEN GOODS REPLEVIABLE.

1. Whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been wrongfully distrained under circumstances in which by the Law of England Replevin might be made, the person complaining of such distress as unlawful may obtain a Writ of Replevin in the manner prescribed by this Act; or in case any such goods, chattels, property or effects have been otherwise wrongfully taken or detained, the owner or other person, or Corporation capable at the time this Act takes effect of maintaining an action of trespass or trover for personal property, may bring an action of Replevin for the recovery thereof, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses. 4 W. 4, c. 7, s. 1,—14, 15 V. c. 64, s. 1.

When goods may be replevied.

## GOODS IN EXECUTION NOT REPLEVIABLE.

Goods seized in execution not to be replevied.

**2.** The provisions herein contained shall not authorize the replevying of or taking out of the custody of any Sheriff or other officer, any personal property seized by him under any process issued out of any Court of Record for Upper Canada. 18 V. c. 118.

## REPLEVIN IN COUNTY COURTS.

County Courts may grant replevin where value does not exceed \$200.

**3.** In case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of two hundred dollars, and in case the title to land be not brought in question, the Writ may issue from the County Court of any County wherein such goods or other property or effects have been distrained, taken or detained. 19 V. c. 90, s. 20,—4 W. 4, c. 7, s. 7.

## PROCEDURE.

Proceedings necessary to entitle a party to replevy.

**4.** Before any Writ of Replevin issues, the person claiming the property, his servant or agent shall make an affidavit, entitled and filed in the Court out of which the Writ issues, and sworn before any person entitled to administer an affidavit, therein, stating :

Affidavit to be made.

1st. That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, describing the property in the affidavit ;

To state value, &c.

2nd. The value thereof to the best of his belief ; and such description of the property and the value shall be stated in the Writ. 14, 15 V. c. 64, s. 2.

How Writs to be tested.

**5.** The Writ shall be tested in the same manner as a Writ of Summons, under the Common Law Procedure Act, and be returnable on the eighth day after the service of a copy thereof, and may be in the form A, or otherwise adapted to the circumstances of the case. 14, 15 V. c. 64, s. 1.

Copy of Writ to be served.

**6.** A copy of such Writ shall be served on the Defendant personally, or if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household, or an inmate of the house wherein he resided as aforesaid. 14, 15 V. c. 64, s. 1

Sheriff not to serve Writ until he has replevied.

**7.** The Sheriff shall not serve a copy of the Writ until he has replevied the property, or some part of the property therein mentioned if he cannot replevy the whole in consequence of the Defendant having eligned the same out of his County, or because the same is not in the possession of the Defendant, or of any person for him. 14, 15 V. c. 64, s. 1.

**8.** Before the Sheriff replevies he shall take a bond in treble the value of the property to be replevied as stated in the Writ, which bond shall be assignable to the Defendant, and the bond and assignment thereof may be in the form B, the condition being varied to correspond with the Writ. 4 W. 4, c. 7, s. 2,—14, 15 V. c. 64, s. 4.

Sheriff, before he replevies, to take bond.

**9.** In case the property to be replevied or any part thereof be secured or concealed in any dwelling house or other building or enclosure of the Defendant, or of any other person holding the same for him, and in case the Sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same be not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid. 14, 15 V. c. 64, s. 10.

If property to be replevied is concealed in any house, &c., how Sheriff to act.

**10.** If the property to be replevied, or any part thereof, be concealed either about the person or on the premises of the Defendant, or of any other person holding the same for him, and in case the Sheriff demands from the Defendant or such other person aforesaid deliverance thereof, and deliverance be neglected or refused, he may, and if necessary, shall search and examine the person and premises of the Defendant or of such other person for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ. 14, 15 V. c. 64, s. 10.

If concealed about the person.

**11.** The Sheriff shall return the Writ at or before the return day thereof, and shall transmit annexed thereto :

When Writ to be returned.

1st. The names of the sureties in, and the date of the bond taken from the Plaintiff, and the name or names of the witnesses thereto ;

With Schedule annexed.

2nd. The place of residence and additions of the sureties ;

3rd. The number, quantity and quality of the articles of property replevied ; and in case he has replevied only a portion of the property mentioned in the Writ and cannot replevy the residue by reason of the same having been eloiigned out of his County by the Defendant, or not being in the possession of the Defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not. 14, 15 V. c. 64, s. 6.

What Schedule to contain.

**12.** In case the Defendant has been duly served with a copy of the Writ, and does not enter his appearance in the suit at the return thereof, the Plaintiff may, on filing the Writ and Affidavit

If defendant having been served does not appear.

affidavit of its due service, enter a common appearance for the Defendant, and proceed thereon as if he had appeared. 14, 15 V. c. 64, s. 3.

Where venue to be laid.

**13.** When the Replevin is brought for goods, chattels or other personal property distrained for any cause, the venue shall be laid in the County in which the distress has been made, but in other cases it may be laid in any County. 14, 15 V. c. 64, s. 5.

If defendant appear, plaintiff to declare, &c.

**14.** Upon an appearance being duly entered by or for the Defendant in the office of the Clerk or Deputy Clerk of the Crown or of the Clerk of the County Court from whose office the Writ of Replevin issued, the Plaintiff and Defendant respectively shall, (in the absence of any provision herein or in any rules of the Superior Courts of Common Law to the contrary,) declare, avow, reply, rejoin and otherwise plead to issue and take all subsequent proceedings to trial and judgment according to the practice in Replevin in England, so far as applicable to the Court having cognizance of the case, but all such proceedings shall be taken respectively, within the same time as in other personal actions in the same Court, and in case of default so to do, the parties respectively shall be liable to the like judgment and proceedings as in such personal actions under the "Common Law Procedure Act." 14, 15 V. c. 64, s. 7,—4 W. 4, c. 7, s. 5.

What pleas defendant may plead.

**15.** The Defendant shall be entitled to the same pleas in abatement or bar as heretofore, and may plead as many pleas in defence as he thinks necessary, each of which, if the action was trespass and the taking complained of, or detinue and the detention only complained of, would constitute a legal defence. 14, 15 V. c. 64, s. 9.

When a defence on equitable grounds may be pleaded, and how.—

**16.** Any Plaintiff or Defendant in Replevin, who, if judgment were obtained, would be entitled to relief against such judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defence, and the Court shall receive such defence by way of plea; but such plea must begin with the words "for defence on equitable grounds," or words to the like effect. 19 V. c. 43, s. 287,—20 V. c. 57, s. 11,—20 V. c. 58, s. 2.

Form of declaration for wrongful detention, &c.

**17.** When the action is founded on a wrongful detention and not on the original taking of the property, the declaration shall conform to the Writ, and may be the same as in an action of detinue. 14, 15 V. c. 64, s. 8.

Form of declaration for wrongful taking, &c.

**18.** When the action is founded on a wrongful taking and detention of the property, it shall not be necessary for the Plaintiff to state in his declaration a place certain within the City, Town, Township or Village, as the place at which the property was taken. 14, 15 V. c. 64, s. 8.

**19.** If the Defendant justifies or avows the right to take or distrain the property, in or upon any place in respect of which the same might be liable to forfeiture, or to distress for rent, or for damage feasant, or for any custom, rate or duty, by reason of any law, usage or custom at the time when, existing and in force, he shall state in his plea of justification or avowry a place certain within the City, Town, Township or Village within the County, as the place at which such property was so distrained or taken. 14, 15 V. c. 64, s. 8.

When defendant to state a place certain in his avowry.

**20.** If the Sheriff makes such a return of the property distrained, taken or detained, having been elaigned, as would warrant the issuing of a Capias in Withernam by the Law of England, then upon the filing of such return, such a Writ shall be issued by the officer who issued the Writ of Replevin, in the form C, and before executing such Writ the Sheriff shall take pledges according to the Law of England in that behalf in like manner as in cases of distress. 4 W. 4, c. 7, s. 3.

If Sheriff returns the property elaigned, a Writ in Withernam may issue.

**21.** The Courts of Queen's Bench and Common Pleas may, from time to time, make such rules for advancing and rendering easy and effectual the remedy by replevin, as well by regulating the practice to be observed in such actions, as by prescribing or changing the forms of Writs and proceedings to be used therein, as such Courts deem conducive to the ends of justice, and all such rules shall have the like force in the County Courts as in the said Superior Courts. 4 W. 4, c. 7, s. 8.

The Superior Courts may make rules.

**22.** The following forms are those referred to in this Act :

FORM A. See S. 5.

County or } Victoria, by the Grace of God, of the  
United Counties of } United Kingdom of Great Britain  
(As the case may be.) } and Ireland, Queen, Defender of the  
Faith.

To the Sheriff of (*here insert name of County or United Counties*)—Greeting :

We command you that, without delay, you cause to be replevied to (A. B.) his goods, chattels and personal property following, that is to say : (*here set out the description of property as in the affidavit filed,*) which the said (A. B.) alleges to be of the value of \_\_\_\_\_, and which (C. D.) hath taken and unjustly detains, (*or unjustly detains, as the case may be,*) as it is said, in order that the said (A. B.) may have his just remedy in that behalf : And that you summon the said

said (C. D.) to appear before us in our Court of Queen's Bench, (or Court of Common Pleas,) at Toronto, (or our County Court, at \_\_\_\_\_, in and for the County, or United Counties, *as the case may be*,) within eight days after service of a copy of this Writ upon the said (C. D.) to answer to the said (A. B.) in a Plea of taking and unjustly detaining (or unjustly detaining, *as the case may be*,) his goods, chattels and personal property aforesaid; And what you shall do in the premises, make appear to us in our said Court on the day and at the place aforesaid; And have there and then this Writ.

Witness \_\_\_\_\_ of our said Court, at \_\_\_\_\_, this  
day of \_\_\_\_\_, A. D. one thousand eight hundred and \_\_\_\_\_.

(Signature of Clerk.)

This Writ is to continue in force for three months from the *teste* hereof, and no longer.

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FORM B. See s. 8.

Know all men by these presents, that we, A. B., of \_\_\_\_\_, W. G., of \_\_\_\_\_, and J. S., of \_\_\_\_\_, are jointly and severally held and firmly bound to W. P., Esquire, Sheriff of the County of \_\_\_\_\_, in the sum of \_\_\_\_\_, of lawful money of Upper Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining (or unjustly detaining, *as the case may be*), of his cattle, goods and chattels, to wit: (*here set forth the property distrained, taken or detained*), and do make a return of the said property, if a return thereof shall be adjudged, then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered }  
in the presence of }

FORM OF ASSIGNMENT.

Know all men by these presents, that I, W. P., Esquire, Sheriff of the County of \_\_\_\_\_, have at the request of the within named C.

C. D., the avowant (or person making cognizance) in this cause assigned over this Replevin Bond unto the said C. D., pursuant to the Statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office, this        day of        , one thousand eight hundred and        .

Sealed and delivered }  
in the presence of        }

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FORM C. (See s. 20.)

County or }  
United Counties of } Victoria, by the Grace of God, &c.  
, to wit : }

To the Sheriff of        ,        Greeting :

Whereas we lately commanded you, that without delay you should cause to be replevied to A. B. his goods, chattels and personal property, to wit, &c., (*setting out the description of the property*), which C. D. had taken and unjustly detained, (or unjustly detained) as it was said, according to our writ to you afore directed, and that you should make appear to us in our Court of        , at Toronto, (or County Court, *as the case may be*), on the        day of        , what you had done in the premises ; and you at that day returned to us that the goods, chattels and personal property aforesaid, were eloigned by the said C. D. out of your County to places to you unknown, so that you could in no wise replevy the same to the said A. B.

Therefore, we command you, that you take in *Withernam* the goods, chattels and personal property of the said C. D. in your County, to the value of the goods, chattels and personal property by him the said C. D. before taken, and deliver them to the said A. B. , to be kept by him until the said C. D. deliver the goods, chattels and personal property last aforesaid to the said A. B. ; and in what manner you shall have executed this our writ make appear to us, on the        day of        term, in our Court of        , (*or County Court, as the case may be*), that we may cause to be further done thereupon what of right and according to the laws of Upper Canada we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the goods, chattels and personal property to be by you taken in *Withernam* as aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the

the said C. D. that he be before us, at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his goods, chattels and personal property aforesaid, and have then there this writ.

Witness

## C A P . X X X .

### An Act respecting Interpleading.

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

#### INTERPLEADER—SUMMONS.

When a party may apply for an Interpleader Order.

**1.** In case after declaration and before plea, any Defendant sued in either of the Superior Courts of Common Law or in any County Court, in any Action of Assumpsit, Debt, Detinue or Trover, applies to such Court and shows by affidavit or otherwise that he does not claim any 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 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 dispose of the subject matter of the action, in such manner as the Court (or a Judge having jurisdiction in the case,) may order, the Court or Judge may make a Rule or Order calling upon such third party to appear, and state the nature and particulars of his claim, and to maintain or relinquish the same. 7 V. c. 30, s. 1,—9 V. c. 56, s. 4,—20 V. c. 57, s. 27.

#### PROCEDURE.

Proceedings on the rule or order.

**2.** The Court or Judge may, upon such Rule or Order, hear the allegations as well of such third party as of the Plaintiff, and in the meantime stay the proceedings in the action, and may finally order such third party to make himself Defendant in the same or in some other action, or to proceed to trial on one or more feigned issue or issues, and also direct which of the parties shall be Plaintiff or Defendant on such trial. 7 V. c. 30, s. 1.

The Court or Judge may by consent of parties finally dispose of the matter.

**3.** The Court or Judge may, with the consent of the Plaintiff and such third party, their Counsel or Attorney, dispose of the merits of their claims, and determine the same in a summary manner, and make such other rules and orders therein as to costs and all other matters, as appear just and reasonable. 7 V. c. 30, s. 1.



4. Any such order made by a single Judge not sitting in open Court may be rescinded or altered by the Court in like manner as other orders made by a single Judge. 7 V. c. 30, s. 4. The Court may review the order of a Judge in Chambers.

5. The Judgment in any such action or issue so directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive upon the parties, and all persons claiming by, from, or under them. 7 V. c. 30, s. 2,—20 V. c. 57, s. 27. The judgment to be conclusive.

6. In case such third party being duly served with the Rule or Order does not appear to maintain or relinquish his claim, or neglects or refuses to comply with any rule or order made after appearance, the Court or Judge may declare him, and all persons claiming by, from, or under him, for ever barred from prosecuting his claim against the original Defendant, his Executors or Administrators, saving the right or claim of such third party against the Plaintiff; and may make such order between the Defendant and the Plaintiff as to costs and other matters as appears just and reasonable. 7 V. c. 30, s. 3. If the third party fail to appear or to obey order of the Court, he may be barred his claim, and the Court may make order between the plaintiff and defendant.

7. In case of any such application to a Judge, he may, at any stage of the proceedings, refer the matter to the Court, in which event the Court shall hear and dispose thereof in the same manner as if the proceeding had been originally commenced by rule of Court, instead of the order of a Judge. 9 V. c. 56, s. 5. The Judge in Chambers may refer the matter to full Court

8. In case any claim be made to any goods or chattels taken or intended to be taken under an attachment against an absconding debtor, or in execution under any process issued by or under the authority of any of the said Courts, or to the proceeds or value thereof, by any person not being the person against whom such attachment or execution issued, then upon application of the Sheriff (or other officer) to whom the writ is directed, made to the Court from which such process issued, or to any Judge having jurisdiction in the case, and either before or after the return of such process, or before or after any action has been brought against such Sheriff or other Officer, such Court or Judge may, by rule or order, call before such Court or Judge as well the party who issued such attachment or execution as the party making such claim, and may thereupon exercise for the adjustment of such claim, and the relief and protection of the Sheriff or other Officer, all or any of the powers and authorities hereinbefore contained, and may make such rules or orders as appear just according to the circumstances of the case. 7 V. c. 30, s. 6,—20 V. c. 57, s. 27. Where claims are made to goods or chattels taken in execution, the Court may, at the instance of the Sheriff, grant interpleading Summons and Order.

9. The costs of all such proceedings shall be in the discretion of the Court or Judge. 7 V. c. 30, s. 6. Costs discretionary.

When an issue is ordered, the Sheriff may tax his costs and serve *allocatur* on each party, &c.

**10.** In case of an issue being directed to be tried for the determination of the adverse claim in respect of property seized or taken under a Writ of Attachment or of Execution, the Sheriff (or other Officer) to whom such writ is directed, may tax the costs incurred by him in consequence of such adverse claim, and may, when taxed, serve a copy of the *allocatur* of the same upon each of the parties to such issue, and the successful party upon the issue shall tax such costs among his costs of the cause, and upon receipt thereof, shall pay over the same to such Sheriff or other Officer. 9 V. c. 56, s. 5.

The successful party liable to the Sheriff for such costs.

**11.** If after the service of such *allocatur*, the party succeeding upon the issue neglects or refuses to tax such costs, the Sheriff or other Officer may obtain a Rule upon the successful party for payment of the same. 9 V. c. 56, s. 5.

If case compromised, the plaintiff to be liable to the Sheriff for his costs.

**12.** In case of any such proceeding being compromised between the parties thereto, such costs of the Sheriff or other Officer shall be paid by the party, Plaintiff or Defendant, by whom the execution or attachment was sued out. 9 V. c. 56, s. 5.

If goods seized remain in the Sheriff's custody, the Court may award remuneration.

**13.** In case after the seizure of any property under attachment or in execution, an issue be directed, and the property seized remains pending the trial of the issue, in the custody of the Sheriff or other Officer who seized the same, the Court from which the writ issued, or any Judge thereof in vacation, may make an Order for the payment to the Sheriff or other Officer, of such sum for his trouble in and about the custody of the property, as the Court or Judge deems reasonable, and such Sheriff or other Officer shall have a lien upon the property for payment of the same. 9 V. c. 56, s. 6,—20 V. c. 57, s. 27.

All proceedings may be entered of record, &c.

**14.** All rules, orders, matters and decisions made or done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry; and every such rule or order so entered shall have the force and effect of a Judgment, except only as to becoming a charge on lands, tenements or hereditaments. 7 V. c. 30, s. 7.

If costs not paid on demand, execution to issue.

**15.** In case the costs adjudged be not paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same or to his Agent or Attorney, execution may issue therefor by Writ of *Fieri Facias* tested and bearing date in like manner as other Writs of *Fieri Facias*, and adapted to the case, together with the costs of the entry aforesaid and of the execution. 7 V. c. 30, s. 7.

The Sheriff's fees, the same

**16.** The Sheriff or other Officer executing any such writ shall be entitled to the same fees and no more, as upon similar

similar writs grounded upon a judgment of the Court. 7 V. as in other cases.  
c. 30, s. 7.

**17.** So far as applicable the Provisions of the Common Law Procedure Act shall apply to this Act. 20 V. c. 57, s. 31.

## C A P. X X X I.

### An Act respecting Jurors and Juries.

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

#### INTERPRETATION.

**1.** The word "County," whenever it occurs in this Act, shall include and apply to "Unions of Counties" for Judicial purposes, and the word "Township" shall include and apply to "Unions of Townships." *The whole of this Act taken from the 22 V. c. 100. (1858.)* Interpretation clause.

#### ISSUES OF FACT TO BE TRIED BY JURY.

**2.** All issues of fact now or hereafter joined in any action, real, personal or mixed, brought in any of Her Majesty's Courts of Justice within Upper Canada, and the assessment or inquiry of damages in any such action the trial or assessment of which is not otherwise provided for, shall be tried and determined or assessed and inquired of by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues, or for the assessment or inquiry of such damages; and the said Jurors may bring in a special verdict upon the trial of any such issue. Issues of fact to be tried by a Jury, unless otherwise provided.

#### QUALIFICATIONS, EXEMPTIONS AND DISQUALIFICATIONS OF JURORS.

**3.** Unless exempted, every person residing in any County, City, or other local judicial division in Upper Canada, who is over the age of twenty-one years, and in the possession of his natural faculties and not infirm or decrepit, and who is assessed for local purposes upon property, real or personal, belonging to him in his own right or in that of his wife, to the amount herein-after mentioned, shall be qualified and liable to serve as a Juror both on Grand and Petit Juries in Her Majesty's Superior Courts of Common Law at Toronto having General Criminal or Civil Jurisdiction throughout Upper Canada, and in all Courts of Civil or Criminal Jurisdiction within the County, City, or other local judicial division of the County in which he resides. Who shall be qualified as a Juror.

Parting with property after assessment not to disqualify.

4. No person enrolled as a Juror in respect of property of which he was at the time seized or possessed shall be disqualified or exempted from serving as such Juror in consequence of his having ceased to be seized or possessed of such property between the time of enrollment and of his being called upon to serve as such Juror, nor shall the same form any ground of challenge to such Juror.

Joint proprietors to be deemed equally interested.

5. Whenever property is assessed on the assessment-roll of any Township, Village or Urban Ward, as the property of two or more persons jointly, the Selectors of Jurors to whom it belongs to extract from such roll the names thereon of those qualified and liable to serve as Jurors, may, and if they have the requisite information as to the names of the parties to enable them to do so, shall, in making such extract, and for all the purposes of this Act, treat such property as if it belonged to such persons in equal proportions, and such Selectors shall treat each of such persons as respects his qualification and liability to serve as a Juror as if he had been severally assessed for such equal proportion of such property.

Property qualifications.

6. The amount of property in respect of which a person is qualified and liable to serve as a Juror shall, by the Selectors for each Township, Village or Urban Ward, be determined by the relative amount of property for which the person is assessed on the assessment-roll of the Township, Village or Ward of which he is a resident inhabitant at the time of the annual selection of Jurors, and the mode for ascertaining the same shall be as follows, that is to say ; The names of one half of the assessed resident inhabitants of the Township, Village or Urban Ward which remain after striking from the said Roll the names of all persons entirely freed and exempt or disqualified from serving as Grand or Petit Jurors, under any of the provisions of this Act, shall be copied from the assessment-roll of such Township, Village or Ward, commencing with the name of the person rated at the highest amount on such roll and proceeding successively towards the name of the person rated at the lowest amount, until the names of one half of the persons assessed upon such roll have been copied from the same ; and the amount for which the last of such persons is assessed upon the said roll, shall be that which qualifies every resident inhabitant of such Township, Village or Urban Ward, and renders him liable to serve as such Juror.

Mode of ascertaining such qualification.

Persons exempted from serving as Jurors ; and not to be inserted on the Rolls.

7. The following persons are hereby absolutely freed and exempted from being returned and from serving as either Grand or Petit Jurors in any of the Courts, and shall not be inserted in the Rolls to be prepared and reported by the Selectors of Jurors as hereinafter mentioned :

1. Every person upwards of sixty years of age ;

2. Every member of the Executive Council of this Province;
3. The Secretary of the Governor; and
4. Every officer and other person in the service of the Governor for the time being;
5. Every officer of the Provincial Government; and
6. Every clerk and servant belonging to either House of the Provincial Parliament, or to the Public Departments of the Province;
7. Every Inspector of Prisons;
8. The Warden of the Provincial Penitentiary; and
9. Every officer and servant of the said Penitentiary;
10. Every Judge of a Court having general jurisdiction throughout Upper Canada;
11. Every Judge of a County Court; and
12. Every Judge of any other Court except the Quarter Sessions of the Peace, having jurisdiction throughout any County or City in Upper Canada;
13. Every Sheriff, Coroner, Gaoler and Keeper of a House of Correction or Lock-up-House;
14. Every Priest, Clergyman and Minister of the Gospel, recognized by law, to whatever denomination of Christians he may belong;
15. Every member of the Law Society of Upper Canada actually engaged in the pursuit or practice of his profession, whether as a Barrister or Student;
16. Every Attorney, Solicitor and Proctor actually practising;
17. Every Officer of any Court of Justice whether of general, County, City, or other local jurisdiction, actually exercising the duties of his offices;
18. Every Physician, Surgeon and Apothecary actually practising;
19. Every Officer in Her Majesty's Army or Navy on full pay;
20. Every Pilot and Seaman actually engaged in the pursuit of his calling;

21. Every Officer of the Post Office, Customs, and Excise ;
22. Every Sheriff's Officer and Constable ;
23. Every County, Township, City, Town and Village, Treasurer and Clerk ;
24. Every Collector and Assessor ;
25. Every Professor, Master and Teacher of any University, College, County Grammar School, Common School or other School or Seminary of learning, actually engaged in performing the duties of such appointment ;
26. Every officer and servant of any such University, College, School or Seminary of learning, actually exercising the duty of his office or employment ;
27. Every Editor, Reporter and Printer of any public Newspaper or Journal actually engaged in such employment or occupation ;
28. Every person actually employed in the management and working of any Railway ;
29. Every Telegraph Operator ;
30. Every Miller ;
31. Every Fireman belonging to any regular Fire Company ;

But no Fireman shall be exempt from serving as a Juror, unless the Captain or other Officer of the Fire Company, at least five days before the time appointed for the selection of Jurors, notifies to the Clerk of the Municipality the names of Firemen belonging to his Company, residing within such Municipality, and claims exemption for such Fireman.

Members of the Legislature and certain Municipal Functionaries exempted from serving at certain Courts.

S. Every Member of the Legislative Council or of the Legislative Assembly of this Province,—every Warden and every Member of any County Council,—every Mayor, Reeve or Deputy Reeve of any City, Town, Township or Village,—every Justice of the Peace, and every other Member and Officer of any Municipal Corporation, is hereby absolutely freed and exempted from being selected by the Selectors of Jurors hereinafter mentioned to serve as a Grand or Petit Juror in Her Majesty's Inferior Courts, and none of the names of any such persons shall be inserted in the rolls from which Jurors are to be taken for such purposes, and if any such name be at any time accidentally inserted in any such roll, it shall, if drawn in selecting any Jury List or drafting any Panel therefrom, be set aside and not inserted therein, and every

every such person is moreover absolutely freed and exempted from being returned upon any General Precept to serve as a Petit Juror at any Sessions of Assize or *Nisi Prius*, Oyer and Terminer or Gaol Delivery, and the name of any such person, if drawn in drafting such panel, shall be set aside and not inserted in the same.

9. Every person whose name had been inserted in any of the Jury Lists for the year next before that in which his name is again drawn in any of such Lists, or for some prior year within the Rule of Exemption hereby established, and who had duly served on some Panel returned under a general Precept from such Jury List until discharged by the Court to which such Panel was returned, shall be exempt from having his name inserted in any such list for any subsequent year within such rule of exemption, that is to say: if the Jurors' Roll from which such name is drawn contains a sufficient number of names to make two complete Jury Lists of the denomination of such Jurors' Roll, and if it appears by the Jurors' Book of the preceding year that the name of such person was inserted in any of the Jury Lists for that year, and that he duly attended and served upon any such Panel, the name of such person shall not be inserted in such Jury List; and if there is a sufficient number of names on such Jurors' Roll to make three such complete Jury Lists, and if it appears by the Jurors' Books of either of the two preceding years that his name was inserted in any of such Jury Lists for either of such years, and that he duly attended and served as aforesaid for either of such years, the name of such person shall not be inserted, and so on, *toties quoties*, allowing one additional year's exemption for each complete additional Jury List that such Jurors' Roll furnishes as aforesaid.

Exemptions arising from having actually served as a Juror within a certain time previously.

10. Service as a Juror upon any Panel returned by the Sheriff of a County, shall not exempt the person from again serving as a Juror upon any Panel returned by the High Bailiff or other proper Officer of a City embraced within the County of such Sheriff, though within the period of exemption provided for by the last preceding section, nor shall any such service upon any Panel returned by the High Bailiff or other proper Officer of any City having a Recorder's Court established in the same, exempt the person who so served, from again serving as a Juror upon any Panel returned to any of the Superior Courts of Criminal or Civil Jurisdiction, by the Sheriff of the County within the limits of which such City is embraced; and the Jury Lists for such Superior Courts for such County and for such City respectively, shall be selected without any regard being had to any such service, but the inhabitants of every such City shall be exempt from serving on Juries at any other than the City Courts, or Division Courts within the limits of which the City is situate, or on trials at the Bar of either of Her Majesty's Superior Courts of Common Law at Toronto, or upon trials ordered

Services as a City Juror not to exempt as a County Juror, and *vice versa*.

Citizens exempted from serving, except at certain Courts.

ordered by the Court of Chancery, or at the Courts of Assize and *Nisi Prius*, Oyer and Terminer, and General Gaol Delivery for the County within the limits of which such City is situate.

Service at Division Courts not to exempt.

**11.** Service as a Juror at any Division Court shall not exempt such Juror from serving as a Juror at any Court of Record or in the Court of Chancery, and no person shall be compelled to serve as a Juror in any Division Court who is by law exempted from serving as a Petit Juror in the Superior Courts. 13, 14 V. c. 53, s. 35,—16 V. c. 177, s. 21.

Aliens disqualified.

Exception.

**12.** Except only in the cases hereinafter expressly provided for, no man not being a natural-born or naturalized subject of Her Majesty, shall be qualified to serve as a Grand or Petit Juror in any of the Courts aforesaid on any occasion whatever.

Attainted persons disqualified.

**13.** No man attainted of any Treason or Felony, or convicted of any crime that is infamous, unless he has obtained a free pardon, and no man who is under outlawry, shall be qualified to serve as a Grand or Petit Juror in any of the said Courts on any occasion whatsoever.

#### SELECTION AND DISTRIBUTION OF JURORS FROM THE ASSESSMENT-ROLL.

Certain Municipal Functionaries to be Selectors of Jurors.

**14.** The Mayor or Reeve, the City, Town, Village or Township Clerk, and the Assessor, or Assessors if there be more than one, of the respective Cities, Towns, Villages and Townships in Upper Canada, shall be *ex officio* the first Selectors of Jurors for every Township and Village, and for each Ward of every such City or Town.

When the selection shall be made;

And where.

**15.** The Selectors shall assemble annually on the first day of September, or if a Sunday or Statutory Holiday, then on the first day thereafter not being such Holiday, at the place where the Meetings of the Municipal Council of such City, Town, Village or Township are usually held, or at such other place within the Municipality as may for that purpose be appointed by the Head of such Municipal Corporation, or during his absence, or the vacancy of the Office, by the Clerk thereof, for the purpose of selecting from the Assessment-Rolls of such City, Town, Village or Township, the names of the persons qualified and liable to serve as Jurors under this Act.

Principles by which the Selectors are to be governed.

**16.** The Selectors shall select such persons as in the opinion of the Selectors, or of a majority of them, are from the integrity of their characters, the soundness of their judgments, and the extent of their information, the most discreet and competent for the performance of the duties of Jurors.

The Clerks of Councils to

**17.** The City, Town, Village or Township Clerk, or the Assessor or Assessors, or the other officer or person who has the



the actual charge or custody of the Assessment-Rolls for any City, Town, Village or Township for the year, shall, at the time aforesaid, bring such Assessment Rolls to the annual meeting of the Selectors of Jurors for such City, Town, Village or Township, and permit the use of the same for the purpose aforesaid.

produce Assessment-Rolls, &c.

**18.** Such Selectors shall annually, on the said first day of September, or if they have been unable to complete the duty hereby imposed upon them on such first day, then on the first day next thereafter not being a Sunday or Statutory Holiday, proceed to select the names from such Rolls, and shall, before entering upon the performance of their duties, severally make and subscribe an oath or affirmation in the form following:

Meeting of Selectors.

Selectors to be sworn.

“ I, A. B., do swear (*or affirm, as the case may be*), that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a Selector of Jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as Jurors for the year of Our Lord, one thousand eight hundred and . So help me God.”

The oath.

“ Sworn (*or affirmed*) before me, at , the day of 18 .”

(Signed,) C. D.

J. P.

(Signed,)

A. B.

Which oath or affirmation any Justice of the Peace may (within his jurisdiction) administer.

How administered.

**19.** The Selectors shall select from those qualified to serve on Juries, at least two thirds of the persons whose names appear on the said Rolls.

How selection to be made.

**20.** In case of an equality of votes amongst such Selectors as to any one or more of the names to be so selected, or as to the Division of the Report of such Selectors in which any such name should be inserted in the distribution of such names as hereinafter provided, or as to any other incidental question which may arise, the Mayor or Townreeve, or in case of his absence or the vacancy of the office, the City, Town, Village or Township Clerk, or in the absence or vacancy of the offices of both, then the Assessor whose Roll for the year contains the greatest number of assessed names, and in the case of joint Assessors, the Assessor first named in the appointment of such Assessors, shall have a casting or double vote in the decision of the question.

In case of an equality of votes among the Selectors, who to have the casting vote.

Proper number of Jurors to be taken by ballot, and how.

**21.** The said Selectors shall then prepare a set of Ballots or pieces of Parchment, Card or Paper of uniform and convenient size, containing the same number of ballots as there are names selected, allowing one name to each ballot, and on one of each such ballots shall be printed or written the name of one of the persons whose names have been selected as hereinbefore mentioned, and the selectors shall then proceed to ballot for Jurors one half of the number of such persons.

Mode of balloting.

The manner of balloting shall be as follows, that is to say :

1. The Selectors, or one of them, shall place the Ballots promiscuously in a Box or Urn to be procured by them for that purpose, and shall cause such Box or Urn to be shaken so as sufficiently to mix the ballots, and shall then openly draw from the said Box or Urn indiscriminately, one of said Ballots, and declare openly the name on such ballot, whereupon the Clerk, or one of the Selectors present, shall immediately declare aloud the name of the person thus balloted ;

2. And thereupon the name and addition of the person whose name has been so selected, shall be written down on a sheet of paper provided for that purpose ;

3. Which being done, the Selectors shall proceed in like manner to ballot and dispose of other numbers from the said Box or Urn, until the necessary number has been completed.

Jurors to be distributed into four divisions.

**22.** The Selectors having made such Selection and Ballot shall, for the purpose of the Report thereof, distribute the names of the persons so balloted into four divisions ; the first, consisting of persons to serve as Grand Jurors in the Superior Courts ; the second, of persons to serve as Grand Jurors in the Inferior Courts ; the third, of persons to serve as Petit Jurors in the Superior Courts, including the Court of Chancery, and the fourth, of persons to serve as Petit Jurors in the Inferior Courts, and shall make such distribution according to the best of their judgment, with a view to the relative competency of the parties to discharge the duties required of them respectively.

Grand Jurors.

Petit Jurors.

Proportionate number in each division.

**23.** The said Selectors shall make the distribution among the said four divisions as nearly as may be in the following proportions relatively to the whole number of persons so balloted as aforesaid, that is to say : one twelfth as nearly as may be under the first of such divisions, two twelfths as nearly as may be under the second of such divisions, three twelfths as nearly as may be under the third of such divisions, and six twelfths as nearly as may be under the fourth of such divisions.

**24.** The said Selectors of Jurors respectively shall thereupon :

1. Make out in duplicate under their hands and seals, or under the hands and seals of such of them as perform the duty, a report of their Selection, Ballot and Distribution for the Township, or Village or Urban Ward, as the case may be, which Report shall be as nearly as may be in the form A, and be filled up agreeably to the directions contained in the notes to such Form ;

Selectors to make out a duplicate report, &c.

2. There shall be subjoined to each duplicate Report a written declaration subscribed by the Selectors respectively, stating each for himself, that he had made the Selection, Ballot and Distribution to the best of his judgment and information pursuant to this Act, and without fear, favour or affection of, to, or for any person or persons whomsoever, gain, reward or hope thereof, other than such fees as they are lawfully entitled to receive for the same under the authority of this Act ; and

Declaration to be subjoined to the report.

3. One of such Duplicate Reports shall, on or before the fifteenth day of the same month of September, be deposited by such Selectors with the Clerk of the Peace for the County in which the Town, Village or Township lies, or within the limits of which such City is embraced ; and the other duplicate, with the City, Town, Village or Township Clerk, as the case may be ;

A duplicate report shall be deposited with Clerks of the Peace.

4. And such Clerks respectively shall keep such duplicate reports on file in their respective offices for the use and information of all who may have lawful occasion to examine or make use of the same ; and

Who shall keep the same on file.

5. In case of the loss or destruction of any Duplicate original Selectors' Report, the Officer in whose office the same was when so lost or destroyed, shall, as soon as reasonably may be, procure from the Officer to whom the legal custody of the other Duplicate Original of such Report belongs, a certified copy of such Duplicate Report, and shall file the same in his office in lieu of the Duplicate original, and such certified copy shall be thenceforth taken, received and acted upon in all respects as if it were the Duplicate Original Report so lost or destroyed.

In case of loss, a copy of such duplicate report to be filed.

#### JURORS' BOOK AND SECOND SELECTION OF JURORS.

25. The Clerk of the Peace for every County shall annually procure a Book and keep the same as nearly as may be in the Form B, and agreeably to the directions contained in the notes to such form, and such book shall be called "The Jurors' Book" for the County of which he is such Clerk, and the year for which such Book is to be used, as hereafter provided, shall be inserted therein.

Clerk of the Peace to prepare Jurors' books in form of Schedule B ;

26. From the Reports of the first Selectors of Jurors for the different Townships, Villages and Urban Wards, or other like local divisions of the County, so made to the several Clerks of

In which shall be entered the names of Grand and Petit Jurors.

of the Peace for such year as aforesaid, or from such of them as may have been so made to them respectively, on or before the fifteenth day of September, in such year, each such Clerk shall, between the fifteenth day of September and the tenth day of November in such year, transcribe into the Jurors' Book aforesaid, in alphabetical order, the names and additions of all persons selected to serve as Grand or Petit Jurors, as the same are set forth and distributed in such Reports.

Such book to contain four rolls of Jurors.

**27.** Such names shall be transcribed into the book in four Rolls: the first to be called "Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction," the second, "Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction," the third, "Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal or Civil Jurisdiction and in the Court of Chancery," and the fourth, "Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal or Civil Jurisdiction."

Names and additions of Jurors.

**28.** In each of such Rolls shall be transcribed the names and additions of all persons by the Selectors selected, balloted and reported as aforesaid to serve as Jurors in each respective County.

Deposit of certified Jurors' book with the Clerk or Deputy Clerk of Crown of Q. B. in the County.

**29.** The Clerk of the Peace shall, on or before the thirty-first day of December, cause a correct copy of such Jurors' Book, certified by him to be a true copy of the original, to be made and deposited in the office of the Clerk or Deputy Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench in the County, as the case may be, and from it, in the event of the loss or destruction of the original by fire or other accident, a duplicate original of such Jurors' Book shall be made, and being certified by the said Clerk or Deputy Clerk of the Crown and Pleas to be truly copied from the copy deposited in his office, shall, upon such loss or destruction being established upon oath or affirmation before two or more Justices of the Peace of the County, be received and used on all occasions and for all purposes, as the original so lost or destroyed.

When copies therefrom to be procured and used.

**30.** In every case of the destruction of any Original Jurors' Book, the Clerk of the Peace for the County shall, as soon as reasonably may be, procure a duplicate original of such book, certified as aforesaid, and deposit the same in his office as above provided.

Notice to be given to the Sheriff, &c.

**31.** In every such case the Clerk of the Peace shall, as soon as may be after procuring such duplicate original, give to the Sheriff or other Officer or Minister of the County to whom the return of Jury Process belongs, notice of such destruction, and of the procurement and deposit of such duplicate original in lieu of the original, and thereupon such Sheriff, Officer or Minister, shall furnish to such Clerk of the Peace copies of all Panels

Panels of Jurors drafted by such Sheriff, Officer or Minister from the Jury Lists in the original book; and such Clerk of the Peace shall thereupon enter such Panels in the duplicate Original Jurors' Book, in like manner as the same were entered in the said Original Jurors' Book.

**32.** In every case in which a Proclamation issues, disuniting a Junior County from a Senior County or Union of Counties to take effect from and after the first day of January of the then following year, the Clerk of the Peace for the Union of Counties of which such Junior County is at the time a member, shall procure two of such Jurors' Books, one for the County or Counties from which such Junior County is to be so disunited, and the other for such Junior County itself.

When union of Counties dissolved, what shall be done by Clerk of the Peace.

**33.** Such Clerk shall transcribe into the former of such Books the names and additions of all persons selected for the different Townships, Villages and Urban Wards of such Senior County or Counties, and into the latter of such Books, the names and additions of all persons selected for the different Townships, and Urban Wards of such Junior County respectively.

How the Jurors' names shall be arranged in the books and rolls.

**34.** In every such case the preparing of the Books, the selecting of the Jury Lists, and the performing of all other acts and things required by this Act to be done for such Junior County for such following year, shall be done and performed by the Clerk of the Peace and Court of General Quarter Sessions of the Peace for such original Union of Counties and by the Chairman and Officers thereof.

Clerk of the Peace to prepare books, &c.

**35.** In every such case as soon as may be after the Jurors' Book for the Junior County has been completed and the Copies thereof made and deposited in the proper offices, the Clerk of the Peace of the original Union of Counties shall, on demand thereof, deliver the same to the Clerk of the Peace of the Junior County, who shall thereupon give him a receipt for such Book.

Clerk of the Peace of senior County to deliver Jurors' book to Clerk of the Peace of junior County.

**36.** Upon such receipt being filed with the Treasurer of such Junior County, and upon the accounts of the Clerk of the Peace and Crier of the said Court of Quarter Sessions of such original Union of Counties for the services thus performed for such Junior County being verified, by affidavit before a Commissioner for taking affidavits for any of such County or Union of Counties of which they may be commissioners, the Treasurer of such Junior County shall pay the amount of such accounts out of the like moneys as hereinafter provided with respect to the payment of similar accounts by the Treasurers of other Counties, and such payments shall in like manner be allowed in the accounts of such Treasurer.

Treasurer of junior County to pay accounts therefor.

**37.** Such Jurors' Rolls shall be each divided into Townships, Wards and Villages, or other like sub-divisions answering to

How such Jurors' rolls are to be divided.

to

to the local divisions of the Counties, and of the Cities and Towns embraced within the limits thereof, and such sub-divisions, and also the names within each sub-division respectively, shall be arranged alphabetically, and all the names in each of such Rolls thus arranged, shall be numbered with a series of current numbers from One forward.

How the rolls are to be certified.

**38.** To each of such Rolls in the Jurors' Book shall be subjoined a certificate from the Clerk of the Peace, who prepared the same, that he has carefully compared such Roll with the Reports made by the several Selectors of Jurors for the different Townships, Wards and Villages and other local divisions of the County or Union of Counties, and the Cities and Towns embraced within the limits of the same for the year, as such Reports remained on file in his office on the Fifteenth day of September in such year, and that such Roll contains a true and correct transcript of the names and additions of all persons so selected and reported to serve as Jurors as aforesaid.

#### SELECTING JURY LISTS FROM JURORS' ROLLS.

Clerk of the Peace to bring Jurors' book into Q. S. (sitting the Court) yearly and certify—

**39.** The Clerk of the Peace for each respective County shall, on the first day of the Court of General Quarter Sessions of the Peace for the County, held next after the tenth day of November in each year, bring into Court and publicly deliver to the Chairman of such Court *sedente curiâ*, the Jurors' Book so prepared by him as aforesaid for the then next year, together with the Jurors' Books for such and so many of the then next preceding years as may be required for proceeding with the selecting of the Jury Lists as hereinafter directed, and shall thereupon make oath in open Court :

That he has compared Jurors' rolls.

1. That he has carefully compared the Jurors' Rolls in such first mentioned Jurors' Book with the Reports made by the several Selectors of Jurors for the several Townships, Villages and Urban Wards within the County, as the same remained on file in his office on the Fifteenth day of September preceding, and that to the best of his knowledge and belief the said Jurors' Rolls contain a true and correct transcript of the names and additions of all persons so selected, balloted and reported by such Selectors of Jurors as aforesaid ;

That the Jurors' books are those remaining on file.

2. That the Jurors' Books secondly above mentioned are those remaining on file in his office for the years to which they purport respectively to belong, and that all entries in such last mentioned Books were truly and faithfully made therein, without fraud or collusion of any kind, and according to the very truth.

If the Clerk has been changed,

**40.** If such Clerk of the Peace has not been in office during all the time that such Jurors' Books have been on file in

in the office of the Clerk of the Peace for the County or Union of Counties, then, that all entries in such Books made during the time that he has been in office, have been truly and faithfully made therein, without fraud or collusion of any kind, and according to the very truth, and that he hath no reason but to believe, and doth therefore verily believe that all other entries made therein prior to his appointment, were in like manner truly and faithfully made therein as aforesaid.

the oath to be modified.

**41.** On the first occasion of bringing into Court a Jurors' Book for any County, or for any City, there being no Jurors' Book for any preceding year for such County, Union of Counties or City, the oath to be made by the Clerk of the Peace or Clerk of the Recorder's Court respectively, shall be modified so as to be adapted to such circumstances.

The oath to be modified also when the books are brought in for the first time.

**42.** If any Clerk of the Peace or Clerk of a Recorder's Court is unable to make the oath required by the fortieth section of this Act, as to the Entries made in any of such Jurors' Books previous to the time of such Book coming into his custody, or has reason to suspect that any original entries in any of such Books have, after their original completion, been erased, mutilated or altered, he shall, in lieu of that part of the said oath, make oath that, as to such entries, he is unable to speak, but that from circumstances which have come to his knowledge, or of which he has been informed, he has reason to doubt the correctness thereof, or of some parts thereof, or has reason to suspect that some of the original entries in some of such Books have been erased, mutilated or altered, as the case may be.

If the Clerk for the time being suspects previous errors or fraud, he is to state the same.

**43.** In every case in which the Clerk of the Peace has made an affidavit in the terms of the last preceding section of this Act, the Court of Quarter Sessions shall, immediately after the selection has been completed, either on the same or some subsequent day, examine and inquire, by the oath of such persons as may be informed thereof, into such supposed incorrect entries, erasure, mutilations or alterations, their nature and extent, and by whom, when and for what purpose they were made, and shall punish the parties found to have made such incorrect entries, erasures, mutilations or alterations, by fine or imprisonment in their discretion, and shall cause such incorrect entries, erasures, mutilations or alterations to be rectified, and such Books restored to their original state as nearly as may be, according to the best information they have been able to obtain of or concerning the same.

The Quarter Sessions shall inquire into the matter.

**44.** The Chairman of such Court shall thereupon certify, under his hand and seal in such Books respectively, the receipt of such Books and the oath or affirmation upon which the same have been received, and a remembrance of the same shall, by the proper officer, be also made in the minutes of such Court.

The receipt of the books, &c., to be certified by the Chairman.

The Court shall determine the number of Jurors to be selected.

List.

**45.** The Court shall then proceed to consider and resolve with reference to the probable amount of judicial business to be disposed of through the instrumentality of the Jurors to be selected on that occasion, and the whole number of Jurors from whom the selection is to be had, whether it is most expedient upon such occasion to select a full Jury List, a two-third Jury List or a half Jury List, and a remembrance of the resolution shall by the proper officer be duly entered upon the minutes of such Court.

Names of Justices present to be recorded.

**46.** On all such occasions the names of the different members of the said Court present and who vote upon any such resolution, shall be entered on the Minutes of the Court, and in the event of the votes of the members present being equal, the Chairman of the Court for the time being shall have a double or casting vote.

How a full Jury List to be selected;

**47.** In the event of the resolution affirming the expediency of selecting a full Jury List, the numbers to be selected from the said Rolls, according to the provisions of the fifty-first section of this Act, shall be: 1. From the Roll of Jurors to serve as Grand Jurors in the Superior Courts, Forty-eight; 2. From the Roll of those to serve as Grand Jurors in the Inferior Courts, Ninety-six; 3. From the Roll of those to serve as Petit Jurors in the Superior Courts, One Hundred and Forty-four; and 4. From the Roll of those to serve as Petit Jurors in the Inferior Courts, Two Hundred and Eighty-eight.

Or a two-third List;

**48.** In the event of the resolution affirming the expediency of selecting a two-third Jury List, the numbers to be selected shall be: 1. From the first named of such Rolls, Thirty-eight; 2. From the second, Sixty-four; 3. From the third, Ninety-six; and 4. From the fourth, Two Hundred and Sixteen.

Or a half List.

**49.** In the event of the resolution affirming the expediency of selecting a half Jury List, the numbers to be selected as aforesaid shall be: 1. From the said first named of such Rolls, Twenty-four; 2. From the second, Forty-eight; 3. From the third, Seventy-two; and 4. From the fourth, One Hundred and Forty-four.

The County of York specially provided for.

**50.** As respects the County of York, or any Union of which that County is for the time being the Senior County, the numbers to be selected from the first and third of such Jurors' Rolls shall be as follows: When a full Jury List is to be selected, then, from the first of such Rolls, ninety-six, and from the third, two hundred and eighty-eight; when a two-third Jury-List is to be selected, then, from the first of such Rolls, seventy-two, and from the third, two hundred and sixteen; and when a half Jury List is to be selected, then, from the first of such Rolls, forty-eight, and from the third, one hundred and forty-four.



## SELECTORS OF JURORS FROM THE JURORS' ROLLS.

**51.** The Chairman of the Court of Quarter Sessions—the Clerk of the Peace—the Warden—the Treasurer, the Reeves and the Sheriff of the County or any three of them, shall be *ex officio* Selectors of Jurors from the Jurors' Rolls within their respective Counties.

Who shall be Selectors of Jurors.

**52.** Immediately after a resolution has been so adopted affirming the expediency of selecting a full or a two-third or a half Jury List as aforesaid, or if it is the unanimous opinion of all the Justices then present that the selecting should be proceeded with at an adjourned sitting of such Court, then on the day to which such selecting may be adjourned, such Selectors shall attend and shall, before entering upon the performance of their duties, severally make and subscribe an oath or affirmation in the form following :

How the selection shall be conducted.

Selectors to be sworn.

“ I, A. B., do swear (*or affirm, as the case may be*), that I will truly, faithfully and impartially, without fear, favor or affection, and to the best of my knowledge and ability, perform the duty of a Selector of Jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as Jurors for the year of Our Lord one thousand eight hundred and . So help me God.”

The oath.

“ Sworn (*or affirmed*) before me, at , the day of , one thousand eight hundred and .”

(Signed) C. D.

J. P.

(Signed) A. B.

Which oath or affirmation any Justice of the Peace may (within his jurisdiction) administer, and such Justice shall cause an entry thereof to be forthwith made in the minutes of the Court of Quarter Sessions in the presence of the Chairman presiding at such Court; and the Selectors having been duly sworn, the said Court shall cause proclamation to be made, *firstly*, for all persons to keep silence while the names of the persons to serve as Jurors for the next year for such County or Union of Counties (and City, if there is one having a Recorder's Court established therein within the limits of such County or Union of Counties,) are openly selected from the Jurors' Rolls; and *secondly*, that if any one can inform the selectors why the name of any person which may be called upon such selection should not be inserted in the Jury List for which it may be called, he is to come forth and he will be heard.

How administered and recorded.

Silence to be proclaimed.

And notice given that objections to Jurors will be heard.

**53.** The last mentioned Selectors of Jurors shall then proceed to select from the Jurors' Rolls the names of the requisite number

Selectors to proceed to the selection.

number of persons to serve as Jurors for such year, who, in the opinion of the selectors, or of a majority of them, are, from the integrity of their characters, the soundness of their Judgments and the extent of their information, the most discreet and competent for the performance of the duties of Jurors, and the selection shall be conducted in the following manner, that is to say :

Clerk of the Peace to call over the names on the several rolls.

1. The Clerk of the Peace shall then openly and audibly call aloud the name and place of residence of the person first named on the Roll of Grand Jurors for the Superior Courts, and so on through such Roll, and each successive Roll of Grand and Petit Jurors for the respective Courts in which the Jurors are required to serve ;

If exempt by reason of former service, what to be done.

2. And if by reference to the Jurors' Book of preceding years, or any of them, and regard being had to the number of names on such Roll, it appears that such person is exempt from having his name inserted in such Jury List, on the ground of its having been inserted in some one of the Jury Lists, for some former year sufficiently recent to entitle him to such exemption, and of his having duly served on some Panel returned from such last mentioned Jury List under a general precept, the Chairman of such Court shall publicly announce the same, and that such person is on that account exempted from serving for the next year accordingly ;

Exemption to be noted.

3. And the Clerk of the Peace shall thereupon note in the said Roll for such next year, opposite the name of such person, that he is exempted from serving as having served on one of the Grand or Petit Jury Lists for such a year, stating the List and the year ;

If not exempt on that ground.

4. But if such person be found not entitled to such exemption, then his name and addition shall be again openly called aloud by the Clerk of the Peace as being proposed to be selected to serve as a Grand Juror for the Superior Courts ; and the Chairman shall thereupon put the question to the other Selectors present : " Shall this name be selected for the Grand Jury of the Superior Courts ? " And if determined in the affirmative by the whole or a majority of the Selectors present, the said Chairman shall thereupon make enquiry whether any one can inform the Selectors why the name of such person should not be inserted in the Jury List for which he has been so selected as aforesaid ;

Question to be put as to each name, and objection heard.

If exempt on other grounds, to be noted accordingly.

5. Whereupon, if the party himself in person or by his Counsel, or his Attorney in the absence of Counsel, by his own oath or by the testimony of witnesses, or if any other person by his own oath or by the testimony of witnesses, satisfies the Court that the person whose name has been so selected is either exempt or disqualified from serving as a Grand Juror

Juror for which he has been so called, such person's name shall not be inserted in such Jury List for such next year ;

6. And the cause with the name of the person so objecting, and the names of the witnesses upon whose testimony such name is set aside, shall, by the Clerk of the Peace, be stated in the Minute Book of the Court, and a short note of the cause of rejection be made on the proper Jurors' Roll opposite the name of such person ;

And if the grounds of exemption.

7. But if no such objection be made or established to the satisfaction of the Selectors, and if they or a majority of them think fit, the names and additions at length, of such person shall, by the said Clerk of the Peace, be forthwith inserted in the Minute Book of the Court ;

If no objection is made, names to be inserted ;

8. Which being done, the said Selectors shall in like manner proceed to select and set aside, or pass, another name, and so on till they have transferred the required number of names from such Roll ;

And so toties quoties.

9. After which the names so selected, with the places of residence and additions of the parties alphabetically arranged, shall by such Clerk of the Peace, be copied into the Jurors' Book with the title of "The Grand Jury List for the Superior Courts," and such List shall have a series of current numbers from one forward as is hereinbefore provided with respect to the Jurors' Rolls, and also a reference to the number of each name on the Roll of Grand Jurors for the Superior Courts ;

Names selected to be inserted in List.

10. And each of such names shall, by the said Clerk of the Peace, be thereupon marked on such last mentioned Roll as transferred to such Jury List, by a reference to the number belonging to such name on that List ;

Clerk of the Peace to enter names in the book.

11. And such List, so selected and transferred, shall be the Grand Jury List for the Superior Courts for the year next after the same has been so selected.

List so made to be the Grand Jury List for Superior Courts.

54. After the said Grand Jury List for the Superior Courts has been so selected and transferred as aforesaid, the said Selectors shall in like manner proceed to select and transfer from the Roll of Jurors to serve as Grand Jurors in the said Inferior Courts, to a similar List in the same Book, to be called "The Grand Jury List for the Inferior Courts" for such next year, the required number of names and the last mentioned List, so selected and transferred, shall be the Grand Jury List for the Inferior Courts for the year next after the same has been so selected as aforesaid.

Grand Jurors' List for Inferior Courts to be made in like manner.

55. After which the Selectors shall in like manner proceed to select and transfer the required number of names from the Roll

And then Lists of Petit Jurors for Superior

and Inferior  
Courts.

Roll of Jurors to serve as Petit Jurors in the said Superior Courts to the Petit Jury List for the Superior Courts for such year, and lastly from the Roll of Jurors to serve as Petit Jurors in the Inferior Courts to the Petit Jury List for the Inferior Courts for such year.

The Chairman  
and Clerk of  
the Peace to  
certify books.

56. So soon as the four Jury Lists have been so selected and transferred, the Chairman and Clerk of the Peace shall certify under their hands in the said book, immediately after each of such Jury Lists, that the same was on such a day duly selected and transferred from the proper Roll in open Court as the Law directs; whereupon such Jurors' Book, with the Jury Lists so certified, shall be deposited with the said Clerk of the Peace to be kept on file in his office.

If Chairman  
absent, presid-  
ing Justice to  
act.

57. All the duties by this Act required of the Chairman of the Quarter Sessions of the Peace, shall, and may in his absence, be performed by the presiding member of such Court for the time being.

If the Jury Lists  
are not so made  
at the time  
hereby ap-  
pointed, the  
Governor may  
appoint ano-  
ther day for the  
purpose.

58. In case from any cause such lists or either of them be not selected pursuant to the provisions of this Act, in any County or City, the Governor may, by warrant under his privy Seal, of which a copy shall be published in the Official Gazette of the Province, and also (if there be such) in one public newspaper published in such County or City, as the case may be, fix a day not sooner than fourteen days from the publication of the warrant in the Gazette, and also a place in such County or City for holding a Special Sittings or Sessions of the Court of Quarter Sessions of the Peace or Recorder's Court as the case requires, for the purpose of selecting such Jury lists as hereinbefore directed; and the several provisions and clauses of this Act, relating to the Sittings or Sessions of such Court, in presence of which the selecting of such Jury lists are hereinbefore directed to be done, shall extend and apply to and be in force with respect to any such Special Sittings or Sessions.

#### JURY PROCESS.

General Pre-  
cepts may be  
issued to She-  
riffs.

59. The Judges, Justices and others to whom the holding of any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, by law belongs, or some one or more of such Judges, Justices or others, shall for that purpose issue Precepts to the Sheriff or other proper Officer or Minister for the return of a competent number of Grand Jurors, for cases criminal for such Sittings or Sessions, and of a competent number of Petit Jurors for the trial of such issues or other matters of fact, in cases criminal and civil, as it may be competent to such Petit Juries to try at such Sittings or Sessions according to law.

**60.** The several Precepts for the return of Panels of Grand and Petit Jurors for any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall be issued to the Sheriff or other Officer or Minister to whom the return of such Precepts belongs, as soon as conveniently may be after the Commission, or other day is known upon which the Jurors to be returned upon such Precepts, are to be summoned to attend, and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding Sittings or Sessions of the like Court; but the Sheriff may return the same panels to the Precepts, for the return of panels of Petit Jurors for the Sittings or Sessions of the Peace and for the Sittings or Sessions of the County Court, in all cases where the same day is appointed for holding such respective Sittings or Sessions.

At what period to issue.

**61.** The number of the Petit Jurors to be returned on any General Precept for the return of Petit Jurors for any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County Court, shall not in any case be less than forty-eight nor more than seventy-two, unless by the direction of the Judges appointed to hold such Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, or one of them, who may, by order under hand and seal, direct that a greater or lesser number shall be the number to be returned.

Number to be summoned.

**62.** In any County in which any Justice of Assize thinks fit so to direct, the Sheriff, to whom the return of the Precept for the trial of causes at *Nisi Prius* for such County belongs, shall :

According to the Precept.

1. Impanel and summon such number of Petit Jurors not exceeding one hundred and forty-four in any County, except the County of York or any Union of which that County for the time being is the Senior County, (and in the said County or Union of Counties last mentioned, not exceeding two hundred and eighty-eight,) as such Justice may think fit to direct, to serve indiscriminately on the criminal and civil side ; and

Within certain limits as to numbers.

2. Where such Justice so directs, the Sheriff shall divide such Jurors equally into two sets, the first of which sets shall consist of the necessary number of those first drawn upon such Panel, and such Jurors shall attend and serve for so many days at the beginning of each Assize as such Justice, within a reasonable time before the commencement of such Assize directs, and the Jurors of the second set shall consist of the residue of such Jurors, and such Jurors shall attend and serve for the residue of such Assize ; but

Where two sets of Jurors may be summoned.

3. The Sheriff shall in the summons to each Juror, in each of such sets, specify whether the Juror named therein is in the first

Names therein to be designated.

first or second set, and at what time the attendance of such Juror will be required ; and

When to be drawn from first set and second set.

4. During the attendance and service of the first of such sets, the Juries on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set ; and

If a view has been granted.

5. In case a Rule for a view has been obtained, in a cause to be tried by a Jury taken from such Panel, the Judge before whom such case is to be tried, shall, on the application of the party obtaining the Rule, appoint that in case the name of any one of the viewers stands in the Panel among the first half of the names therein, the names of all the viewers shall by such Sheriff be placed in the first of such sets, and that the case shall be tried during the attendance and service of that set of Jurors.

The Courts may issue Writs and Precepts as heretofore.

63. Her Majesty's Superior Courts of Common Law at Toronto, and all Courts of Oyer and Terminer, and Gaol Delivery in Upper Canada, shall respectively have the same powers and authority as heretofore in issuing any Writ or Precept, or in making any award or order orally or otherwise for the return of a Jury for the trial of any issue before any of such Courts respectively, or for the amending or enlarging the Panel of Jurors returned for the trial of any such issue ; and the return to any such Writ, Precept, Award or Order shall be made in the manner heretofore used and accustomed in such Courts, save and except that the Jurors shall be returned from the body of the County, and not from any township or from any particular venue within the County, and shall be qualified according to this Act.

The Court of Chancery may issue Precepts.

64. In case the Court of Chancery issues a Precept or Order, directed to the Sheriff of any County, requiring him to strike or summon a Jury for the trial of any issue or issues, such Jury shall be struck and summoned (as nearly as may be) in the same manner as is herein provided for striking and summoning Petit Jurors for the Superior Courts of Common Law.

The directions for Precepts, &c., at the Assizes to apply also the Quarter Sessions, &c.

65. The several directions in this Act contained, respecting the issue of Precepts for the return of a Panel of Grand Jurors for the Sittings or Sessions of Oyer and Terminer, and Gaol Delivery, as well as for the execution and return of such Precepts, with all things touching the same, shall, in all particulars, be observed and followed, with respect to the Sittings or Sessions of the General Quarter Sessions of the Peace, and with respect to the Sittings or Sessions of the several Recorder's Courts of the Cities in which such Courts are established.

**66.** The several directions in this Act contained respecting the issue of Precepts for the return of a General Panel of Petit Jurors for the Sittings or Sessions of Assize and *Nisi Prius*, as well as for the execution and return of such Precepts with all things touching the same, except only those contained in the sixty-first section of this Act, shall be observed and followed in all particulars with respect to the Sittings or Sessions of the several Quarter Sessions and County Courts and of the several Recorder's Courts of the Cities in which such Courts are established.

And County Courts.

**67.** The Judges of the County Courts respectively, if required by either Plaintiff or Defendant in a suit where the Sheriff is the opposing party, shall issue a Precept to a Coroner of their respective Counties, at least fourteen days before the week in which the General Quarter Sessions of the Peace are to be holden, requiring him to summon, and he is hereby directed thereupon to summon the number of Jurors expressed in such Precept, to be and appear at the time and place when and where the General Quarter Sessions are to be holden, on the same day on which such Sessions are generally holden, from whom a jury shall be taken for the trial of the issue or the assessment of damages, in like manner as practised in cases at *Nisi Prius*.

If the Sheriff is a party, the County Courts to issue a Precept to the Coroner.

**68.** When necessary, every Writ of *Venire Facias Juratores*, for the trial of any issue, civil or criminal, or on any penal Statute, in any of the Courts hereinbefore mentioned, shall direct the Sheriff, or other Officer or Minister to whom the same is directed, "to return twelve good and lawful men of the body of his County, qualified according to law," and the rest of the Writ shall proceed in the accustomed form.

Writs of *Venire Facias Juratores* to direct the return of 12 Jurors.

**69.** Every Precept issued for the return of Jurors for Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall in like manner direct the Sheriff, or other Officer or Minister to whom the same is directed, "to return a competent number of good and lawful men of the body of his County, qualified according to law," and shall not require the same to be returned from any Township, or from any particular *venue* within the County.

What the Precept shall express.

**70.** Except in trials at Bar, the Writ of *Venire Facias Juratores*, where by law necessary, may be tested on the day on which the same issues and be made returnable on any day in term or vacation, and except in trials at Bar, the Writ of *Distringas Juratores* and *Habeas Corpora* may be tested either on the return day of the *Venire* or on any subsequent day in term or vacation, and as well after as before or on the Commission day of the Assizes at which the cause in which the same may be sued out is intended to be tried, and any such process may

Teste, &c. of Writs for the summoning of Jurors, except in special instances.

may be sued out of the office of the Deputy Clerk of the Crown and Pleas in the proper County, as well as out of the principal office at Toronto.

Contents of  
Writs of Ha-  
beas Corpora  
Juratorum, &c.

**71.** In any Writ of *Habeas Corpora Juratorum* or *Distringas* subsequent to and founded upon any Writ of *Venire Facias Juratores*, it shall not be requisite to insert the names of all the Jurors contained in the panel, but it shall be sufficient to insert in the mandatory part of such Writs respectively—"the bodies of the several persons in the panel to this Writ annexed, named," or words of the like import, and to annex to such Writs respectively, panels containing the same names as were returned on the panel to such *Venire Facias*, with their places of abode and additions.

Writs of *Venire Facias Juratores*, &c., not necessary at the Assizes, &c.

**72.** For the trial of issues in cases whether criminal or civil which come on in course for trial at any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, it shall not be necessary to sue out any Writ of *Venire Facias Juratores* or other Jury process, but the award of such process by the Court, and the entry of such award where necessary on the Roll, together with the return of a panel of Jurors upon the general Precept issued for such Sittings or Sessions, and the trial of such issues respectively by a Jury taken from such general Panel in the manner herein provided, shall be sufficient, and shall be as valid and effectual in law as if such *Venire Facias Juratores*, or other process, had been actually and regularly sued out in each case, and the names of the Jurors had been regularly returned upon such Jury process :

Trials at Bar not to be affected.

1. But nothing in this section contained shall extend to any issue, to be tried at Bar, or by order of the Court of Chancery, or by a Special Jury, or by a Jury *de medietate lingue*, or *de ventre inspiciendo*, or in a case in which a view has been granted ;

Talesmen to be deemed taken from the general Panel.

2. Every Jury of which some of the Jurors have been regularly taken from such general Panel, shall, notwithstanding its being completed by the award of a *tales de circumstantibus*, be deemed to have been taken from such general Panel for the purposes of this section ;

When view is granted, what Sheriff shall do on the *Venire Facias Juratores*.

3. To every *Venire Facias* directed to a Sheriff in a case in which a view has been granted, and which *Venire Facias* is not endorsed for the return of a Special Jury thereon, such Sheriff shall return the same Jurors as those whose names are inserted in the panel returned upon the general Precept for the Sittings or Sessions at which such cause is to be tried.

What to be done if cause

**73.** If when the cause is at issue, any Plaintiff or Demanded or any Defendant in *Quare impedit* or *Replevin* has sued out



out a Writ of *Venire Facias* upon which a Writ of *Habeas Corpora* or *Distringas* with a *Nisi Prius* has issued in order to the trial of the said issue at the Assizes or Sessions of *Nisi Prius*, and does not proceed to trial at the first Assizes or Sessions of *Nisi Prius* after the teste of such Writ of *Habeas Corpora* or *Distringas*, then, (except when a view by Jurors is directed) such Plaintiff, Demandant or Defendant, whenever he intends to try the issue at any other Assizes or Sessions of *Nisi Prius*, shall sue forth a new Writ of *Venire Facias*, commanding the Sheriff or other Minister to return anew twelve good and lawful men of the body of the County qualified according to Law, and the rest of the Writ shall proceed in the accustomed manner, and such Writ being duly returned, a Writ of *Habeas Corpora* or *Distringas* with a *Nisi Prius* shall issue thereupon, upon which the Plaintiff, Demandant or Defendant, may proceed to trial, as effectually to all intents and purposes, as if no former Writ of *Venire Facias* had been prosecuted in that cause, and so *toties quoties* as the case may require.

not tried at the first Court in which a *Venire Facias Juratores* is returnable.

74. Nothing in this Act contained shall change or alter any privilege of Parliament, or shall alter, abridge or affect any power or authority, which any Court or Judge hath when this Act takes effect, or any practice or form, in regard to trials by Jury, Jury Process, Juries or Jurors, except in those cases only where any such power or authority, practice or form, is repealed or altered, or is inconsistent with any of the provisions hereof.

Former powers of Courts and Judges in trials by Jury not abridged, unless by express provisions.

#### DRAFTING PANELS FROM JURY LISTS.

75. Every Sheriff or other Officer to whom any Writ of *Venire Facias* or Precept for the return of Jurors is directed, shall, to such Writ or Precept, return a panel of the names of the Jurors contained in the proper Jury List for the year, whose names shall be drafted from such List in the manner hereinafter mentioned.

How Sheriffs to draft panels of Jurors.

76. If there be no Jurors' Book, or certified copy thereof, in existence for the year, the Sheriff may return to any such Writ or Precept a panel of Jurors selected in like manner from the proper Jury List in the Jurors' Book of the nearest preceding year, for which there is a Jurors' Book, or certified copy thereof, in existence.

If no Jurors' book for the year.

77. If there be no Jurors, or not a sufficient number of such Jurors upon any Jury List from which a panel is so required to be drafted, liable to be drafted and to serve upon such panel, the Sheriff may return to the Writ or Precept a panel of Jurors selected in like manner, or the residue of whom respectively have been selected in like manner, from the proper Jury List in the Jurors' Book of the nearest

If not a sufficient number in the Lists.

nearest preceding year for which there is a Jurors' Book, or certified copy thereof, in existence.

What notice  
Sheriffs shall  
give.

**78.** Upon any Sheriff or other officer being called upon to return a Panel of Jurors, whether Grand or Petit, he shall give public written notice in his office, and also on the door of the Court House of the County, or if there be no Court House, then in some other public place, of the day and hour at which he will attend at the office of the Clerk of the Peace to draft such Panel of Jurors from the Jury List, and at such time and place he shall proceed publicly to draft the panel by ballot from the Jury List in the presence of the Clerk of the Peace and any two Justices of the Peace of the County, who, upon reasonable notice from such Sheriff, are hereby required to attend, and in the presence of any other person or persons who may desire to be present.

Notice to be  
eight days, if  
time admits.

**79.** If the Sheriff or other officer has sufficient time, he shall give every such notice at least eight days before the drafting of the panel, and if there be not sufficient time for that purpose, he shall give such notice as soon after his receipt of the Precept or Writ as conveniently may be.

The drafting, if  
not completed,  
may be resum-  
ed.

**80.** If the drafting or completing of the panel, at the time appointed, be prevented by unavoidable accident, the same may be had or completed at any other time in the presence of the Clerk of the Peace, and two Justices of the Peace, upon a similar notice being first given of such time.

How Sheriff to  
prepare a  
Panel.

**81.** In proceeding to draft a panel of Jurors from the Jury List, the Sheriff, or other officer to whom the return of the panel belongs, shall in the first place prepare a proper title or heading for the Panel of Jurors to be returned, to which he shall fix an appropriate number according as such panel by the Jurors' Book appears to be the first, second, third or subsequent panel drafted from such Jury List, and the title or heading shall set forth the number of Jurors to be returned in words at length, or (where such Sheriff has a discretion as to such number,) the number that in the exercise of such discretion, he has determined to return, and the number, when discretionary, shall not be altered after the same has been so inserted in such title or heading.

Same subject.

**82.** In the second place, the Sheriff, or other officer, shall append to such title or heading, a list of numbers from one forward to the number required, and shall prepare a set of Ballots or pieces of Parchment, Card or Paper of uniform and convenient size, such set containing the same number of ballots as there are numbers on the Jury List from which the panel is to be drafted, allowing one number to each Ballot, and which number shall be printed or written on the same, and he shall then proceed to draft the panel of Jurors in the manner herein-after mentioned.

**§3.** The manner of drafting the panel shall be as follows, that is to say :

1. The Sheriff, or other officer to whom the return of the panel belongs, shall place the Ballots promiscuously in a Box or Urn to be procured by him for that purpose, and shall cause such Box or Urn to be shaken so as sufficiently to mix the ballots, and he shall then openly draw from the said Box or Urn indiscriminately one of the said ballots, and declare openly the number of such ballot, whereupon the Clerk of the Peace, or one of the Justices of the Peace present as aforesaid at such drawing, shall immediately declare aloud the name to which such number is appended in the Jury List from which the Panel is drafted ;

How Panel of Jurors to be drafted.

2. And thereupon, if such person is exempt from being drafted or serving upon such panel, under the seventh section of this Act, or if upon the face of such Jury List it appears that the person whose number has been so drafted had previously been drafted to serve on a panel drafted from such Jury List in obedience to a Precept for the return of a general panel for any Sessions or Sittings of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, General Quarter Sessions of the Peace, or County Court, and that such person had actually attended and served upon such panel, and if a sufficient number of names to complete the panel then in course of being drafted, remain on such Jury List without taking any of those who had been previously drafted from the same list upon any former panel, the Sheriff shall publicly announce the same, and that the name of the person so drafted is, on such account, not inserted in the panel ;

Same subject.

3. But if upon examination of such Jury List no such cause appears for omitting the name of such person from the panel then being drafted, the name and addition of the person whose name has been so drafted, shall be thereupon written down on a sheet of paper provided for that purpose, and such name shall, by the said Sheriff, or other Officer, be thereupon marked on the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book ;

Same subject.

4. Which being done, the Sheriff shall proceed in like manner to draft and dispose of other numbers from the said Box or Urn, until the necessary number for the panel to be so drafted has been completed ;

Same subject.

5. After which, the names so drafted, with the places of residence and additions of the parties, arranged alphabetically, shall, by such Sheriff, or other officer, be transcribed on another sheet of paper, with a reference to the number of each such name respectively on the Jury List, and each such name

Same subject.

name

name shall, by the said Sheriff or other Officer, or his Deputy, be thereupon marked in the said Jury List, with a reference to the number which will belong to such name in the panel in the Jurors' Book ;

Same subject.

6. Whereupon, such panel so alphabetically arranged and numbered, with a short statement of the Writ or Precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the Sheriff, or other officer or Minister, or his Deputy, and of the Clerk of the Peace and Justices of the Peace, present at such drafting, or at least of two of them, shall be fairly entered in the said Jurors' Book, and attested by the signatures of such Sheriff, or other Officer or Minister, or his Deputy, and of the said Clerk of the Peace and the said Justices, or at least two of them.

The Panel to be annexed to the Writ or Precept, and a copy sent to the Clerk of the Queen's Bench or to the Deputy Clerk.

84. The said Sheriff shall, upon his return of the Writ of *Venire Facias*, or Precept under authority of which such panel has been drafted, annex a panel to the said Writ or Precept, containing the names, together with the places of abode and additions of the persons so drafted upon such panel, and shall transmit one copy thereof to the office of the Clerk of the Peace of the proper County, and another to the Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench at Toronto, or to the Deputy Clerk of the Crown, as the case may be.

Copies, Jury books, &c., to be open to inspection.

85. Each of such copies, as well as the Jurors' Book, shall at all reasonable times be open to inspection by litigants or their professional Agents, without fee or reward.

#### JURORS, WHEN SUMMONED BY CORONERS, ELISORS, &C.

How Jurors to be summoned by Coroners and Elisors.

86. The manner of drafting or striking, returning and summoning Jurors by the Sheriff upon Writs of *Venire Facias Juratores*, as prescribed by this Act, shall be observed and followed by all Coroners, Elisors, and other Officers and Ministers having the return of Jury process, and they shall for such purpose have free access at all reasonable times to the Jurors' Book in the Office of the Clerk of the Peace of the proper County ; and every such Coroner, Elisor, and other Officer and Minister shall possess all the powers and perform all the duties, in any way connected with the drafting, striking, returning and summoning such Jurors, as in and by this Act are prescribed to or vested in the Sheriffs of the different Counties, with respect to Jurors returned by them upon similar process.

#### SUMMONING JURORS.

Jurors to be summoned, eight days.

87. The proper Officer shall summon every man bound to serve on Grand Juries or on Petit Juries, not being Special Juries, in any of the Courts aforesaid, eight days at least before

before the day on which the Juror is to attend, by delivering to him, or in case of his absence from the usual place of his abode, by leaving with some grown person there inhabiting, a note in writing under the hand of the Sheriff, or other proper Officer, containing the substance of such summons.

88. The proper officer shall summon every man to serve on Special Juries in any of the Courts aforesaid, in the like manner as aforesaid, three days at the least before the day on which the Special Juror is to attend; which last mentioned day may be upon, or any day after, the first day of the Assizes at which the cause is to be tried.

Special Jurors to be summoned, three days.

89. The Judges of the different Courts may, by any general rules to be made by them for that purpose, make such regulations as they deem expedient for regulating the time and manner of bringing on such Special Jury trials at *Nisi Prius*.

The Judges may make order as to calling on special Jury cases for trial.

90. The proper officer, notwithstanding any thing in this Act contained, shall summon, in the manner heretofore used and accustomed, every person required to serve upon any Inquest or Inquiry before any Coroner, or before any Commissioners appointed under the Great Seal of this Province, or under the Seal of either of Her Majesty's Superior Courts of Common Law at Toronto, or to serve as a talesman upon any Jury either for the trial of an issue, or assessment of damages, in any of the Courts aforesaid, or any matron to serve on a Jury *de ventre inspiciendo*.

The proper officer to summon Jurors whenever required.

91. Every Sheriff, and other Officer or Minister to whom the return of Jurors belongs, is hereby indemnified for empannelling and returning any person as a Grand or Petit Juror named in and taken from the Grand or Petit Jurors' Rolls for the year in which he has been summoned, although such person may not have been qualified or liable to serve as such Juror for such year.

Sheriff indemnified for returning unqualified persons, if in the rolls of Jurors.

#### EMPANNELLING GRAND JURY.

92. When there do not appear as many as twelve of the Grand Jurors summoned upon a Panel returned upon any Precept to any Court of Criminal Jurisdiction, every such Court, upon request made for the Queen by Her Attorney or Solicitor General, or any of Her Counsel Learned in the Law, or in their absence, by the County Attorney, or by any one thereto authorized or assigned by such Court, shall command the Sheriff, or other Officer or Minister to whom the making of the return belongs, to name and appoint so many of such other able men of the County or City, as the case may be, then present, as will make up a Grand Inquest of twelve, and the Sheriff, or other Officer or Minister aforesaid, shall at such command of the Court, return such duly qualified men as are present or can be found, to serve on such Grand Inquests, and shall add and annex their names

How Grand Jurors to be empannelled if a sufficient number do not appear.

names to the Panel returned upon such Precept; and the Court shall proceed with those Grand Jurors who were before empannelled, together with the Talesmen so newly added and annexed, as if all the said Jurors had been originally returned upon such Precept.

## DRAWING JURY AT TRIAL.

Empannelling  
Jury at the  
trial.

**93.** The name of each man summoned and empannelled as a Petit Juror upon the general Precept for any Sittings, or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County Court, with his place of abode and addition, shall by the Sheriff be written distinctly on a piece of Parchment, Card or Paper, as nearly as may be of the form and size following, viz :

DAVID BOOTHE,  
of Lot No. 11, in the 7th Con. of Albion,  
MERCHANT.

and such names so written shall, by the direction and care of such Sheriff, be put together in a Box or Urn to be by him provided for that purpose, and shall be by him delivered to the Clerk of Assize, or other Clerk of such Court.

How the Clerk  
is to proceed.

**94.** When any issue is brought on to be tried, or damages are to be assessed, such Clerk of Assize, or other Clerk, shall :

Drawing  
names from the  
Box, &c.

1. In open Court, cause such Box or Urn to be shaken so as sufficiently to mix the names, and then draw out twelve of the Parchments, Cards or Papers one after another, (causing the Box or Urn to be shaken after the drawing of each name,) and if any of the Jurors whose names are so drawn do not appear or be challenged and set aside, then such further number, until twelve Jurors are drawn, who do appear, and who after all just causes of challenge allowed, remain as fair and indifferent, and the first twelve Jurors so drawn appearing and approved as indifferent, their names being noted in the minute Book of the Clerk of Assize, or other Clerk of the Court, shall be sworn or affirmed (as the case may be), and shall be the Jury to try the issue, or to assess the damages; and

Names drawn  
to be kept  
apart, &c.

2. The names of the men so drawn and sworn shall be kept apart by themselves until the Jury have given in their verdict, and the same has been recorded, or until such Jury have been by consent of the parties, or by leave of the Court, discharged, and then

then the same names shall be returned to the Box or Urn, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried, or any damages remain to be assessed.

**95.** If any issue is brought on to be tried, or damages to be assessed at any of the said Sittings or Sessions, before the Jury in any other cause have brought in their verdict, or been discharged, the Court may order twelve of the residue of the said Parchments, Cards or Papers (not containing the names of any of the Jurors who have not brought in their verdict or been discharged,) to be drawn in the manner last aforesaid, for the trial of the issue so brought on to be tried, or for the assessment of damages, as the case may be.

If another Jury is required before the last drawn have brought in their verdict.

**96.** Notwithstanding the two last preceding sections, where no objection is made on the part of the Queen, or any other party, the Court may try any issue or assess damages with the Jury previously drawn to try any other issue, or to assess damages without their names being returned to the box or urn, and redrawn, or may order to retire any of such Jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the Court, and may cause another name or other names to be drawn from the box or urn, and shall try the issue or assess the damages with the residue of the original Jury and such new Jurors who appear and are approved as indifferent, and so *toties quoties* as long as any issue remains to be tried or any damages remain to be assessed.

Several causes may be tried in succession by the same Jury.

**97.** When a full Jury does not appear before any Court of Assize and *Nisi Prius*, or before any sittings of any County Court for the trial of issues or assessment of damages as at *Nisi Prius*, or before any Court of a City when engaged in the trial of a civil suit, or where, after the appearance of a full Jury, by challenge of any of the parties, the Jury is likely to remain untaken for default of Jurors, every such Court, upon request made for the Queen by any one thereto authorized or assigned by the Courts, or on request made by the parties Plaintiff, Demandant, Defendant or Tenant or their respective Attorneys, in any action or suit, shall command the Sheriff or other Officer or Minister to whom the making of the return belongs, to name and appoint, as often as need requires, so many of such other able men, of the County or City, as the case may be, then present, as will make up a full Jury, and the Sheriff, or other Officer or Minister aforesaid, shall, at such command of the Court, return such duly qualified men as may be present, or can be found, to serve on such Jury, and shall add and annex their names to any Panel that has been returned upon any Precept or *Vexire Facias*, in such cause.

If a full Jury do not appear, a tales may be granted.

## CHALLENGES.

The want of qualification, a good ground of challenge.

Not the want of freehold.

Not to extend to Special Jurors.

Peremptory challenges limited to twenty in felony.

In misdemeanors, limited to three.

When the Crown bound to shew cause of challenge.

In civil cases each party may challenge three peremptorily.

That a Juror affirms, no

**98.** If any man not duly qualified be returned as a Juror for the trial of any issue in any cause, civil or criminal, or on any Penal Statute, the want of such qualification shall be a good cause of challenge, and he shall be discharged upon such challenge, if the Court is satisfied of the fact; But the want of a sufficient property qualification shall not, at the trial of any such case, be a good cause of challenge, either by the Crown or by the party, nor a cause for discharging the Juror upon his own application; but nothing in this section contained shall extend in any wise to any Special Juror.

**99.** No person arraigned for murder or other felony shall be admitted to any peremptory challenge above the number of twenty.

**100.** A Defendant arraigned for a misdemeanor, or if there be more than one, such of them as are tried together and unite in their challenges, may challenge peremptorily without assigning any cause for the same, any three of the Jurors called upon to serve on such trial.

**101.** In all inquests to be taken before any of the Courts wherein the Queen is a party, howsoever it be, notwithstanding it be alleged by them that sue for the Queen, that the Jurors of those inquests or some of them, be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause; but if they that sue for the Queen will challenge any of those Jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the Court, and shall proceed to the taking of the same inquisitions as it shall be found if the challenges be true or not, after the discretion of the Court; But nothing herein contained shall affect or be construed to affect the power of any Court in Upper Canada, to order any Juror to stand by until the panel is gone through, at the prayer of them that prosecute for the Queen, as has been heretofore accustomed.

**102.** In any civil case, and any case upon Penal Statute, each party, the Plaintiff or Plaintiffs, Demandant or Demandants, on one side, and the Defendant or Defendants, Tenant or Tenants, on the other, may, on each side, except in the case of special Jurors, challenge peremptorily, without assigning any cause for the same, any three of the Jurors drawn to serve on the trial of the cause.

THAT JURORS AFFIRM, NO CAUSE OF CHALLENGE.

**103.** It shall not be a good ground of challenge against any person, called upon to serve as a Juror, that he belongs



belongs to any Religious persuasion or denomination allowed by Law to affirm instead of taking an Oath, but every such person shall be as eligible and liable to serve on all Juries and inquests on his being affirmed, as if he had been sworn in the usual way. cause of challenge.

#### ENTRY AND CERTIFICATE OF SERVICE OF JURORS.

**104.** Immediately after the Sittings or Sessions of any Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, the Sheriff shall, on the Jury List from which the Panel of Grand Jurors (if any) returned to such Sittings or Sessions was drafted, and on the Jury List from which the Panel of Petit Jurors returned upon the General Precept to such Sittings or Sessions was drafted, opposite the names of the Jurors respectively, note the non-attendance or default of all the Jurors in such Panels who have not duly attended and served upon such Panels until discharged by the Court. The Sheriff to keep a record of Jurors who serve;

**105.** Every Juror who has attended and served upon any such Panel as last aforesaid, shall (upon application by him made to the Sheriff or Deputy Sheriff, before he departs from the place of trial), receive a certificate testifying his attendance and service, and the Sheriff or Deputy Sheriff shall give such certificate upon demand. And grant a certificate thereof if demanded.

**106.** Immediately after every Session of the Recorder's Court for any City, the High Bailiff of such City shall, on the Jury List from which the Panel of Grand Jurors returned to such Session was drafted, and on the Jury List from which the Panel of Petit Jurors returned upon the General Precept to such Session was drafted, opposite the names of the Jurors respectively, note the non-attendance or default of all the Jurors in such Panels respectively who have not duly attended and served upon such Panels until discharged by the Court. The High Bailiff to perform similar duties in Recorder's Courts.

**107.** Every Juror who has so attended and served upon any such Panel as last aforesaid, shall (upon application by him made to such High Bailiff or his Deputy before he departs from the place of trial) receive a certificate testifying his attendance and service, and the High Bailiff or his Deputy shall give such certificate upon demand. Same subject.

#### SPECIAL JURIES.

**108.** Her Majesty, or any prosecutor, Relator, Plaintiff, or Demandant, and any Defendant or Tenant in any case whatever, whether civil or criminal, or on any Penal Statute, excepting only on Indictments for Treason or Felony, may in any such case triable by a Jury, have the issue joined tried by a Special Jury upon suing out the necessary Jury Process for

Either party may strike a Special Jury.

for that purpose, and procuring such Special Jury to be struck and duly summoned for the day on which the trial of such case is to be had, and every Jury so struck shall be the Jury returned for the Trial of such issue.

New trial in Special Jury cases.

**109.** In the event of a new Trial being ordered in any case after the verdict of a special Jury, the *Venire Facias Juratores* shall set forth the names of the Jurors who sat on the first trial of such cause, or in the event of more trials than one having been previously had, the names of all Jurors who sat upon any of such trials, and none of the Jurors who so sat on any such former trial shall be returned or sit as Jurors upon any subsequent trial of the same cause.

The party requiring a Special Jury may sue out a Writ of *Venire Facias Juratores*.

**110.** In every case, the party desiring a Special Jury to be struck, whether an actor in the cause or not, shall have a right in person, or by his Attorney or Agent, to sue out a Writ of *Venire Facias Juratores* for that purpose, and every such Writ before being delivered to the Sheriff, or other Officer or Minister to whom it is directed, shall be indorsed with a direction to such Sheriff, or other Officer or Minister, requiring him to return a Special Jury on the same, and every such Sheriff, or other Officer or Minister, upon receipt thereof, shall, by a Memorandum in writing upon such Writ, appoint some convenient day and hour for striking such Special Jury, the day and hour so fixed being sufficiently distant to enable the party suing out the said *Venire* to give the necessary notice to the opposite party.

Such party to give notice to the opposite party.

**111.** In any such case the party, his Attorney or Agent, suing out such *Venire Facias*, shall give notice in writing to the opposite party, his Attorney or Agent, that he has sued out a *Venire Facias* in the cause for the purpose of having a Special Jury struck therein, and of the day and hour appointed by the Sheriff or other Officer or Minister for striking the same, and such notice shall be served on such opposite party, his Attorney or Agent, four full days before the day so appointed, and an Affidavit or Affirmation of such service, or an admission in writing under the hand of the Attorney or Agent on whom it has been served, shall be produced to the Sheriff, or other Officer or Minister, at the time appointed for striking such Special Jury, and in default thereof the Sheriff, or other Officer or Minister, shall not proceed to strike the Special Jury upon such appointment.

Qualification of Special Juries to be struck under the 108th section.

**112.** Every Special Jury to be struck under the authority of the one hundred and eighth section of this Act, shall, except as herein-after provided, consist solely of persons whose names appear on the Roll of Grand Jurors for the Superior Courts or on the Roll of Grand Jurors for the Inferior Courts for the year in which the Writ of *Venire Facias* is returnable.

**113.** Every such Special Jury shall be struck in the following manner, that is to say :

How a Special Jury is to be struck.

1. The Sheriff shall provide a set of Ballots or pieces of parchment, card or paper, of as uniform and convenient a size as reasonably may be, and containing the same number of Ballots as there are numbers on the respective Grand Jurors' Rolls from which the said Special Jury is to be struck, and the whole of the numbers of such Grand Jurors' Rolls, shall be printed or written, upon such ballots respectively, allowing one number to each Ballot, and distinguishing each number by the letters S. C. or I. C. according as it belongs to the Roll of Grand Jurors for the Superior Courts, or to the Roll of Grand Jurors for the Inferior Courts ;

Ballots to be prepared.

And 2. At the office of the Clerk of the Peace, at the time appointed for such purpose, in the presence of all the parties in the case and of their Attorneys and Agents (if they respectively attend, or if none of the said parties, their Attorneys or Agents, attend, then upon such proof as is hereinbefore provided of the service of the notice of striking such Special Jury), the Sheriff shall put all the said Ballots in the box or urn, and after having caused the said box or urn to be shaken so as sufficiently to mix the said Ballots, he shall draw out of the said box or urn forty of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the Grand Jurors' Roll to which such Ballot may belong, and read aloud the name to which such number is appended in the said Roll ;

Drawing Jurors.

3. If at the time of so reading any such name, either party, or his Attorney or Agent, objects that the man whose name has been so drawn is in any manner incapacitated from serving on the said Jury, and also then and there proves the same to the satisfaction of such Sheriff, the name shall be set aside, and the said Sheriff shall instead thereof draw out of the said box or urn another number, and shall in like manner refer to the corresponding number in the Grand Jurors' Roll to which such Ballot may belong, and read aloud the name to which such number is appended in the said Roll, and such name may be in like manner set aside, and other numbers and names be drawn according to the mode of proceeding hereinbefore described for the purpose of supplying names in the places of those set aside, until the whole number of forty names not liable to be set aside is completed ;

Objection to Jurors drawn.

4. And if in any case it so happens that the whole number of forty names cannot be obtained from the said Grand Jurors' Rolls, the Sheriff shall, in like manner from the Grand Jurors' Rolls in the Jurors' Book of the nearest year for which there is a Jurors' Book or certified copy thereof in the office of the Clerk of the Peace, ballot, in addition to those already taken

If forty names cannot be obtained.

taken

taken from the first mentioned Grand Jurors' Rolls, the number of names required to make up the full number of forty names ;

Sheriff to make List.

Striking out.

5. And the said Sheriff shall thereupon make out a List of the forty names, together with their respective places of abode and additions, from which List, after a reasonable time allowed in the discretion of such Sheriff for enquiry and consideration respecting the same, each party, his Attorney or Agent, shall strike out twelve names, such names being so struck out by parties one by one alternately, the party suing out the *Venire Facias* commencing ;

The Sixteen Jurors to be summoned.

6. And the Sheriff shall return upon such *Venire Facias* the sixteen persons whose names remain on such List, to appear on the day appointed for the trial of such cause ;

How Special Juries formed.

7. And from such sixteen persons, or so many of them as appear in obedience to the summons, a Special Jury for the trial of the cause shall be taken by Ballot in the manner hereinbefore by the ninety-fourth section of this Act prescribed for the drawing of Petit Jurors from the General Panel therein mentioned.

How to proceed if either party fails to attend.

114. If any of the parties in the cause neglect to attend in person or by Attorney or Agent, at the striking of the Special Jury, the Sheriff, upon production of the affidavit, affirmation or admission of service of the notice as aforesaid, and after waiting at least half an hour for such absent party, shall, if requested by the other party, his Attorney or Agent, proceed to strike the Special Jury, and in case of the continued absence of such first mentioned party, the Sheriff shall, on his behalf, strike out of the said List the twelve names to be by such party struck out of the List as aforesaid.

How if the Court of Chancery directs a trial by Special Jury.

115. In case the Court of Chancery directs any issue or issues to be tried by a Special Jury, such Special Jury shall be struck and summoned in (as nearly as may be) the same manner as for the Superior Courts of Common Law.

#### JURIES OF MERCHANTS, &C.

In what cases Juries of Merchants may be had.

116. In suits between :

1. Merchant and Merchant ; or
2. Trader and Trader ; or
3. Merchant and Trader, involving one or more questions of mercantile consideration ; and
4. In suits between Manufacturer and Manufacturer ; or
5. Mechanic and Mechanic ; or

6. Manufacturer and Mechanic, involving one or more questions of Mechanical or scientific consideration; and

7. In suits between any of the former and any of the latter involving one or more of any of such questions; and

8. In suits between any other persons involving one or more questions of scientific consideration;

Either of Her Majesty's Superior Courts of Common Law at Toronto, in Term time, or any Judge thereof, in Vacation, without consent of parties in all but the eighth or last mentioned case, and with consent of parties in the last mentioned case, may order and direct any such cause to be tried by a Special Jury of men belonging to the appropriate kind or kinds of business as aforesaid, or of scientific men respectively, as the case may be; but any such Rule not made with the consent of parties, shall be made only upon a rule to shew cause or summons upon which the adverse party has had the usual opportunity of being heard as in other cases.

In what cases the Court may order a special Jury, with or without consent of parties.

117. In every Rule for striking any such Special Jury, it shall be ordered that such Special Jury shall be struck, and the names of such Special Jury be certified to the Sheriff by three Elisors to be appointed in writing by endorsement upon such Rule, one by the Plaintiff in the cause, his Attorney or Agent, another by the Defendant, his Attorney or Agent, and the third by the Clerk or Deputy Clerk of the Crown and Pleas of the Court in which the cause is pending, or in case of such Elisors disagreeing, then by the majority of such Elisors, all three being present.

Contents of the order for such Jury.

To be struck by Elisors.

118. The Sheriff upon the *Venire Facias* in such cause, shall return and summon the persons whom such Elisors, or the majority of them, certify to him to have been struck as Special Jurors for the trial of the same.

The Sheriff to summon.

119. The indorsement to return a Special Jury on the *Venire Vacias* in every such cause, shall direct the Sheriff to return a Special Jury of men of the appropriate kind of business as aforesaid, or of scientific men, as the case may be, pursuant to such certificate as he may receive from the Elisors (naming them,) or a majority of them in that behalf appointed by such Rule.

How Writ of *Venire Facias* to be indorsed.

120. Every such Special Jury shall be struck in the following manner, that is to say:

How such Special Juries are to be struck.

1. The three Elisors, or a majority of them, upon the delivery to them of a copy of the Rule for such Special Jury and of the *Venire Facias* for the return of such Jury, shall, at the request of either of the parties in such cause, make an appointment in writing

Appointment of a day.

writing of a day, hour and place for striking such Special Jury as by the one hundred and tenth section of this Act is provided with respect to other Special Juries ;

List of qualified persons.

2. And upon notice of such appointment being served upon the opposite party, and such service being proved as in the same section is provided with respect to other Special Juries, the said Elisors shall, at the time and place so appointed, and after waiting the time prescribed by the one hundred and fourteenth section, proceed to make a list of the names and additions of all the persons whose names appear on any of the Jurors' Rolls for the year in which such *Venire Facias* is returnable, and who in their judgment come within the description of persons required to be struck on such Jury according to the exigency of the Rule ;

If there be not forty qualified.

3. And if there be not forty of such persons to be found upon such Rolls, and if the said Elisors, or the majority of them, know of a sufficient number of persons answering the description within the County, whether such persons be otherwise qualified and liable to serve, or exempt from serving as Jurors or not, provided they be not persons disqualified from any of the causes set forth in the thirteenth section of this Act, the said Elisors, or a majority of them, shall add to the list the names and additions of a sufficient number of such persons, to complete the same to forty names ;

If more than forty.

4. And if there are the names of more than forty of such persons on such Rolls, the said Elisors, or the majority of them, from the names of all persons on such Rolls who answer such description, shall, in the manner prescribed by the one hundred and thirteenth section of this Act for the striking other Special Juries, select forty of such names ;

Reducing the List.

5. And the List of such forty names being thus completed, the same shall be reduced in the same manner as hereinbefore by the said one hundred and thirteenth section provided with respect to other Special Juries ;

Names of the 16 Jurors to be certified to parties.

6. And the said Elisors shall thereupon give a certificate to each of the parties to the suit, their Attorney or Agent, certifying the names and additions of the sixteen persons whose names remain upon the List ;

What exemptions shall not excuse.

7. And every person so struck on any such Special Jury shall be liable to serve on the same, although exempted from serving upon Juries by the general provisions of the seventh, eighth and ninth sections of this Act ;

Return and Summons.

8. And the Sheriff, or other Officer to whom the *Venire Facias* is directed, shall, upon receipt of either of such certificates, return and summon such sixteen persons accordingly ;

9. And from these sixteen persons so returned shall be selected the Jury to try such cause, in the same way and under and subject to the like restrictions as by the one hundred and thirteenth section of this Act is enacted with respect to other Special Juries. Striking Jury.

**121.** In case a Special Jury has been struck for the trial of any issue, the talesmen, if any be required, shall be selected from the Jurors empannelled upon the Common Jury Panel to serve at the same Court if a sufficient number of such men can be found, and the Queen, by any one duly authorized or assigned, and every party shall, in every such case, have and may exercise their respective challenges to the talesmen so added, and the Court shall proceed to the trial of every such issue with those Jurors who were before empannelled, together with the talesmen so newly added and annexed, as if all the said Jurors had been returned upon the Writ or Precept awarded to try the issue. In Special Jury cases, talesmen to be taken from the general panel.

**122.** Nothing herein contained shall prevent the same Special Jury, however nominated, from being summoned and returned, to try any number of causes, provided the parties respectively, or their Attorneys, signify in writing to the Sheriff, or other Officer to whom the return of Juries in such cases belongs, their assent to the nomination and return of such special Jury for the trial of their respective cases; But if such Juror has served upon one or more Special Juries at the same Assizes or Session of *Nisi Prius*, the Court may, upon his application, discharge him from serving upon any other Special Jury during the same Assizes or Session of *Nisi Prius*. The same Special Jury may try several such cases—when.

**123.** The party who sues out a *Venire Facias* for a Special Jury in any cause, shall pay the fees for striking such Special Jury, the fees of the Jurors, and all the expenses occasioned by the trial of the cause by such Special Jury, and shall not have any further or other allowance for the same upon taxation of costs than if the cause had been tried by a common Jury, unless the Judge who tried the case certifies under his hand, in open Court, immediately after the verdict, or afterwards, upon a Summons at Chambers, that the same was a cause proper to be tried by a Special Jury. The party who sues out the Writ, to pay fees of striking, &c.

#### VIEWS, JURIES DE MEDIETATE LINGUÆ AND INQUESTS.

**124.** When in any case, either Civil or Criminal, or on any Penal Statute depending in either of Her Majesty's Superior Courts of Common Law at Toronto, it appears to such Court or to any Judge thereof in vacation, that it will be proper and necessary that some of the Jurors who are to try the issues in such case, should have view of the place in question, in order to their better understanding the evidence that may be given When a view may be granted.

given upon the trial of such issues, such Court, or Judge in vacation, may order a Rule to be drawn up containing the usual terms, and, if such Court or Judge thinks fit, also requiring the party applying for the view, to deposit in the hands of the Sheriff a sum of money to be named in the Rule for payment of the expenses of the view.

Writ therefor.

**125.** Such Rule shall also command Special Writs of *Venire Facias* and *Distringas* to issue, to the Sheriff or other Officer, to whom the said Writs are to be directed, commanding him to have six or more of the Jurors named in such Writs, or in the Panels thereunto annexed, (who are mutually consented to by the parties, or if they cannot agree, are drawn by ballot from such Panels,) at the place in question, some convenient time before the trial.

*Locus in quo*  
to be shewn to  
the viewers.

**126.** The Viewers shall, then and there, have the place in question shewn to them by two persons in the said writs named to be appointed by the Court or Judge; and the said Sheriff, or officer who is to execute such writs, shall, by a Special return thereto, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers.

How the view-  
ers shall be se-  
lected.

**127.** When the parties in any such case do not agree as to the Jurors to be nominated to take the view, the viewers shall, by the Sheriff or other Officer to whom the *Venire Facias Juratores* in such case is directed, be drawn by ballot from the Panel returned upon such *Venire Facias*, at some time and place to be appointed by the Sheriff or other Officer for that purpose, in the like manner as by the ninety-third and ninety-fourth sections of this Act is provided for drawing Juries from the General Panel at *Nisi Prius*; But no such Sheriff or other Officer shall proceed to draw such viewers from such Panel without having first given at least forty-eight hours' notice in writing to the respective parties in the suit, of the day, hour and place of such drawing.

The viewers to  
to be the first  
sworn on the  
Jury.

**128.** When a view has been allowed in any case, those men who have had the view, or such of them as appear upon the Jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who appear, as after all defaults and challenges allowed, make up a full Jury of twelve.

As to Juries of  
matrons, or *de*  
*medietate lin-*  
*guæ, &c.*

**129.** Nothing herein contained shall extend to any Jury of matrons, or to any Writ *de ventre inspiciendo*, or to deprive any alien not naturalized who has been indicted or impeached of any felony or misdemeanor, of the right of being tried by a Jury *de medietate linguæ*, but on the prayer of every such alien so indicted or impeached, the Sheriff shall by command of the Court return for one half of the Jury a competent number of aliens, if so many there be in the Town or place where the trial is had, and if



if not, then so many aliens if any, as are found in the same town or place, and no such alien Juror shall be liable to be challenged for want of any qualification required by this Act, but every such alien may be challenged for any cause of disqualification in like manner as if he were otherwise qualified by this Act.

**130.** No man shall be liable to be summoned or empannelled to serve as a Juror in any County, City or Town, upon any inquest or inquiry to be taken or made by or before any Commissioners appointed under the Great Seal of the Province, or the Seal of any Court in Upper Canada having general jurisdiction throughout the same, or having general jurisdiction throughout any County of the same, or throughout any City, or Town within the same, unless the name of such person appears upon one or other of the Jurors' Rolls for the year in which such person is called upon to serve on such inquest or inquiry.

No person to be summoned on Juries whose name is not on the roll of Jurors.

**131.** But nothing in the next preceding section contained shall extend to any inquest to be taken by or before the Coroner of any County, Union of Counties, City or Town by virtue of his office, or to any inquest or inquiry to be taken or made by or before any Sheriff, High Bailiff, or Coroner, of any County, City or Town, but the Coroners, Sheriffs and High Bailiffs aforesaid, in all such Counties, Cities and Towns respectively, shall respectively take and make all inquests and inquiries by Jurors of the same description as they were used and accustomed to do before the passing of this Act.

Except on Coroner Juries, &c.

#### APPLICATION OF CERTAIN PROVISIONS TO CITIES AND RECORDER'S COURTS.

**132.** In every City in which there is a Recorder's Court, or any other Court either Civil or Criminal, or both, having local jurisdiction within such City, and in which Court, or any Sittings or Sessions thereof, Jurors are required for the trial of issues of fact joined therein according to the course of Common Law :

Provisions applicable to Recorder's Court.

1. The Clerk of the Recorder's Court of every such City shall, annually, within the same period as is hereinbefore provided for the performance of a similar duty by the Clerks of the Peace and in a similar manner, prepare from such Reports of the Selectors of Jurors of the County within the limits of which the City is embraced, as have been returned for Wards or other local divisions lying within such City, a Jurors' Book for such City, inserting in the respective Jurors' Rolls in such Book, the names of the persons resident within such City, who, upon such Reports, or upon such of them as have then come in as aforesaid, have been returned as qualified and liable to serve as Grand or Petit Jurors respectively, either in the Superior or Inferior Courts ;

The Clerk of Recorder's Court to perform the same duties as the Clerk of the Peace, &c.

But only two rolls required.

2. Except only that there shall, in every such case, be but two Rolls, one of Grand Jurors, consisting of all such persons as have been so selected, balloted and reported for Grand Jurors in either the Superior or Inferior Courts, and the other, of all such persons as have been in like manner selected, balloted and reported for Petit Jurors in either the Superior or Inferior Courts, and the heads of such Rolls in such Jurors' Books shall be adapted to the same accordingly ;

The Recorder to preside, &c.

3. And such Recorder's Court, the Recorder of such City, or the Chairman, or other presiding Member thereof, the Mayor, the Clerk of such Court for the time being, and the High Bailiff, shall respectively perform the like duties in respect of such Books, and the preparing and selecting of the Jury Lists from the Jurors' Rolls, as are hereinbefore prescribed to the Selectors of Jurors from the Jurors' Rolls for the respective Counties ; and

High Bailiff to execute the duties required of Sheriff, &c.

4. All other duties which are by this Act prescribed to the Sheriffs of Counties, in respect of Jurors, whether Grand or Petit, within their respective Counties, shall, as respects Grand or Petit Juries for the Courts of any such Cities, be performed by and required of the High Bailiff or other officer, as aforesaid ; and

In drafting Jurors, &c.

5. The manner of drafting, striking, returning and summoning Juries by the Sheriff, upon Writs of *Venire Facias Juratores*, as prescribed by this Act, shall be observed and followed by the High Bailiff, Coroners, Elisors and other Officers having the return of Jury process within every such City, and such High Bailiff, Coroners, Elisors and other Officers and Ministers shall for such purpose have free access, at all reasonable times, to the Jurors' Book, in the office of the Recorder's Court or other similar office of such City ; and

Same subject.

6. The High Bailiff, Coroners, Elisors, and other Officers and Ministers of every such City, shall possess all the powers and perform all the duties in any way connected with the drafting, striking, returning and summoning such Juries, which are by this Act prescribed to or vested in the Sheriffs of Counties with respect to Juries returned by them upon similar process.

Jurors' book when a Town becomes a City.

**133.** In every case in which a Proclamation issues erecting any Town into a City upon, from and after the first day of January of the following year, a Jurors' Book shall be prepared, and Jury Lists selected for such City for such following year as hereinbefore directed with respect to Junior Counties.

Clerk of the Peace to perform *pro tem.* the duties of the Clerk of Recorder's Court.

**134.** In every such case, the preparing the Books, the selecting of the Jury Lists and the performing of all other acts and things required by this Act to be done for such newly proclaimed City, shall be done and performed by the Selectors

of Juries from the Jurors' Roll for the County within the limits of which such Town lies, in the like manner as according to the provisions of this Act would, in the case of other Cities, be done and performed by the Clerk of the Recorder's Court of such Cities, the Recorder and Recorder's Court and the Officers of such Court respectively.

**135.** In every such case, the Clerk of the Peace shall, on demand, deliver over to the Clerk of the Recorder's Court of the City erected as aforesaid, the Jurors' Book for such newly erected City, as soon as may be after the same has been completed, and the copies thereof made and deposited in the proper office, and the Clerk of the Recorder's Court shall thereupon give him a receipt for such Book.

Clerk of the Peace to hand over Jurors' book to Clerk of Recorder's Court.

**136.** Upon such receipt being filed with the Chamberlain of such City, and upon the accounts of the said Selectors for the services thus performed for such City, being verified by affidavit before any Commissioner for taking affidavits for such County, and upon such accounts being properly audited and an order made for payment thereof, the Chamberlain of such City shall pay the amount of such accounts out of the like moneys as are hereinafter provided with respect to the payment of similar accounts by the Chamberlains of other Cities, and such payment shall in like manner be allowed in the accounts of such Chamberlain.

Who to pay the expenses thereof.

**137.** All the powers conferred and the duties imposed by this Act upon Justices of the Peace, with respect to Counties, are hereby conferred and imposed upon the Aldermen of Cities in which a Recorder's Court is established.

Powers of Justices conferred upon Aldermen.

**138.** The duties by this Act required of the Sheriffs of the different Counties and of the High Bailiffs, or other similar Officers of Cities, and those also required of the Clerks of the Peace, and of the Clerks of the Recorder's Courts of Cities as aforesaid, may be performed either by the principal Officer himself, or by his Under-Sheriff or Deputy.

The duties of Sheriffs and High Bailiffs may be performed personally or by Deputy.

#### OMISSIONS NOT TO VITIATE VERDICTS.

**139.** No omission to observe the directions in this Act contained, or any of them, as respects the qualification, selection, balloting and distribution of Jurors, the preparation of the Jurors' Book, the selecting Jury Lists, from the Jurors' Rolls, the drafting panels from the Jury Lists, or the striking of Special Juries, shall be a ground of impeaching the verdict in any cause, or be allowed for error upon any Writ of Error or Appeal to be brought upon any judgment rendered in any case, criminal or civil, by any Court in Upper Canada.

Omissions to observe the directions of this Act, not to vitiate the verdict, &c.

## PAYMENT OF JURORS.

## 1.—GRAND JURORS.

County Councils to provide funds for paying Grand Jurors.

**140.** The several County Councils may, in their discretion, from time to time by By-law, provide for the payment to Grand Jurors, either at the Courts of Oyer and Terminer and General Gaol Delivery, or at the General Quarter Sessions, out of the County funds, such sum per diem as they deem reasonable.

## 2.—PETIT JURORS.

Allowance to Petit Jurors attending certain Courts.

**141.** Every Petit Juryman actually attending any of the Courts of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Quarter Sessions of the Peace, or County Courts in Upper Canada, shall be entitled to receive in the manner hereinafter provided, the sum of one dollar per day, for every day he attends such Court, and the sum of ten cents per mile for every mile he necessarily travels from his place of residence to the said Court, or such other sums as the County Council by By-law from time to time fixes and determines, and the distance travelled shall be ascertained by the declaration of the Sheriff's Bailiff who summoned such Juror, or by the declaration of the Juror himself; But every Juror who makes a false declaration respecting such distance, shall forfeit his right to receive any payment for travelling to or attending such Court as a Juror.

False declaration.

Only fees.

**142.** No Petit Juror shall be entitled to any fee or allowance other than is provided by or under this Act.

Sheriff to make a Pay List for Petit Jurors.

**143.** Every Sheriff shall make a pay list for the Petit Jurors summoned to attend any of the aforesaid Courts in the form C, and shall attend or cause some Officer to attend at the opening of the Court, on the morning of every day on which such Court sits for the trial of causes by Jury, and upon the Petit Jurors being called over, shall check and mark the word "present," or "absent," as the case may be, in the proper column of such list opposite the name of every such Juror, and on the last day of the sitting of such Court shall certify and return the said pay list to the Treasurer of the County.

Treasurer to pay the Jurors.

**144.** The said pay list, checked and certified as aforesaid, shall be a sufficient authority for the Treasurer to pay to each Petit Juror the sum to which he appears entitled, as certified by such list, and the Treasurer shall forthwith pay every such Juror the sum so appearing due to him on such list.

Allowances to Sheriffs.

**145.** Every Sheriff shall be entitled to receive from the Treasurer of the County of which he is Sheriff, such sum for each pay list, and such sum per diem for checking the same every

every day at the opening of the Court, and for certifying and returning the same to the Treasurer, as the County Council by By-law determines; and for the purposes of the payment of Jurors, the Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius, when holden at the same time and under the same Precept and Panel of Jurors, shall be one Court; and the County Court and General Quarter Sessions shall be one Court, and the duty of calling over Jurors at the opening of the Court daily shall be performed by the Clerk of whichever of the said Courts respectively is first opened.

Certain Courts identical.

**146.** The Marshal or Clerk of Assize, the Clerk of the County Court or Clerk of the Peace, as the case may be, shall, at the opening of the Court, and before any other business is proceeded with, call over the names of the Petit Jurors, so that the Sheriff or his Officer may check who are present or absent

List of Jurors to be called over daily when Court opens.

**147.** A Petit Juror, not appearing when so called, shall not be entitled to any pay for the day on which he makes default, and every Petit Juror for each default he makes during the day, shall be liable to such a fine as to the Court seems meet.

Jurors not attending to be fined.

**FUND FOR PAYMENT OF JURORS.—FEES ON ENTRY OF NISI PRIUS RECORDS.**

**148.** With every record entered for trial or assessment, there shall be paid to the Clerk of Assize for the County, the sum of Three Dollars, and to the Clerks of the several County Courts the sum of One Dollar and Fifty Cents, and such sums shall be forthwith paid over to the Treasurer, and shall form part of the fund from which Petit Jurors are to be paid. *See also—Ante c. 11, s. 20, p. 44, and Post c. 33, Sch. p. 408.*

Sums to be paid with record when entered for trial.

**149.** No Record shall be entered for trial or assessment unless the sums before mentioned be first paid.

Record not to be entered unless sum is paid.

**FEES IN CRIMINAL CASES.**

**150.** In all criminal cases in which by law the party prosecuting, or the party prosecuted, is liable to pay the costs of the prosecution, the Officer of the Court shall charge against and receive from the party so liable the sum of Three Dollars over and above the sum to which he is otherwise liable, and such sum of Three Dollars shall form part of the fund for the payment of Petit Jurors, and shall forthwith be paid over by the Officer receiving it, to the Treasurer of the County in which the prosecution has been carried on.

The like in criminal cases where either party is liable to pay costs.

**151.** All fines and penalties imposed upon and levied in the several Counties in Upper Canada, not payable to the Receiver General or to any Municipal Corporation, and all fines upon Jurors for non-attendance levied therein, shall be paid

Certain fines to go towards payment of Jurors.

to

to the Treasurers of each of the said Counties respectively, and shall form part of the fund for the payment of Petit Jurors under this Act.

COUNTY COUNCILS TO SUPPLY DEFICIENCY.

County Councils to provide funds for paying Jurors.

**152.** In case the sums appropriated by this Act be not sufficient to pay the said Jurors, the several County Councils shall raise and appropriate such sums of money as in their judgment will be sufficient to pay the Petit Jurors according to the terms of this Act.

County Councils to provide funds.

**153.** Every County Council which has not made such provision for the payment of Jurors shall, at the regular meeting in January next, make provision for, and appropriate a sum of money for the payment of Jurors for such County; and in every such County, until such provision be made, every Petit Juror shall be allowed the sum of twenty-five cents in every cause in which he is sworn as a Juror in any civil case in the Superior Courts or at the Assizes, and the sum of twelve and a half cents in cases in the County Courts, and such fee shall be paid by the plaintiff or his Attorney, and shall be accounted for in costs by the party charged with the payment thereof. 2 G. 4, 2nd session, c. 1, s. 30.

Until provided what fees Jurors shall receive.

County Treasurer to notify Sheriff when funds are provided.

**154.** In every County in which a Petit Jury fund is for the first time provided, the Treasurer of such County shall give notice to the Sheriff of the County, who shall thereupon perform the duties imposed upon him under this Act.

Cities bound to contribute.

**155.** The Municipal Corporation of any County in Upper Canada of which a City or a Town withdrawn from the jurisdiction of the County Council forms part for judicial purposes, may demand and recover from the Municipal Corporation of such City or Town a portion of the expenses incurred by such County, in any year, for the payment of Jurors, which portion shall be determined as follows:

Deduction to be made from total sum expended.

1. From the total sum expended in the County in any year, for the payment of Jurors and other fees and disbursements under this Act, there shall be deducted the sums paid to Jurors for attendance at the Courts of Quarter Sessions, and the sum actually received by the County in such year for fees and penalties, which under this Act are appropriated towards the payment of Jurors;

Portion to be finally borne by the City, &c.

2. Of the sum remaining after such deduction, the portion to be finally borne by the City or Town and by the County respectively, shall be in proportion to the assessed value of all the rateable property in each, and the sum to be finally borne by the City or Town shall be the sum to be repaid by the Municipal Corporation thereof to that of the County;

3. In comparing the value of the rateable property in any City or Town and County for the purposes of this Act, the assessed annual value shall be held to be ten per cent. of the actual value. Assessed annual value, &c.

**156.** The actual or annual value of rateable property in a City or Town or County for the purposes of this Act, shall be that shewn by the Assessment-Rolls of each, for the year in which the expenses to be divided between them are incurred, and the portion of such expenses to be finally borne by the City or Town shall be payable to the County immediately after the close of each year. Annual value of rateable property to be that shewn by assessment-rolls.

**157.** The Council of any City or Town shall raise by assessment the sum of money required by such City or Town for the purposes of this Act, or shall pay such sum out of any moneys belonging to the City or Town, and applicable to municipal purposes generally. The Council of Cities to raise the necessary funds by assessment, &c.

#### FEEs TO OFFICERS.

##### 1.—TO SELECTORS.

**158.** The Selectors of Jurors under the fourteenth section of this Act, shall for every selection and distribution of Jurors, and the Report thereof made by them, be entitled to such sum of money as is authorized to be awarded them by the Council of the Municipality of which they are respectively Officers; and upon receipt of a certificate from the Clerk of the Peace that the Report has been returned to him within the time limited by Law, such sum of money shall be paid to such selectors respectively by the Treasurers (or Chamberlains, as the case may be,) of their respective Townships, Villages, Towns and Cities, in such manner as such Municipal Councils may severally direct. Fees to Selectors under the 14th section.

**159.** The Selectors of Jurors under the fifty-first section of this Act shall be entitled to the sum of four dollars each for each day's attendance for the purpose of selecting Jurors, and upon receipt of a certificate from the Clerk of the Peace for the County or Union of Counties, that the duties required of such Selectors have been duly performed by them, such sum shall be paid by the Treasurers of the County (or Chamberlains of the City) to every such Selector of Jurors. Fees to Selectors under the 51st section.

##### 2.—TO CLERKS OF THE PEACE AND OF RECORDER'S COURTS.

**160.** The Clerk of the Peace of every County, and the Clerks of the Recorder's Courts, in every City in which a Recorder's Court is established, shall be entitled to the following sums of money for the respective services performed by them under this Act, that is to say :

1. For receiving and examining the Reports of Selectors for each City, Town, Village and Township, causing any deficiency which may be found therein to be supplied, and filing the same in his office, fifty cents ;
2. For giving certificates to Selectors of Jurors, of duties having been performed, fifty cents ;
3. For preparing in proper form each Jurors' book, and superintending the making up of the same (besides actual disbursements for stationer's charges) three dollars ;
4. For arranging alphabetically and in order the names contained in Selector's Report, per one hundred names, two dollars ;
5. For making up Jurors' books, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names, two dollars ;
6. For each copy of the Jurors' book required by this Act, per one hundred names, two dollars ;
7. For each certificate required to be entered on the Jurors' book to verify same, one dollar ;
8. For copy of Jury list required to be entered, per one hundred names, two dollars ;
9. For each panel of Jurors drafted from the Jury list, per one hundred names on such Jury list, two dollars ;
10. For entering each panel in the Jurors' book, with the numbers corresponding to the Jury list, two dollars ;
11. For making up aggregate return in detail of Jurors, five dollars ;
12. For copy thereof, and transmitting same to Provincial Secretary when required, and for office copy of the same, each, two dollars.

### 3.—TO SHERIFFS, &c.

Fees to Sheriffs, High Bailiffs, &c.

**161.** The Sheriff, High Bailiff or other officer of every such County or City, shall, exclusive of such fees as he may be entitled to from the parties in any suit, be entitled to the following sums of money for the respective services performed by him under this Act, that is to say :

1. For each panel of Jurors, whether Grand or Petit, returned and summoned by him in obedience to any general Precept for the Return of Grand or Petit Jurors for any sittings or sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions



Sessions of the Peace or County or Recorder's Court respectively, under this Act, four dollars ;

2. For copies of such panel to be returned to the offices of the Superior Courts of Common Law at Toronto, each, one dollar ;

3. For every summons served upon the Jurors on any panel, the sum of twenty-five cents ;

4. And in the case of Sheriffs of Counties, the further sum of eight cents for every mile which the Sheriff or his Deputy or Bailiffs necessarily and actually travelled from the County Town for the purpose of serving such summonses ; such mileage to be allowed for going only and not for returning ;

5. And for every certificate given to any Juror of his having served, (to evidence his exemption from serving again until his time for doing so returns in its course), the sum of twenty cents.

#### 4.—TO CRIERS.

**162.** The Crier of every such Court of Quarter Sessions, or Recorder's Court, for making the Proclamations, calling the names of all those drawn in the course of selecting such Jury Lists, and performing all other duties required of him under this Act, shall be entitled to the sum of one dollar and fifty cents, for every one hundred names so drawn.

Fees to Criers of Quarter Sessions.

**163.** In all the foregoing cases, when there are more than one hundred, or more than an even number of hundreds of such names, if the broken number beyond such hundred or hundreds falls short of fifty names, the same shall not be reckoned, and if such broken number amounts to fifty names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred.

If there are more than one hundred names.

**164.** Upon proof, by affidavit made before a Commissioner for taking affidavits in one of Her Majesty's Superior Courts of Common Law, of such several services having been executed, or in the case of the Sheriff, of such travel having been necessarily performed in going to effect the service of such Summonses, the affidavit being accompanied with a detailed account showing the number of miles actually and necessarily travelled in going to serve each Juror, (so that at the end of the service the officer summoning the jury shall only be entitled to mileage for the number of miles actually travelled), and upon the account being properly audited, and an order of the Court of Quarter Sessions being made for the payment thereof, the Treasurer or the Chamberlain, as the case may be, shall, out of any money in his hands belonging to the County, City or Town respectively,

How the said fees shall be paid.

respectively, not otherwise specially appropriated by Act of Parliament, pay to such Officers respectively, the amount of their fees; and for all such moneys so paid, the Treasurer and Chamberlain shall be allowed in his accounts with the County, City or Town, as if the same had been paid under the special authority and direction of the Municipal Council of such County, City or Town respectively.

## PENALTIES.

Attaints of  
Jurors abolished.

**165.** The Queen shall not, nor shall any one on Her behalf, nor shall any party or parties in any case whatsoever, commence or prosecute any Writ of Attaint against any Jury or Jurors for the verdict by them given, or against the party or parties who have Judgment upon such verdict, and no inquests shall be taken to inquire of the concealments of other inquests, but all such attaints and inquests have been and shall remain abolished.

Embracery  
punishable as  
heretofore.

**166.** Notwithstanding any thing herein contained, every person who is guilty of the offence of embracery, and every Juror who wilfully or corruptly consents thereto, shall be respectively proceeded against by indictment or information, and be punished by fine and imprisonment, in like manner as such person and Juror might have been before the passing of this Act.

On Jurors for  
non-attendance.

**167.** If any person, having been duly summoned to attend on any Jury, in any of the Courts hereinbefore mentioned, does not attend in pursuance of such Summons, or being there called, does not answer to his name; or if any such Juror, or any talesman, after having been called, is present, but does not appear, or after his appearance wilfully withdraws himself from the presence of the Court, the Court shall set such fine upon every such Juror or talesman (unless some reasonable excuse be proved by oath, affidavit or affirmation,) as the Court thinks meet.

On viewers for  
non-attendance.

**168.** Where any viewer, having been duly summoned to attend on a Jury, makes default, as in the last preceding section is set forth, the Court at which he has been summoned to attend for the trial of such cause, shall set upon such viewer, (unless some reasonable excuse be proved as aforesaid,) a fine in the discretion of the Court to the amount of twenty dollars at the least.

On Jurors upon  
inquests and  
inquiries, &c.

**169.** If any person, having been duly summoned and returned to serve as a Juror in any County, City or Town upon any inquest or inquiry, before any Sheriff or Coroner, or before any of the Commissioners aforesaid, does not, after being openly called three times, appear and serve as such Juror, every such Sheriff, Coroner and Commissioners respectively, shall  
(unless

(unless some reasonable excuse be proved on oath, affidavit or affirmation) impose such fine upon the person so making default, as they respectively think fit, not exceeding twenty dollars.

**170.** Every such Sheriff, Coroner and Commissioner respectively, shall make out and sign a certificate containing the christian and surname, the residence and addition of every man so making default, together with the amount of the fine imposed and the cause of such fine, and transmit such certificate to the Clerk of the Peace for the County or to the Clerk of the Recorder's Court of the City in which such defaulter resides, on or before the first day of the General Quarter Sessions of the Peace, or Sessions of the Recorder's Court next ensuing.

Sheriff to certify defaults and transmit copies.

**171.** And every such Clerk shall copy the fines so certified on the Roll on which all fines and forfeitures imposed at such Quarter Sessions or Sittings, or Sessions of such Recorder's Court, are copied, and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if they had been part of the fines imposed at such Quarter Sessions or Sittings respectively.

Fines to be estreated.

**172.** If any Sheriff, or other Officer or Minister as aforesaid, wilfully empannels and returns any person to serve on a Jury in any of the Courts aforesaid, whose name has not been duly drawn upon such Panel, in the manner in this Act prescribed, or if any Clerk of Assize, Clerk of the Peace, Clerk of the Recorder's Court or other Officer of any of the Courts aforesaid, wilfully records the appearance of any man so summoned and returned who has not really appeared,—in every such case, the Court shall, upon examination in a summary way, set such fine upon such Sheriff, Officer or other Minister, Clerk of Assize, Clerk of the Peace, Clerk of the Recorder's Court, or other Officer offending, as the Court thinks meet.

On Sheriffs, &c., for default to perform duties assigned to them.

**173.** No Sheriff, Deputy Sheriff, Coroner, Elisor, Bailiff or other Officer, or person whatsoever, shall directly or indirectly, take or receive any money or other reward or promise of money or reward, to excuse any man from serving or being summoned to serve on Juries, or under any such colour or pretence; and no Bailiff, or other Officer appointed by any Sheriff, Under-Sheriff, Coroner or Elisor, to summon Jurors, shall summon or pretend to summon any man to serve thereon other than those whose names are specified in a Warrant or Mandate signed by such Sheriff, Under-Sheriff, Coroner or Elisor, and directed to such Bailiff, or other Officer; and if any Sheriff, Deputy Sheriff, Coroner, Elisor, Bailiff or other Officer, wilfully transgresses in any of the cases aforesaid, or summons any of the Jurors, not being a Special Juror, less than eight days before the day on which he is required to attend, or summons any Special Juror less than three days before the day on which he

On Sheriffs, &c., taking money as a bribe.

is to attend, except in the cases hereinbefore excepted, the Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, County and Recorder's Court respectively, within whose jurisdiction the offence has been committed, shall, on examination and proof of such offence in a summary way, set such fine upon every person so offending, as the Court thinks meet.

On Sheriffs, &c., making any unauthorized alteration in any Jurors' book, or neglecting to return the same, &c.

**174.** 1. If any Sheriff or Deputy Sheriff of any County, or any High Bailiff or other Officer of any City, makes, or causes to be made, any alteration whatever in any of the Rolls, Lists or Panels in any Jurors' Book, or in the certified copies thereof in their official custody respectively, except in compliance with the directions in this Act contained, or neglects or refuses to prepare the Jurors' Book, the Ballots necessary for drafting the Panels, striking Special Juries, and drawing Juries at the trial, or neglects or omits to return such Jurors' Book, and the Ballots for drafting such Jury Lists, to the Court to which by this Act he is required to return the same, or neglects or omits to perform any other duty required of him by this Act, or wilfully does any thing inconsistent with the provisions of this Act;

On Deputy Clerks of Crown and Pleas, altering Lists, &c.

2. Or, if any Deputy or Clerk of the Crown and Pleas, makes, or causes to be made, any alteration whatever in the Rolls, Lists or Panels in any Jurors' Book, or in any copy thereof, deposited in his office, or wilfully certifies as true any copy of any Jurors' Book, or any Roll, List or Panel therein, which is not a true copy thereof;

On Assessors not making and returning the assessment-roll in proper time.

3. Or, if any Assessor of any Township, Village or Ward in Upper Canada, neglects or omits to make out and complete his Assessment-Roll for such Township, Village or Ward, and to return the same to the office of the Clerk of such Township or Village, or of the City or Town in which any such Ward is situated, or to the other office or place of deposit for such Roll, on or before the first day of September of the year for which he is such Assessor;

On Municipal Officer not producing assessment-roll as required.

4. Or, if any City, Town, Village or Township Clerk, or any Assessor, or other Officer or person who, at the time of the annual meeting of the Selectors of Jurors for any City, Town, Village or Township, has the actual charge or custody of the Assessment-Rolls or Assessment-Roll of such City, Town, Village or Township for such year, neglects, or omits to perform the duties required of him by the seventeenth section of this Act, as regards the production of such Roll or Rolls at the annual meeting of such Selectors, or the permitting such Selectors to have necessary access to the same for the purposes of their duty;

On Selectors of Jurors for wilful dereliction of duty.

5. Or, if any Selector of Jurors for any Township, Village or Ward, wilfully selects, ballots and reports, as qualified and liable to serve as a Grand or Petit Juror, any person who, according to the provisions of this Act, ought not to  
be

be so selected, balloted or reported, or takes any money or other reward for so selecting, balloting or reporting or omitting to select, ballot or report any person whomsoever, or wilfully inserts in any such report a wrong description of the name, place of abode, or addition of any one so selected, balloted and reported, or neglects or omits to complete his selection, ballot and report, and to deposit the same in the proper office on or before the fifteenth day of September of the year for which he acts as such Selector of Jurors ;

6. Or, if any Clerk of the Peace, or Clerk of any Recorder's Court of any City, or his Deputy, when acting in performance of the duties required of him by this Act, neglects or omits to perform any duty required of him in the manner herein prescribed, or wilfully does any thing inconsistent therewith ;

On Clerks of Peace for wilful dereliction of duty.

7. In all such cases, every such person so offending, shall, for such offence, forfeit the sum of two hundred dollars, one moiety thereof to the use of Her Majesty, to be paid over to the Treasurer and applied as provided by the one hundred and fifty-first section of this Act, and the other moiety thereof, with full costs, to any person who will sue for the same, in any Court of competent jurisdiction, by action of debt or information ; but nothing herein contained shall be construed to relieve any Assessor from the obligation of returning the Assessment-Roll at an earlier period of the year, or from any penalty he may incur by not returning the same accordingly.

Amount of penalty, and how to be applied.

175. Except as otherwise provided by the one hundred and fifty-first section of this Act, all fines imposed under this Act by either of Her Majesty's Superior Courts of Common Law at Toronto, or by any Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, County Court, or Recorder's Court, shall be levied and applied in the same manner as other fines imposed by this Act.

How pecuniary penalties shall be levied and applied.

176. All other penalties under this Act, for which no other remedy is given, may be recovered by summary proceeding before any Justice of the Peace having jurisdiction, over the offence, which Justice may, on complaint, hear and examine witnesses on oath or affirmation, and determine the same, and if he sees fit, may mitigate the penalty to the extent of a moiety thereof.

Recovery by summary proceeding.

Mitigation of penalty.

177. Unless the penalty be forthwith paid upon conviction, such Justice shall, by warrant under his hand and seal, levy the same by distress and sale of the offender's goods and chattels, and for want of sufficient distress, the offender shall be committed by warrant, under the hand and seal of such Justice, to the Common Gaol or House of Correction, for such term, not exceeding six months, as such Justice thinks proper, unless such penalty be sooner paid ; and all penalties shall be paid to the Treasurer as hereinbefore provided.

Committal for non-payment.

MISCELLANEOUS PROVISIONS.

Year, what.

**178.** The year, for the purposes of this Act, shall be the calendar year.

Affirmations instead of oaths.

**179.** Nothing herein contained shall be construed to affect or alter any Statute or Law whereby the affirmation of any person belonging to certain religious societies, classes or descriptions of persons is allowed, or directed to be in all cases received and taken from such person in lieu of an oath.

Certain allegations not necessary in setting out legal proceedings.

**180.** Whenever any legal proceeding in which a Jury was empanelled is required to be set out, it shall not be necessary to specify that any particular person or persons who acted as Jurors made affirmation instead of oath, but it may be stated that they served as Jurymen, in the same manner as if no Act had passed for enabling persons to serve as Jurymen without oath. 16 V. c. 19, s. 12.

Short Titles of this Act, and others, relative to Jurors in Upper Canada.

**181.** In pleading, citing or otherwise referring to this Act, and any other Acts that may be hereafter passed touching or concerning or in any wise relating to Jurors, Juries or Inquests generally, it shall be sufficient to use the expression, *The Upper Canada Jurors' Act* (or *Acts*, as the case may be,) or words of equivalent import.

**182.** The following forms are those referred to in the foregoing sections of this Act, namely :

FORMS A. (See Section 24.)

**REPORT** of the selection and distribution of Jurors for the Township of Albion (or for the Ward of St. James, in the City of Toronto), in the County of York, for the year 18 , made at the Town (or City) Hall of the said Township (or City) by A. B. Townreeve (or Mayor), C. D. Town (or City) Clerk, and E. F., G. H. and I. J. Assessors of the said Township (or Ward), on the day of in the year 18 , pursuant to the directions of the Upper Canada Jurors' Act of 18 . (1)

FIRST DIVISION

For the Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
John Anderson.....	16	2	Esquire.
Peter Cameron.....	4	6	Yeoman.
William O'Leary.....	—	Oatlands	Gentleman.
Alfred Piper.....	17	1	Esquire.
&c.			

## SECOND DIVISION

*For the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Un-incorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
William Adams.....	9	4	Gentleman.
Richard House.....	7	5	Yeoman.
Jacob Wyse.....	2	1	Tailor.
Allan Thomas.....	24	5	Esquire.
&c.			

## THIRD DIVISION

*For the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Un-incorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
David Boothe.....	11	7	Merchant.
George Sullivan.....	3	4	Esquire.
Nathan Lowe.....	6	1	Shoemaker.
Henry Grace.....	24	7	Yeoman.
&c.			

## FOURTH DIVISION

*For the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Un-incorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
George Gule.....	7	8	Tailor.
Samuel Jones.....	15	3	Yeoman.
William Carpenter.....	7	2	Esquire.
Thomas Hoole Rogers.....	11	1	Gentleman.
&c.			

We, the above-named Selectors of Jurors for the Township of Albion (or as the case may be) do hereby solemnly declare, each severally for himself, that we have made the Selection and Distribution of Jurors in this Report from the Assessment-Roll of the said Township for the present

present year to the best of our judgment and information, pursuant to the directions of the Upper Canada Jurors' Act, and that we have so made the same without fear, favour or affection of, to or for any person or persons whomsoever, gain, reward or hope thereof, other than the fees to which we are entitled under the provisions of the said Act.

Witness our Hands and Seals, the day and year last above written.

A. B. [L. S.] Townreeve.

C. D. [L. S.] Town Clerk.

E. F. [L. S.] Assessor.

G. H. [L. S.] Assessor.

I. J. [L. S.] Assessor.

### FORMS B. (See Section 25.)

The JURORS' BOOK for the County of York, for the year 18 . (1)

#### 1.—ROLL OF GRAND JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal Jurisdiction.

No. on Roll.	NAMES.	No. of Lot or House as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
1 ALBION, (Township.)						
1	Anderson John.....	16	2	Esquire, Gentleman, Merchant, Yeoman,	3	Exempted, having served on G. J. List, S. C. 18 .
2	Aylof Graham.....	9	4			
3	Boswoth David.....	11	7			
4	Cameron Peter..... ( <i>&amp;c., to, say</i> )	4	6			
20	Young David.....	7	8	Tailor,		
2 BROCK, (Township.)						
21	Allan Simon.....	21	7	Yeoman, Gentleman,	2	
22	Bolland George..... ( <i>&amp;c., to, say</i> )	5	12			
31	Wilkinson James... ..	13	4	Esquire, Yeoman,	144	
32	Yates Edward.....	1	5			
3 YORKVILLE, (Village.)						
4 ST. JAMES WARD, (City of Toronto.) ( <i>&amp;c., to, say</i> )						
26 YORK, (Township.)						
503	Arthur Thomas.....	3	2 From Bay. 1 E. Yonge St.	Yeoman, Yeoman,	1	
504	Bull Peter.....	14				

These



These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and \_\_\_\_\_, as such Reports remained with me as Clerk of the Peace on the fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Superior Courts of Criminal Jurisdiction for such County.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

E. F., Clerk of the Peace.

## 2.—THE GRAND JURY LIST

For the Superior Courts, (2) as selected in open Court, at a General Quarter Session of the Peace for the County, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, being the first day of the first General Quarter Sessions of the Peace for the County, held next after the tenth day of November in the said year, by C.D., Chairman of the said Court, and the undersigned Selectors, pursuant to the directions of the Act of Parliament.

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. of Roll.	No. of Panel.	Remarks.
1	Arthur Thomas.	3	2 From Bay,	York	Yeoman,	503	1	Served accordingly.
2	Bolland George.	5	12	Brock	Gentleman	22	1	Omitted to attend altogether.
3	Young David. (&c. to)	7	8	Albion	Tailor,	20		
144	Yates Edward..	1	5	Brock	Yeoman,	32	1	Served accordingly.

These are to certify that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant, being the first day of the first General Quarter Sessions of the Peace for the County of York, next after the tenth day of November in this year (6), the foregoing Grand Jury List for the Superior Courts for this County for the year one thousand eight hundred and \_\_\_\_\_, was in open Court duly selected, canvassed and transferred from the Roll

Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of the "Upper Canada Jurors' Act."

Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

C. D. Chairman.

E. F. Clerk of the Peace.

G. H. Warden.

### 3.—GRAND JURY PANELS FOR THE SUPERIOR COURTS. (2)

(a) No. 1.

PANEL of Grand Jurors returned upon a precept from the Honorable G. H., the Honorable I. J., [&c.] Her Majesty's Justices in that behalf, tested the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, for the return of twenty-four of such Jurors for the Sessions of *Oyer and Terminer* and Gaol Delivery, to be held for this County on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, as drafted on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Arthur Thomas.....	3	2 From Bay,	York	Yeoman,	1	
2	Bolland George.....	5	12	Brock	Gentleman,	2	
	(&c. to)						
24	Yates Edward.....	1	5	Brock	Yeoman,	144	

Witness our hands, the day and year last above written.

A. B. Sheriff.

K. L. J. P.

M. N. J. P.

(b) No. 2. (5) &c.

## 4.—ROLL OF GRAND JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal Jurisdiction. (4)

No. on Roll.	NAMES.	No. of Lot or House as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION, (Township)					
1	Acland White.....	16	2	Esquire,		Exempted, having served on G. J. List, S. C. 18
2	Adams William.....	9	4	Gentleman,		
3	Eswald David.....	11	7	Merchant,		
4	Hamilton Peter.....	4	6	Yeoman,		
	(&c., to, say)					
20	Large George.....	7	8	Tailor,	3	
	2 BROCK, (Township)					
21	Ash Simon.....	21	7	Yeoman,		2
22	Borland George....	5	12	Gentleman,		
	(&c., to, say)					
31	Wilkins James.....	13	4	Esquire,		
32	Waters Edward....	1	5	Yeoman,	144	
	3 OSHAWA, (Village)					
	4 ST. JAMES WARD, (City of Toronto) (&c., to, say)					
	26 YORK, (Township)					
503	Astor Thomas.....	3	2 From Bay,	Yeoman,	1	
504	Peel Peter.....	14	1 E. Yonge St.	Yeoman,		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes for the year one thousand eight hundred and \_\_\_\_\_, as such Reports remained with me as Clerk of the Peace on the Fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Inferior Courts of Criminal Jurisdiction for such County.

Witness my hand, this

day of

, one thousand

eight hundred and

E. F. Clerk of the Peace.

5.—THE GRAND JURY LIST

For the Inferior Courts, (2) as selected in open Court at a General Quarter Sessions of the Peace for the County, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, being the first day of the first General Quarter Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and other Selectors, pursuant to the directions of the Act of Parliament (3)

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. on Roll.	No. on Panel.	Remarks.
1	Astor Thomas...	3	2 From Bay.	York	Yeoman,	503	1	Served accordingly. Omitted to attend altogether.
2	Borland George.	5	12	Brock	Gentleman,	22	1	
3	Large George... (&c., to)	7	8	Albion	Tailor,	20		
144	Waters Edward.	1	5	Brock	Yeoman,	32	1	Served accordingly

These are to certify that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant, being the first day of the first General Quarter Sessions of the Peace for the County of York next after the tenth day of November in this year (6), the foregoing Grand Jury List for the Inferior Courts for this County, for the year one thousand eight hundred and \_\_\_\_\_, was in open Court duly selected, canvassed and transferred from the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of the Act of Parliament (3)

Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

C. D. Chairman.  
E. F. Clerk of the Peace.

6.—GRAND JURY PANELS FOR THE INFERIOR COURTS. (2)

(a) No. 1.

Panel of Grand Jurors returned upon a precept from S. B. H., and K. L. M., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, for the return of twenty-four of such Jurors for the General Quarter Sessions of the Peace to be held for this County on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, as drafted on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_ at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff,

Sheriff, in the presence of K. L., and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Astor Thomas...	3	2 From Bay.	York	Yeoman,	1	
2	Borland George.. (&c., to)	5	12	Brock	Gentleman,	2	
24	Waters Edward.	1	5	Brock	Yeoman,	144	

Witness our hands, the day and year last above written.

A. B. Sheriff.  
K. L. J. P.  
M. N. J. P.

(b) No. 2. (5) &c.

7.—ROLL OF PETIT JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal and Civil Jurisdiction. (4)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION. (Township.)					
1	Parley Peter.....	16	2	Esquire,		
2	Alley Simon.....	21	7	Yeoman,	2	
3	Aikins William....	25	3	Yeoman,		
4	Ashford Thomas...	19	5	Yeoman,	3	
5	Adams George.....	5	5	Gentleman,	1	
6	Worth David.....	11	7	Merchant,	5	
7	Barclay John.....	9	2	Shoemaker,	4	
8	Cameron William..	4	6	Yeoman,		
9	Daniels George....	22	11	Yeoman,	6	Excepted,
10	Small William.....	7	8	Tailor,	7	having
	(&c., to say)					served on
1060	Yarrod George....	14	9	Baker,	288	P. J. List.
	2. BROCK. (Township.) &c.					S. C. 18

• These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the several Selectors of Jurors for the different

different Townships, Villages and Wards in the County of York including the City of Toronto, as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and , as such Reports remained with me as Clerk of the Peace on the fifteenth day of September of that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, description and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this                      day of                      , 18 .  
 E. F. Clerk of the Peace.

8.—THE PETIT JURY LIST

For the Superior Courts, (2) as selected in open Court at a General Quarter Sessions of the Peace for the County, on                      , the                      day of 18                      , being the first day of the first General Quarter Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and E. F. the Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Adams George..	5	5					
2	Ahey Simon....	21	7	Albion	Gentleman,	5		
3	Ashford Thomas.	2	19	Albion	Yeoman,	2	1	Served accordingly.
4	Barclay John...	19	8	Albion	Yeoman,	4		
5	Worth David....	9	5	Albion	Shoemaker	7		
6	Daniel George..	11	16	Albion	Merchant,	6		
	(&c. to)			Albion	Yeoman,	9		
188	Yarrold George..	14	9	Albion	Baker,	1060	1	

These are to certify that on                      , the                      day of                      instant, being the first day of the first General Quarter Sessions of the Peace for the County of York next after the tenth day of November in this year, (6) the foregoing Petit Jury List for the Superior Courts for this County for the year 18                      , was in open Court duly selected, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of the Act of Parliament of (3)

Witness our hands, this                      day of                      , 18 .  
 C. D. Chairman.  
 E. F. Clerk of the Peace.

## 9.—PETIT JURY PANELS

FOR THE SUPERIOR COURTS (2)

(a) No. 1.

Panel of Petit Jurors returned upon a Precept from the Honorable G. H., the Honorable J. J. (&c.) Her Majesty's Justices, in that behalf tested the        day of       , one thousand eight hundred and       , for the return of forty-eight of such Jurors for the Sessions of Assize and *Nisi Prius*, *Oyer* and *Terminer*, and Gaol Delivery, to be held for this County, on       , the        day of       , one thousand eight hundred and       , as drafted on       , the        day of       , one thousand eight hundred and       , at the Office of the Clerk of the Peace in Toronto, by A. B. Esquire, Sheriff, in the presence of K. L. and M. N. Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Jurors' List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Alley Simon..... (&c. to)	21	7	Albion	Yeoman,	2	
48	Yarrold George...	14	9	Albion	Baker,	288	

Witness our hands, the day and year last above written.

A. B. Sheriff.

K. L. J. P.

M. N. J. P.

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(b) No. 2, (5) &c.

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10.—ROLL OF PETIT JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal and Civil Jurisdiction, (4)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or street, or Unincorporated Village or Hamlet as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION. (Township.)					
1	Alford Peter...	16				
2	Adams Simon..	21	2	Esquire,		
3	Addis William.	25	3	Yeoman,	2	
4	Ashton Thomas.	19	5	Yeoman,		
5	Aylwin William	5	5	Yeoman,	3	
6	Brooks David..	11	5	Gentleman,	1	
7	Burley John ...	9	7	Merchant,	5	
8	Catty Peter...	4	2	Shoemaker,	4	
9	Davis George..	22	6	Yeoman,		
10	Gule George...	7	11	Yeoman,	6	} Exempt, having served on P. J. List, S.C. 18
	(&c. to say)		8	Tailor,	7	
1060	Yold George...	14	9	Baker,	288	
	2 BROCK. (Township.)					
	&c.					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and , as such Reports remained with me as Clerk of the Peace, on the fifteenth day of September in that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this

day of , 18

E. F., Clerk of the Peace.



## 11.—THE PETIT JURY LIST

For the Inferior Courts, (2) as selected in open Court at a General Quarter Sessions of the Peace for the County, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, being the first day of the first General Quarter Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and E. F., Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Aylwin William	5	5	Albion,	Gentleman,	5		
2	Adams Simon..	21	7	Albion,	Yeoman,	2	1	Served accordingly.
3	Ashton Thomas.	19	5	Albion,	Yeoman,	4		
4	Burley John ..	9	2	Albion,	Shoemaker	7		
5	Brooks David..	11	7	Albion,	Merchant,	6		
6	Davis George..	22	11	Albion,	Yeoman,	9		
288	(&c., to) Yold George...	14	9	Albion,	Baker,	1060	1	

These are to certify that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant, being the first day of the first General Quarter Sessions of the Peace for the County of York, next after the tenth day of November in this year, (6) the foregoing Petit Jury List for the Inferior Courts for this County for the year one thousand eight hundred and \_\_\_\_\_, was in open Court duly selected, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of the "*Upper Canada Jurors' Act.*"

Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

C. D. Chairman.

E. F. Clerk of the Peace.

## 12.—PETIT JURY PANELS FOR THE INFERIOR COURTS. (2)

(a) No. 1.

Panel of Petit Jurors returned upon a Precept from S. B. H., and K. L. and M. N., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, for the return of forty-eight of such Jurors, for the General Quarter Sessions of the Peace to be held for this County, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, as drafted on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks
1	Adams Simon . . . (&c., to)	21	7	Albion,	Yeoman,	2	
48	Yold George . . .	14	9	Albion,	Baker,	288	

Witness our hands, the day and year last above written.

A. B., Sheriff.

K. L., J. P.

M. N., J. P.

(b) No. 2.

Panel of Special Jurors returned upon a Writ of *Venire Facias Juratores*, out of the Court of Queen's Bench, in the case of N. O. Plaintiff, against P. Q. Defendant, tested (&c.,) and returnable (&c.,) as struck at the Office of the Clerk of the Peace in Toronto, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, by A. B. Esquire, Sheriff, in the presence of R. S., Attorney for the Plaintiff, and T. A., Agent for the Attorney of the Defendant, (or in the presence of R. S., Attorney for \_\_\_\_\_)

for the Plaintiff, the Defendant's Attorney, though served with the appointment, not appearing) pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in the Jury List.	Township, Village or Ward.	Additions.	No. on Grand Jurors' Rolls.	Remarks.
1	Abbott William.	11	9	Albion,	Gentleman,	I. C. 31	From G. J. Roll for S. C. for year 18 - No. 10. the G. J. Roll for this year being exhausted.
2	Wilkins James. (&c. to)	13	4	Brock,	Esquire,		
16	Young David..	7	8	Albion,	Tailor,	S. C. 20	

Witness my hand, the day and year last above written.

A. B., Sheriff.

(c) No. 3. (5) &c.

#### NOTES TO FORMS B.

- (1) This Title to be placed at the head of each page or folio throughout the Book.
- (2) So much of this Sub-Title as ends with this word, to be placed at the head of each page or folio of the Book appropriated to this class of entries.
- (3) Here insert the short title of this Act.
- (4) This Roll to be commenced on a new page or folio after leaving a sufficient number of leaves for the Jury List to be selected from the preceding Roll and the probable number of Panels that may be drafted from such List in the course of the year.
- (5) The subsequent Panels following immediately may be commenced on the same page or folio on which the preceding one is closed.
- (6) Or, if at a Special Sessions held under the authority of the fifty-eighth section of this Act, say, "Of a Special General Sessions of the Peace for the County of York held for that purpose under the warrant of His Excellency the Governor General," (or Lieutenant Governor, as the case may be,) the foregoing Grand or Petit Jury List, &c., was in open Court, &c., And note that the words "the said year" in the first part and the words "this year" in the latter part of the form mean the same year, the General Quarter Sessions being now held on the second Tuesday in December in each year.

F O R M

FORM C. See Section 143.

PAY LIST for Petit Jurors who have attended "the Assizes" or "County Court and Quarter Sessions" (as the case may be) held for the County of \_\_\_\_\_, begun on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and ended on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Name of Jurors.	Number of miles travelled in coming to Court.	Check of Attendance.							Amount to be paid to Juror.		Juror's signature acknowledging receipt of money.	
		1st day.	2nd day.	3rd day.	4th day.	5th day.	6th day.	7th day.	8th day.	\$		cis.
John Just..... Charles Careless—	21	present	present	present	present	absent	present	present	present			

I, \_\_\_\_\_, Sheriff of the County of \_\_\_\_\_, do hereby certify to the Treasurer of the said County, that the above is, to the best of my knowledge, a correct return of the number of miles travelled by each Juror in coming to the said Court, a true check of the number of days every such Juror attended the Court, and the just sum to which every Juror on the above list is entitled.

A. B., Sheriff.

## C A P. X X X I I .

## An Act respecting Witnesses and Evidence.

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

QUAKERS, MENONISTS AND TUNKERS MAY AFFIRM IN CASES,  
CIVIL OR CRIMINAL.

1. In any case, criminal or civil, in which an oath, declaration or affirmation is required by law, or upon any lawful occasion whatever on which the oath of any person is by law admissible, a Quaker, Menonist or Tunker, or a member of the church known as the "Unitas Fratrum," or the United Brethren, sometimes called the Moravian Church, having first made the following declaration or affirmation, viz: "I, A. B., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers, Menonists, Tunkers or Unitas Fratrum or Moravians," (*as the case may be,*) may make his affirmation or declaration in the form following, that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm, &c.;" and such affirmation or declaration shall have the same force and effect to all intents and purposes in all Courts of law and Equity and all other places, as an oath taken in the usual form. 49 G. 3, c. 6,—10 G. 4, c. 1.

Menonists and Tunkers permitted to make affirmation.

2. Every person authorized or required to administer an oath for any purpose, may administer such affirmation or declaration. 49 G. 3, c. 6, ss. 1, 2, 3,—10 G. 4, c. 1,—22 V. c. 100, s. 101.

Persons authorized to administer oaths may administer affirmation.

## COMPETENCY OF WITNESSES.

3. No person offered as a witness shall, by reason of incapacity from crime or interest, be excluded from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any Matter or Question, or on any Inquiry arising in any Suit, Action or Proceeding, Civil or Criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer or Person having by Law, or by consent of parties, authority to hear, receive and examine evidence. 16 V. c. 19, s. 1.

Who may be admitted as witnesses.

4. Every person so offered shall be admitted and be compellable to give Evidence on Oath, or solemn affirmation where an affirmation is receivable, notwithstanding that such person has or may have an interest in the matter in question or in the event of the trial of some Issue, Matter, Question or Inquiry, or of the Suit, Action or Proceeding in which he is offered as a witness, and notwithstanding that such person so offered as a

An interest in the question not to disqualify.

witness, had been previously convicted of a crime or offence. 16 V. c. 19, s. 1.

Exception.

5. This Act shall not render competent or authorize or permit any party to any suit or proceeding, individually named in the Record, or any Claimant or Tenant of premises sought to be recovered in Ejectment, or the Landlord or other person in whose right any Defendant in *replevin* may make cognizance, or any person in whose immediate or individual behalf any Action may be brought or defended either wholly or in part, or the husband or wife of any such party, to be called as a witness on behalf of such party, but such party may in any Civil proceeding be called and examined as a witness in any suit or action at the instance of the opposite party; Provided always, that the wife of the party to any suit or proceeding named in the Record, shall not be liable to be examined as a witness by or at the instance of the opposite party. 16 V. c. 19, s. 1.

Copies of public books or documents admissible in evidence.

6. Whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other Statute exists which renders its contents proveable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person having by law or by consent of parties, authority to hear, receive and examine evidence, provided it be proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the Officer to whose custody the original has been entrusted. 16 V. c. 19, s. 9.

And if required, copies to be delivered.

7. Such Officer shall furnish such certified copy or extract to any person applying for the same at a reasonable time upon his paying therefor a sum, not exceeding ten cents, for every folio of one hundred words. 16 V. c. 19, s. 9.

Copies thereof may be certified.

8. If any Officer authorized or required by this Act, or by any law or usage in force in Upper Canada, to furnish any certified copies or extracts, wilfully certifies any document to be a true copy or extract, knowing that the same is not a true copy or extract, he is guilty of a misdemeanor, and shall upon conviction be imprisoned for any term not exceeding eighteen months. 16 V. c. 19, s. 10.

#### PROOF OF WILLS.

In actions concerning real estate, Probate, &c., to be *prima facie* evidence of will, &c., after certain notice,

9. In any Action at Law or suit in Equity where, according to the existing law exclusive of the provisions contained in this Act, it would be necessary to produce and prove an original will in order to establish a Devise or other testamentary disposition of or affecting real estate, the party intending to establish in proof such Devise or other testamentary disposition, may give

give notice to the opposite party ten days at least before the trial or other proceeding in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition, the probate of the will or letters of administration with the will annexed, or a copy thereof, stamped with the seal of the Surrogate Court granting the same; and in every such case Probate or Letters of Administration or copy thereof, respectively stamped as aforesaid, shall be sufficient evidence of such will, and of its validity and contents notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid, in a contentious cause or matter, unless the party receiving such notice does within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition. 22 V. c. 93, s. 33.

save where its validity is put in issue.

**10.** In every case in which in any such action or suit the original will is produced and proved, the Court or Judge before whom such evidence is given may direct by which of the parties the costs thereof shall be paid. 22 V. c. 93, s. 34.

As to costs of proving a will in any action, &c.

**11.** In case of the death of any person in any of Her Majesty's possessions out of Upper Canada, after having made a will sufficient to pass real estate in Upper Canada, and whereby any such estate has been devised, charged or affected, and in case such Will be duly proved in any Court having the proof and issuing probate of wills in any of such possessions, and remains filed in such Court, then in case notice of the intention to use such Probate or Certificate in the place of the original Will, be given to the opposite party in any such proceeding one month before the same is to be so used, the production of the Probate of the Will, or a certificate of the Judge, Registrar or Clerk of such Court, that the original is filed and remains in the Court, and purports to have been executed before two witnesses, shall, in any proceeding in any Court of Law or Equity in Upper Canada concerning such Real Estate, be sufficient *prima facie* evidence of such Will and the contents thereof, and of the same having been executed so as to pass Real Estate, without the production of the original Will; but such Probate or Certificate shall not be used if, upon cause shewn before any such Court, or any Judge thereof, such Court or Judge finds any reason to doubt the sufficiency of the execution of such Will to pass such Real Estate as aforesaid, and makes a rule or order disallowing the production of such Probate. 16 V. c. 19, s. 5.

Proof in the case of Will of Real Estate filed in foreign Courts.

**12.** The production of the certificate, in the last preceding section mentioned, shall be sufficient *prima facie* evidence of the facts herein stated, and of the authority of the Judge, Registrar or Clerk, without any proof of his appointment, authority or signature. 16 V. c. 19, s. 6.

Certificate to be *prima facie* evidence.

## SUBPÆNAS IN COUNTY COURT.

County Courts may issue *subpœnas* to any part of Upper Canada.

**13.** The several County Courts may issue Writs of *Subpœna ad Testificandum* to enforce the attendance of any witnesses resident within Upper Canada, and also Writs of *Subpœna Duces Tecum* to enforce the attendance of and the production of deeds and papers by any such witnesses, and may proceed against persons who having been duly served with a *subpœna*, disregard or disobey the same, with the same powers, in like manner and by the same mode of proceeding as belongs to and is practised in the Superior Courts of Common Law. 20 V. c. 58, s. 7,—13, 14 V. c. 52, s. 3.

To what allowance such witnesses entitled.

**14.** Such Witnesses shall be entitled to the same allowance as if attending under *subpœna* from either of the said Superior Courts of Common Law. 20 V. c. 58, s. 7,—13, 14 V. c. 52, s. 3.

A party to any civil suit may be summoned as a witness by the opposite party and consequences of non-attendance.

**15.** Whenever any party in such proceeding desires to call the opposite party as a witness, he shall either *Subpœna* such party or give to him or his Attorney at least eight days' notice of the intention to examine him as a witness in the cause, and if such party does not attend on such notice or *Subpœna*, such non-attendance shall be taken as an admission *pro confesso* against him in any such suit or action, unless otherwise ordered by the Court or Judge in which or before whom such examination is pending, and a general finding or Judgment may be had against the party thereon, or the Plaintiff may be non-suit or the proceedings in the action or such suit may be postponed by the Court or Judge, on such terms as the Court or Judge sees fit to impose. 16 V. c. 19, s. 2.

How to proceed if a party resides abroad.

**16.** In case a party to any such suit or action be resident out of Upper Canada, and in case the opposite party requires a Commission and states by affidavit the facts intended to be proved before such Commission, and in case the Court or Judge is satisfied that such Commission is applied for in good faith and not for purposes of delay, the Court in which the suit or action has been brought, or any Judge thereof, may, at the instance of the opposite party, issue a Commission for the examination of such non-resident party in the same manner as a Commission may be issued for the Examination of Witnesses. 16 V. c. 19, s. 3.

If he refuses to attend.

**17.** If such party refuses to attend before the Commissioners, such refusal, being proved by affidavit or otherwise, to the satisfaction of a Judge of the Court in which the suit or the trial is pending, shall authorize a verdict or judgment to pass against the party, or he shall become non-suit. 16 V. c. 19, s. 3.

Persons accused of offences, not competent or

**18.** Nothing herein contained shall render any person, who, in any proceeding, is charged with the commission of an indictable offence, or any offence punishable on summary conviction, competent



competent or compellable to give evidence for or against himself, or shall, in any such proceeding, render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, or shall, in any civil proceeding, render any person compellable to answer any question tending to criminate himself or to subject him to a prosecution for any penalty. 16 V. c. 19, s. 4.

compellable to give evidence for or against themselves.

#### COMMISSIONERS TO EXAMINE WITNESSES.

**19.** In case the Plaintiff or Defendant in any action in either of the Superior Courts of Common Law or in any County Court, is desirous of having at the trial thereof, the testimony of any aged or infirm person resident within Upper Canada, or of any person who is about to withdraw therefrom, or who is residing without the limits thereof, the Superior Court in which the action is pending, or a Judge of either of such Courts, or the County Court in which the action is pending, or a Judge thereof, may, upon the motion of such Plaintiff or Defendant, and upon hearing the parties, order the issue of one or more commission or commissions under the seal of the Court in which the action is pending, to one or more Commissioner or Commissioners, to take the examination of such person or persons respectively. 2 G. 4, c. 1, s. 17,—20 V. c. 58, s. 5.

Commissions may issue to examine persons aged, infirm or absent from Upper Canada.

**20.** Due notice of every such commission shall be given to the adverse party to the end that he may cause the witnesses to be cross-examined. 20 V. c. 58, s. 5.

Notice to be given to the adverse party.

**21.** In case the examination of any witness or witnesses taken without the limits of Upper Canada, pursuant to any such commission, be proved by an Affidavit of the due taking of such examination sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same has been taken, and in case such commission with such examination and affidavit thereto annexed be returned to the Court from which such Commission issued close under the hand and seal of one or more of the Commissioners, the same shall *prima facie* be deemed to have been duly taken, executed and returned, and shall be received as evidence in the cause, unless it is made to appear to the Court in which such examination is returned and published, or before which the same is offered in evidence, that the same was not duly taken; or that the Deponent is of sound mind, memory and understanding, and living within the jurisdiction of the Court at the time such examination is offered in evidence to such Court. 2 G. 4, c. 1, s. 18,—20 V. c. 58, s. 6.

How commissions executed abroad are to be proved.

## TITLE 5.

## PROFESSIONS, &amp;c.

## 1.—THE PROFESSION OF THE LAW.

## CAP. XXXIII.

## An Act respecting the Law Society of Upper Canada.

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

## LAW SOCIETY CONTINUED.

The Law Society continued.

1. The Law Society of Upper Canada shall continue as at present constituted, subject to the provisions of this Act, and to the By-laws, Rules and Regulations for the Government thereof in force at the time this Act takes effect, which By-laws, Rules and Regulations respectively shall also continue until modified, altered or repealed by the Corporation of "The Law Society of Upper Canada," and the benchers thereof shall have the power heretofore exercised to call and admit to the practice of the Law, as a Barrister, any person duly qualified to be so admitted according to the provisions of Law and the rules of the Society. 37 G. 3, c. 13, ss. 1, 5.

## THE INCORPORATION OF THE TREASURER AND BENCHERS CONTINUED.

The Corporation of the Treasurer and Benchers continued.

2. The Treasurer and Benchers of the Law Society of Upper Canada, heretofore incorporated and their Successors who have been appointed according to the Rules and By-Laws of the Society, shall continue to be a body corporate and politic, by the name of "*The Law Society of Upper Canada*;" and without license of mortmain may purchase, take, possess, and after acquiring the same, sell, lease or depart with any lands, tenements or hereditaments for the purposes of the said Society, but for no other purpose, and may execute all other matters appertaining to them to do. 2 G. 4, c. 5, s. 1.

## THE JUDGES OF THE SUPERIOR COURTS TO BE VISITORS.

The Judges to be Visitors.

3 The Chief Justices and Puisne Judges of the Superior Courts of Common Law, and the Chancellor and Vice-Chancellors of the Court of Chancery, shall be Visitors of the Society. 37 G. 3, c. 13, s. 2,—13, 14 V. c. 51, s. 2.

## APPOINTMENT OF BENCHERS.

4. The Benchers of the Society may from time to time appoint such Members of the Bar, (including the six Senior Members and the Attorney General and Solicitor General of Upper Canada,) as they think fit, to be Governors, or Benchers of the Society, and may also appoint a Librarian and a Treasurer. 37 G. 3, c. 13, s. 2.

Appointment of Benchers.

## THE SOCIETY MAY MAKE RULES.

5. The Benchers of the Society may from time to time make Rules for the Government of the Society, and other purposes connected therewith, under the inspection of the Visitors. 37 G. 3, c. 13, s. 2.

The Benchers, &c., may make rules.

## GRANT IN AID OF BUILDINGS FOR THE SUPERIOR COURTS.

6. Whereas the Law Society of Upper Canada did, on the twentieth day of June, in the year of Our Lord, one thousand eight hundred and forty-six, covenant with Her Majesty to provide at the seat of such Society, Buildings suitable for the accommodation for the Superior Courts of Law and Equity in Upper Canada for all time to come; And whereas for the purpose of carrying out the said arrangement four several sums of money amounting to the sum of two hundred and twenty-four thousand dollars were by four several statutes of this Province granted to Her Majesty to be raised by debentures as in said Acts provided; Such Acts being the Act passed in the ninth year of Her Majesty's Reign, chapter thirty-three—the Act passed in the eighteenth year of Her Majesty's Reign, chapter one hundred and twenty-two—the Act passed in the twentieth year of Her Majesty's Reign, chapter sixty-four—and the Act passed in the twenty-second year of Her Majesty's Reign, (one thousand eight hundred and fifty-nine,) chapter thirty-one; And whereas the Governor has issued Debentures according to the provisions of the said Acts; And whereas by such Acts provision was made for the purpose of paying the principal and interest on such Debentures, as the same become payable, and it is expedient to continue such provisions, for the purpose of liquidating the debts incurred as aforesaid; Therefore, for the purpose of paying the interest on the Debentures issued under the said Acts and of liquidating the principal thereof, there has been and shall continue to be imposed, levied and collected on the proceedings in the Superior Courts of Law and Equity in Upper Canada, including the Practice Court and proceedings before the Heir and Devisee Commission, the sums set forth in the Schedule hereunto subjoined; and such sums shall be in addition to all fees authorized to be levied for other purposes and to be otherwise

Recital of the covenant of the Law Society with Her Majesty.

Schedule of sums payable on proceedings in the Superior Courts, &c.

otherwise applied, and law proceedings shall be subject to the said levy whether had in the Court of Queen's Bench or the Court of Common Pleas or the Practice Court. 22 V. c. 31. (1859.)

### SCHEDULE.

#### ON PROCEEDINGS IN THE QUEEN'S BENCH, COMMON PLEAS AND PRACTICE COURT.

	\$	cts.
On every Writ of Summons or Capias, and on every other Writ or other Document of what nature or description soever, having the Seal of the Court affixed thereto...	0	50
On every Judgment entered.....	0	60
On every Certificate of Judgment.....	0	50
On setting down on the paper for argument of every demurrer, special case, points reserved, special verdict or appeal case.....	0	30
Every Record of Nisi Prius entered for Trial or Assessment † .....	1	00
On every Rule of Court issued.....	0	20
On Taxation of every Bill of Costs.....	0	15

#### ON PROCEEDINGS IN THE COURT OF CHANCERY.

On filing every Bill or Amended Bill.....	2	40
On passing and entering every Decree or Decretal Order.	1	00
On every Certificate of Bill filed, on every Certificate of Decree or Decretal Order made, on every Subpœna, and on every other Writ or Certificate issued under the Seal of the Court.....	0	50

#### ON PROCEEDINGS IN THE COURT OF ERROR AND APPEAL.

On every Appeal entered.....	4	00
On every Judgment, Decree or Order of the Court passed and entered.....	2	00

#### ON PROCEEDINGS IN THE OFFICE OF THE SURROGATE CLERK IN CHANCERY.

On every Certificate issued by the Surrogate Clerk in Chancery.....	0	50
On		00

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NOTE.—† Including but not in addition to the sum of one dollar mentioned in the twentieth section of the eleventh chapter of the Consolidated Statutes for Upper Canada, page 44,—but exclusive of and in addition to the fees mentioned in the Consolidated Statutes respecting Jurors and Juries. *Ante c. 31, s. 148, p. 377.*

On every order made on application to a Judge in	
Chancery.....	0 25
On entering every Appeal.....	0 50
On every Decree or Order on Appeal.....	1 00

ON PROCEEDINGS BEFORE THE HEIR AND DEVISEE COMMISSION.

On every claim entered and received.....	0 50
On every claim allowed.....	0 50

22 V. c. 31. (1859.)

CLERKS TO RENDER ACCOUNTS.

8. The Clerks of the Crown and Pleas, and the several Deputy Clerks of the Crown, the Clerk of the Process, the Clerks of Assize, the Registrar of the Court of Chancery, the Clerk of the Court of Appeals, the Surrogate Clerk, and the Clerk of the Heir and Devisee Commissioners, shall severally collect the sums by this Act imposed on the Writs, Process and proceedings herein mentioned, and render half yearly accounts of the same to the Minister of Finance, and every such account shall be signed by the Officer rendering the same and be declared by him before any Judge or Justice of the Peace, and such Officer shall pay the same to the account of or to the Receiver General, at such time as the Governor in Council may direct; and the officer rendering such account and making such payment shall be entitled to charge and receive four per centum on the sums paid over by him. 9 V. c. 33, s. 5,—See 12 V. c. 63, ss. 15, 16,—22 V. c. 31. (1859.)

Clerks of Crown and Pleas and Deputies, Clerks of Assize and of Appeals to render half-yearly accounts to the Minister of Finance.

SALE OF LAND IN TORONTO AUTHORIZED.

9. The Governor may authorize and direct a portion, not exceeding two acres, of the lot of land in the City of Toronto formerly known and designated as Simcoe Place, and bounded by Front Street, John Street, Wellington Street and Simcoe Street, according to the plan in the Office of the Commissioner of Crown Lands, to be sold at public auction, for the best price that can be obtained for the same, payable in money at a credit of not more than five years; and the proceeds of such sale, as well interest as principal, shall be applied to the satisfaction of the debentures issued for the purposes aforesaid. 9 V. c. 33, s. 6.

Governor may direct sale of 2 acres of land in Toronto to raise funds to meet debentures.

DEBENTURES REDEEMABLE AT PLEASURE.

10. The Governor may by Proclamation call in for payment any of the said debentures, although not then payable; and at the expiration of six months from the date of such Proclamation, all interest on the debentures so called in shall cease. 9 V. c. 33, s. 7.

Governor may call in debentures.

## ACCOUNTS TO BE LAID BEFORE PARLIAMENT.

Accounts to be laid before Legislature.

**11.** Accounts in detail of all moneys received and paid, and of the debentures issued and the interest thereon, and of the redemption of the whole or any portion of such debentures, and of all expenses attending the collection and payment of the sums of money collected and received by authority of this Act, shall be laid before the Legislature of this Province at each Session thereof. 9 V. c. 33, s. 8,—22 V. c. 31. (1859.)

## C A P . X X X I V .

## An Act respecting Barristers at Law.

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

Who may be admitted to practise at the Bar.

**1.** The following persons, and no others, may be admitted to practise at the Bar in Her Majesty's Courts of Law and Equity in Upper Canada :

Students of 5 years' standing.

**1.** Any person of the age of twenty-one years, who, having been entered of and admitted into the "Law Society of Upper Canada" as a Student of the Laws, has been standing on the Books thereof for five years, and has conformed himself to the Rules of the Society ; 37 G. 3, c. 13, ss. 5, 7.

Graduates of 3 years' standing on the Books of the Society.

**2.** Any person who has taken the Degree of Bachelor of Master of Arts, or Bachelor of Law, in any of the Universities of the United Kingdom of Great Britain or Ireland, or of any University or College in Upper Canada having power to grant Degrees, and has been admitted into and been standing on the Books of the Society as a Student of Laws for three years, and has conformed himself to the Rules thereof ; and in the case of Degrees conferred in Upper Canada, the Student may be admitted to the Bar notwithstanding he was entered on the Books of the Society before taking his Degree ; 7 W. 4, c. 15, s. 5,—10, 11 V. c. 29, ss. 1, 2, 3,—See 20 V. c. 63.

Barristers of England, Ireland and Scotland.

**3.** Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in England, Scotland or Ireland, not being Courts of merely local jurisdiction ; 2 G. 4, c. 5, s. 2.

Barristers of other Colonies.

**4.** Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in any of Her Majesty's Provinces of North America in which the same privilege would be extended to Barristers from Upper Canada, and who produces sufficient evidence of such call and testimonials of good character and conduct to the satisfaction of the Law Society. 2 G. 4, c. 5, s. 2.

## C A P . X X X V .

## An Act respecting Attorneys at Law.

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

## ADMISSION OF.

1. Unless admitted and enrolled, and duly qualified to act as an Attorney or Solicitor, no person shall, in Upper Canada, act as an Attorney or Solicitor in any Superior or Inferior Court of Civil or Criminal jurisdiction in Law or Equity, or any Court of Bankruptcy or Insolvency, or before any Justice of the Peace, or as such sue out any writ or process, or commence, carry on, solicit or defend any action, suit or proceeding in the name of any other person or in his own name. 20 V. c. 63, s. 2.

Attorneys and Solicitors must be admitted and enrolled.

## WHO MAY BE ADMITTED.

2. Subject to the provisions hereinafter contained, the following persons, and no others, may be admitted and enrolled as Attorneys or Solicitors : 20 V. c. 63, s. 3.

Who may be admitted and enrolled Attorneys or Solicitors.

1. Any person bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for five years ;

2. Any person who has taken the Degree of Bachelor or Master of Arts, or of Bachelor or Doctor of Laws, in any of the Universities of the United Kingdom of Great Britain and Ireland, or of this Province, and has, before or after taking his Degree, been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as a Clerk for three years ; 20 V. c. 63, s. 4.

3. Any person who has been duly called to practise at the Bar of Upper Canada or who has been duly called to practise at the Bar of any of Her Majesty's Superior Courts, not having merely local jurisdiction, in England, Scotland or Ireland, and has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year ; 20 V. c. 63, s. 5,—22 V. c. 94, s. 2. *Proviso.*

4. Any person duly and lawfully sworn, admitted and enrolled an Attorney or Solicitor of Her Majesty's High Court of Chancery, or Court of Queen's Bench, Common Pleas or Exchequer in England or Ireland, or who has been Writer to the Signet or Solicitor in the Supreme Courts in Scotland, and has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year ; 20 V. c. 63, s. 5.

5. Any Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's Colonies wherein the Common Law of England is the Common Law of the land, and who has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year. 20 V. c. 63, s. 5.

TERMS OF ADMISSION.

Provisions to be complied with by Attorneys and Solicitors before they can be admitted.

3. No person above mentioned shall be admitted and enrolled as an Attorney or Solicitor, unless : 20 V. c. 63, ss. 3, 4, 5, 11.

1. He has, during the term specified in his contract of service, duly served thereunder, and has, during the whole of such term, been actually employed in the proper practice or business of an Attorney or Solicitor, by the Attorney or Solicitor to whom he has been bound or, (with his consent,) by the Professional Agent of such Attorney or Solicitor at Toronto, for a part of said time not exceeding one year; nor unless—20 V. c. 63, s. 9.

2. He has, during his term of service, attended the Sittings of the Courts of Queen's Bench or Common Pleas during at least two of the Terms of such Courts, and has complied with the regulations of the Law Society in that behalf; nor unless—20 V. c. 63, s. 3.

3. After the expiration of such term of service he has been examined and sworn in the manner hereinafter directed; nor unless—

4. At least fourteen days next before the first day of the Term in which he seeks admission, he has left with the Secretary of the Law Society his contract of service, and any assignment thereof, and an affidavit of execution thereof, and of due service thereunder, and a certificate of his having attended the Sittings of the Court or Courts during two Terms as hereinbefore provided; and (in the case of a person who has taken a Degree as hereinbefore mentioned,) a certificate of his having taken such Degree, or a duly authenticated certified copy of such certificate;

5. Nor unless the Candidate for admission by affidavits of himself and of the Attorney or Solicitor to whom he has been bound, or his Agent as aforesaid, proves that he hath actually served and been employed by such practising Attorney or Solicitor and Agent (as to the latter for the term of one year only) during the whole of his term of service, and in the manner required by this Act.

Form of affidavit to be de-

4. Such affidavits shall be in the form approved of by the Judges of the Court to which application for admission is made, and



and shall by the applicant be delivered to the Law Society upon his application to be examined. 20 V. c. 63, s. 11. livered to the Society.

5. In case the contract of service, affidavit and assignment (if any) cannot be produced, then on application made to the Law Society in that behalf at least fourteen days next before the first day of the Term in which the applicant seeks admission, the Society on being satisfied of such fact, may in their discretion, dispense with the production of such contract, affidavit and assignment, or any of them, and the certificate of the Law Society of such dispensation shall be sufficient in lieu of the production of the required contract and affidavit and any assignment thereof under the provisions of this Act. 22 V. c. 94, s. 4. Provision in case the contract, &c., cannot be produced.

#### OATH.

6. No Candidate shall be admitted unless he also makes and subscribes the oath or affirmation following: 20 V. c. 63, s. 21. Oath to be taken by Candidates for admission.

“I, A. B., do swear (or solemnly affirm, as the case may be) that I will truly and honestly demean myself in the practice of an Attorney (or Solicitor, as the case may be) according to the best of my knowledge and ability. So help me God.”

#### CONDITIONS.

7. No Candidate for admission being of the class of persons respectively mentioned in sub-sections three, four and five of section two of this Act, shall be admitted unless (1) such person publishes in the *Canada Gazette*, at least two months previous, notice of his intention to apply for admission to the Court of Chancery, Queen's Bench or Common Pleas, (as the case may be,) in the next ensuing Term of such Court; Provisions respecting Candidates of the classes in sub-sections 3, 4 and 5 of section 2 supra.

Nor, except in the case of a person called to the Bar of Upper Canada, unless (2) such Candidate, at least fourteen days before the first day of such Term, leaves with the Secretary of the Law Society: 20 V. c. 63, s. 5.

A. In the case of a Barrister, not being a Barrister of Upper Canada,—a certificate under the seal of the Society, or Inn of Court in England, Scotland or Ireland of which he is a member, duly attested under the proper hand of the proper officer thereof, that he has been duly called to the Bar and was at the date of such certificate on the Books of such Society or Inn of Court; and also, an affidavit of the applicant to the satisfaction of the Law Society, that since his admission to the Bar, no application to any Society or Inn of Court has been made against such person to disbar him or otherwise to disqualify him from further practice for misconduct in such his capacity of Barrister; 22 V. c. 94, s. 2.

B. And in the case of any Attorney or Solicitor,—a certificate under the seal of the proper Court or Courts, duly attested under the hand of the proper officer thereof, that he was duly admitted and enrolled as such Attorney or Solicitor, and was at the date of such certificate on the Roll of Attorneys or Solicitors of such Court or Courts; and also, an affidavit of the applicant, that since his admission as aforesaid, no application to any such Court or Courts (as the case may be) has been made against such person to strike him off the roll of any such Court, or otherwise to disqualify him in his capacity of Attorney or Solicitor; 22 V. c. 94, s. 2.

C. Such certificates respectively shall bear date within three months of the first day of the Term during which the application is made.

#### BENCHERS MAY MAKE RULES.

The Law Society to make rules for the examination of Candidates.

8. The Benchers of the Law Society with the approbation of the Visitors, (one of the Judges of each of the Superior Courts of Law and Equity being one,) shall from time to time make such Rules as they consider necessary for conducting the Examination of persons applying to be admitted as Attorneys or Solicitors, as well touching the Articles and Service, and the several Certificates required by Law to be produced by them before their admission, as to the fitness and capacity of such persons to act as Attorneys or Solicitors; and the Society may from time to time nominate and appoint Examiners for conducting such Examinations. 20 V. c. 63, s. 19.

When Law Society may suspend decision.

9. In any of the foregoing cases where it appears to the Law Society expedient for purposes of further inquiry or investigation, the Society may suspend for a period not exceeding twelve months, their final decision in respect to the granting or refusal of the certificate. 22 V. c. 94, s. 2.

#### EXAMINATIONS.

The Law Society to examine into the fitness and capacity of Candidates for admission as Attorneys or Solicitors.

10. The Law Society, upon proof to their satisfaction of the requisites of this Act having been complied with, shall examine and enquire by such ways and means as they think proper, touching the fitness and capacity of any applicant for admission to act as an Attorney or Solicitor; and if satisfied by such examination, or by the certificate of the Examiners hereinafter mentioned, that such person is duly qualified, fit and competent to act as an Attorney or Solicitor, the Society shall give a certificate under the corporate seal of the said Society of the due service under contract in writing, of such person, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, and that he is in all respects duly qualified to be admitted as an Attorney and Solicitor, and upon production to one of the Judges of the Superior Courts of Law or of Equity in Upper Canada, annexed to such certificate of the original

original contract of service and any assignments thereof, and the affidavits of due service thereunder, and all other certificates hereinbefore required, such Judge shall endorse his fiat of admission upon the certificate of the Law Society : and

Thereupon any of the Superior Courts of Law or Equity during the Term in which such application for admission is made, may, in addition to the oath of allegiance, administer to such person in open Court the oath hereinbefore directed to be taken by Attorneys and Solicitors, and after such oaths taken may cause him to be admitted and his name to be enrolled as an Attorney or Solicitor of such Court, which admission shall be signed by the Clerk or Registrar of the Court, and the documents upon which the admission has been obtained shall be filed and retained of record in the office of the Court in which the admission takes place. 20 V. c. 63, s. 6.

**11.** Whenever any person has been bound by contract in writing to serve as a Clerk to an Attorney or Solicitor, such Attorney or Solicitor shall, within three months after the date of the contract, make or procure to be made an affidavit that such Attorney or Solicitor has been duly admitted, and also that such contract was duly executed by the said Attorney or Solicitor, and by the person bound to serve him as such Clerk ; and

Articled Clerks of Attorneys and Solicitors to procure affidavits of the admission of Attorney or Solicitor, to whom Articled and of execution of articles.

In every such affidavit there shall be specified the names of the Attorney or Solicitor, and of the person so bound, and their places of abode respectively, together with the day on which the contract was actually executed ; and

Every such contract, with the affidavit annexed thereto, shall, within three months next after the execution of the contract, be filed with one of the Clerks of the Crown and Pleas, at Toronto, who shall endorse and sign upon such affidavit and contract a memorandum of the day of the filing thereof. 20 V. c. 63, s. 7.

**12.** In case such affidavit be not filed within three months after the date of the contract, the same may nevertheless be filed by the officer before mentioned ; but the service of the Clerk shall be reckoned only from the date of filing such affidavit. 20 V. c. 63, s. 8.

Provision in case affidavit not filed in three months.

**13.** Every person authorized to practise as an Attorney or Solicitor may have under contract in writing four Clerks at one time, and no more ; and no Attorney or Solicitor shall have any Clerk bound as aforesaid, after such Attorney or Solicitor has discontinued practising as, or carrying on the business of an Attorney or Solicitor, nor whilst such Attorney or Solicitor is employed as a Writer or Clerk by any other Attorney or Solicitor ; and the service by an Articled Clerk to an Attorney or Solicitor, under any such circumstances, shall not be deemed good service under the Articles. 20 V. c. 63, s. 10.

Practising Attorneys and Solicitors may have 4 Articled Clerks, and no more.

Courts may order articles to be discharged or assigned in certain cases.

**14.** In case any Attorney or Solicitor, before the determination of the contract of a Clerk bound to him as aforesaid, has become bankrupt, or taken the benefit of any Act for the relief of Insolvent Debtors, or having been imprisoned for debt has remained in prison for the space of twenty-one days, any of the said Courts of Law or Equity wherein such Attorney or Solicitor had been admitted to practise may, upon the application of such Clerk, order the said contract to be discharged or assigned to such person, upon such terms, and in such manner as the Court thinks fit. 20 V. c. 63, s. 13.

Case of death of the Attorney or Solicitor, to whom Clerk Articled provided for.

**15.** If an Attorney or Solicitor, to whom a Clerk has been so bound, dies before the expiration of the term for which the Clerk became bound, or if he discontinues practice as an Attorney or Solicitor, or if the contract be by consent of the parties cancelled, or in case such Clerk be legally discharged before the expiration of such term by any rule or order of the Court wherein such Attorney or Solicitor has been admitted, such Clerk may be bound by another contract in writing, to serve as Clerk to any other practising Attorney or Solicitor during the residue of his said term; and in case an affidavit be duly made and filed of the execution of such last mentioned contract within the time and in the manner hereinbefore directed, and subject to the like regulations with respect to the original contract and the affidavit of its execution, due service under such second or subsequent contract shall be deemed sufficient. 20 V. c. 63, s. 14.

#### DISABILITIES.

Attorneys and Solicitors in Prison not to practise.

**16.** In case an Attorney or Solicitor be a Prisoner in any Gaol or Prison, he shall not during his confinement therein, or within the limits thereof, commence, prosecute or defend as such Attorney or Solicitor any action in any Court of Law or Equity, nor act in any matter in Bankruptcy or Insolvency; and any such Attorney or Solicitor so practising, and any Attorney or Solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the Court in which any such proceedings take place, and upon the application of any person complaining thereof shall be punishable by such Court accordingly; and such Attorney or Solicitor shall moreover be incapable of maintaining any action at Law or in Equity for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him whilst such Prisoner as aforesaid in his own name or in the name of any other Attorney or Solicitor. 20 V. c. 63, s. 15.

Attorneys and Solicitors not to act as Agents of unqualified persons.

**17.** In case an Attorney or Solicitor wilfully and knowingly acts as the Professional Agent of any person not duly qualified to act as an Attorney or Solicitor, or suffers his name to be used in any such agency on account or for the profit of any unqualified person, or sends any process to such person, or does any other act to enable such person to practise in any respect as

an Attorney or Solicitor, knowing him not to be duly qualified, and in case complaint be made thereof in a summary way to any of the Superior Courts wherein such Attorney or Solicitor has been admitted, and proof be made thereof upon oath to the satisfaction of the Court, the Attorney or Solicitor so offending may, in the discretion of the Court, be struck off the Roll and disabled from practising as such Attorney or Solicitor; and the Court may also commit such unqualified person so having practised as aforesaid to any Common Gaol or Prison for any term not exceeding one year. 20 V. c. 63, s. 16.

Knowing the want of qualification.

18. In case any person, unless himself a Plaintiff or Defendant in the proceeding, commences, prosecutes or defends in his own name, or in that of any other person, any action or proceeding in any Court of Law or Equity, without being admitted and enrolled as aforesaid, he shall be incapable of recovering any fee, reward or disbursements on account thereof; and such offence shall be a contempt of the Court in which such proceeding has been commenced, carried on or defended, and punishable accordingly. 20 V. c. 63, s. 17.

Penalty on Attorneys practising without being admitted.

19. Except in case of fraud, no person admitted and enrolled shall be struck off the Roll on account of any defect in the Articles of Clerkship, or in the registry thereof, or in his service thereunder, or in his admission and enrolment, unless application for striking him off the Roll be made within twelve months next after his admission and enrolment. 20 V. c. 63, s. 18.

Except in cases of fraud, Attorneys not to be struck off Roll for defect in articles, unless application made in 12 months from admission.

20. Every person duly admitted, sworn and enrolled as an Attorney or Solicitor of any one of the Courts of Queen's Bench, Common Pleas or Court of Chancery shall, upon production of his Admission therein, or an Official Certificate of such admission, and that the same still continues in force, and upon signing the Roll of the other Court, be admitted an Attorney or Solicitor of either or both of the other Courts, and any such Solicitor or Attorney may practise in the Court of Appeal. 20 V. c. 63, s. 20.

Attorneys of one Court to be admitted Attorneys of other Courts.

21. No Attorney or Solicitor shall practise in any Court of Law or Equity in Upper Canada, either in his own name or by his partner, deputy, or agent, or in the name of any other person, or otherwise, directly or indirectly while he holds, possesses, practises, carries on, or conducts any of the offices of Clerk of the Crown and Pleas of the Courts of Queen's Bench or Common Pleas, or of Deputy Clerk of the Crown and Pleas of any County or Union of Counties, Registrar of the Court of Chancery and Clerk of the Court of Appeal, Clerk of a County, or Clerk of a Division Court, in Upper Canada; and every such person, so practising, shall be subject to the forfeiture of such office, and shall, in addition thereto, be subject to a penalty of two thousand dollars, to be recovered in an action of debt in either of Her Majesty's Superior Courts of Common Law, to the

Practice prohibited while holding certain offices.

use of Her Majesty ; but nothing herein contained shall extend to any Local Master or Deputy Registrar of the Court of Chancery. 22 V. c. 94, s. 5,—22 V. c. 36. (1859.)

No Attorney to practise while engaged as a Merchant.

**22.** No Attorney or Solicitor shall practise in any of the Courts in Upper Canada during the time he is engaged in the business of a Merchant or connected by Partnership, public or private, in purchasing and vending merchandize in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged or to be connected as aforesaid. 20 V. c. 63, s. 22,—2 G. 4, c. 1, s. 44.

#### TEMPORARY PROVISIONS.

Persons entitled to be admitted on the 1st Dec. 1857, specially provided for.

**23.** Every person who on or before the tenth day of December, one thousand eight hundred and fifty-seven, had completed his period of service according to the Laws in force on ninth June, one thousand eight hundred and fifty-seven, but has not been admitted an Attorney or Solicitor in pursuance of such service, shall, if otherwise qualified according to the requirements of this Act, be capable of being admitted and enrolled an Attorney or Solicitor in pursuance of the provisions of this Act, in the same manner in all respects as if he had been actually bound by contract in writing, on the eleventh day of June, one thousand eight hundred and fifty-seven, and although such person had not attended during two of the Sittings of either of the said Courts in Term time as hereinbefore mentioned and required. 20 V. c. 63, s. 23.

Where certain requisites cannot be complied with, Law Society may afford relief and examine the applicant ; but certificate cannot be granted until the articles, affidavits, &c., have been left with Secretary of Law Society.

**24.** In the case of those persons who entered into contracts of service prior to the first July, one thousand eight hundred and fifty-eight, if by reason of the expiration of the period of any such contract during any Term of the Superior Courts of Common Law, it be impossible for an applicant for examination and admission to comply with the requisites of this Act, in respect to the leaving of the contract of service and any assignment thereof, together with the affidavit of due execution thereof, and of due service thereunder, with the Secretary of the Law Society of Upper Canada, fourteen days next before the first day of such Term, the Law Society, upon satisfactory proof that the day of expiration of such contract of service has not arrived, but will arrive previously to the last Thursday in the then present Term in which such applicant seeks admission, and upon being satisfied that all other requisites of this Act have been complied with, may proceed to the examination of such applicant notwithstanding his term of service has not been completed ; but no certificate of due service, fitness and capacity shall be issued by the Law Society under the provisions of this Act, until the said contract of service and affidavits, and all other documents required by this Act, have been left with the Secretary of the Law Society. 22 V. c. 94, s. 1.

**25.** The Judges of the Courts of Queen's Bench, Common Pleas and Chancery may, from time to time, make such Rules or Regulations, other than the Rules and Regulations hereinbefore referred to, as to them may seem necessary and meet for carrying out the provisions of this Act. 20 V. c. 63, s. 25.

Judges of Superior Courts to make rules, &c.

**26.** The following fees shall be payable under this Act, that is to say: 20 V. c. 63, s. 24.

Fees payable under this Act.

1. To Clerk of the Crown and Pleas—On filing Articles and Assignments (if any) and every affidavit of execution of such Articles, and making the endorsement required by the Act—Fifty cents;

2. To the Law Society of Upper Canada—On leaving Articles and Assignments thereof, Affidavits of Execution and Service and Certificates, for inspection, and enquiry as to due service previous to examination for admission—Two dollars;

3. To the Law Society of Upper Canada—For the examination and certificate of fitness and capacity, and of compliance with the requisites of the Act—Forty dollars;

4. To the Clerk of the Court whence Fiat issues—For Fiat for admission and oath, and on signing the Roll—One dollar;

5. To the Clerk of the Court whence Fiat issues—For Certificate—Two dollars;

6. To the Clerk of the Court on admission upon Certificate of admission of any other Court—For signing the Roll and Certificate of admission—Two dollars.

#### ATTORNEYS' COSTS.

**27.** No Suit at Law or Equity shall be brought for the recovery of fees, charges or disbursements, for business done by any Attorney or Solicitor as such, until one month after a Bill thereof, subscribed with the proper hand of such Attorney or Solicitor, his Executor, Administrator or Assignee, (or, in the case of a partnership, by one of the partners, either with his own name, or with the name or style of such partnership,) has been delivered to the party to be charged therewith, or sent by the Post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, or been enclosed in or accompanied by a letter subscribed in like manner, referring to such Bill. 16 V. c. 175, s. 20.

Attorneys to deliver their Bill one month before bringing action for costs.

**28.** Upon the application of the party chargeable by such Bill within such month, any of the Superior Courts of Law or Equity, or any Judge thereof, or any Judge of a County Court shall, without any money being brought into Court, refer the

Party chargeable may have Bill taxed and what steps to be taken by

him for that purpose.

Bill, and the demand thereon, to be taxed by the proper officer of any of the Courts in which any of the business charged for in such Bill was done ; and the Court or Judge making such reference shall restrain the bringing any Suit for such demand pending the reference.

Court or Judge may order Bill to be referred on application of either party.

**29.** In case no application be made within the month, then the Court or Judge upon the application of either party may order a reference with such directions and conditions as he may deem proper ; and may upon such terms as may be thought just restrain any suit for such demand pending the reference.

No reference to be made on application of party chargeable after verdict or after 12 months from delivery of Bill.

**30.** No such reference shall be directed upon application made by the party chargeable with such Bill after a verdict has been obtained or a Writ of Inquiry executed, or after twelve months from the time such Bill was delivered, sent or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom the application for the reference is made.

If parties refuse to attend, Officer may tax Bill *ex parte*.

**31.** In case either party to any such reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made, may tax the Bill *ex parte* ; and in case the reference is made upon the application of either party and the party chargeable with the Bill attends the taxation, the costs of the reference shall be paid according to the event of the taxation, except that if a sixth part be taxed off, the costs shall be paid by the party by whom or on whose behalf, such Bill was delivered ; and if less than a sixth part be taxed off, then by the party chargeable with such Bill, if he applied for or attended the taxation.

Order of reference to direct Officer to tax costs of reference and to certify what he finds due on taxation.

**32.** Every order for such reference shall direct the Officer to whom the reference is made, to tax the costs of the reference, and to certify what, upon the reference, he finds to be due to or from either party in respect of such Bill and of the costs of the reference, if payable.

Officer may make special certificate, and Court or Judge may direct payment of costs of taxation.

**33.** Such Officer may certify specially any circumstances relating to such Bill or taxation, and the Court or Judge thereupon make such Order as may be deemed right respecting the payment of the costs of the taxation.

Court or Judge may give special directions relative to costs of reference.

**34.** In case such reference be made when the same is not authorized, except under special circumstances as hereinbefore provided, the Court or Judge in making the same may give any special directions relative to the costs of the reference.

Where no Bill delivered, or where Bill, if delivered, might have

**35.** Where no Bill has been delivered, sent or left as aforesaid, and where such Bill if delivered, sent or left, might have been referred as aforesaid, any such Court or Judge may order the delivery of a Bill, and may also order the delivery up of Deeds



or papers in the possession, custody or power of the Attorney or Solicitor, his Assignee or representatives, in the same manner as has heretofore been done in cases where any such business had been transacted in the Court in which such Order was made.

been referred, Court or Judge may order delivery up of papers.

**36.** In proving a compliance with this Act, it shall not be necessary in the first instance to prove the contents of the Bill delivered, sent or left, but it shall be sufficient to prove that a Bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner aforesaid; but the other party may shew that the Bill so delivered, sent or left, was not such a Bill as constituted a *bonâ fide* compliance with this Act.

Not necessary in first instance in action on Bill to prove contents of Bill delivered.

**37.** Any Judge of the Superior Courts of Law or Equity, or a County Judge, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to quit Upper Canada, may authorize an Attorney or Solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of a Bill as aforesaid. 16 V. c. 175, s. 20.

The Judges may allow actions for costs within one month if departure from U. C. be apprehended.

**38.** When any person not being chargeable as the principal party is liable to pay or has paid any Bill either to the Attorney or Solicitor, his Assignee, or representative, or to the principal party entitled thereto, the party so paying, his Assignee or representative, may make the like application for a reference thereof to taxation and in like manner as the party chargeable therewith might himself have made, and the same proceedings shall be had thereupon, as if such application had been made by the party so chargeable.

When a party not being the principal pays a Bill of costs, a taxation may be allowed afterwards.

**39.** In case such application is made when, under the provisions hereinbefore contained a reference is not authorized to be made except under special circumstances, the Court or Judge to whom the application is made, may take into consideration any additional special circumstances applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the Bill, if he was the party making the application. 16 V. c. 175, s. 21.

When special circumstances may be considered.

**40.** For the purpose of any such reference upon the application of the person not being the party chargeable, or of a party interested as aforesaid, such Court or Judge may order the Attorney or Solicitor, his Assignee or representative, to deliver to the party making the application a copy of the Bill, upon payment of the costs of the copy. 16 V. c. 175, s. 22.

A Judge may order the delivery of a copy of the Bill.

When a Bill taxed may be referred.

**41.** No Bill previously taxed shall be again referred, unless under the special circumstances, the Court or Judge to whom the application is made thinks fit to direct a retaxation thereof. 16 V. c. 175, s. 22.

Payment not to preclude taxation if applied for within a year.

**42.** The payment of any such Bill as aforesaid shall in no case preclude the Court or Judge to whom application may be made from referring such Bill for taxation, if the application be made within twelve months after payment, and if the special circumstances of the case in the opinion of such Court or Judge appear to require the same, upon the terms and subject to the directions which to the Court or Judge seem right. 16 V. c. 175, s. 23.

A Taxing Officer may require the assistance of the officer of any other Court.

**43.** In all cases in which a Bill is referred to be taxed, the Officer to whom the reference is made, may request the proper Officer of any other Court, to assist him in taxing any part of such Bill, and such Officer, so requested, shall thereupon tax the same, and shall have the same powers, and may receive the same fees in respect thereof, as upon a reference to him by the Court of which he is such Officer, and he shall return the Bill, with his opinion thereon, to the Officer who so requests him to tax the same. 16 V. c. 175, s. 24.

How applications against Attorneys to be intitled.

**44.** All applications made to refer any Bill to be taxed, or for the delivery of a Bill, or for the delivering up of Deeds, documents and papers, shall be made "in the matter of such Attorney or Solicitor;" and upon the taxation of any such Bill, the certificate of the Officer by whom the Bill is taxed shall (unless set aside or altered by order of a Judge, Decree or Rule of Court,) be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the course of the Court in which the reference has been made. 16 V. c. 175, s. 25.

PROVISIONS FOR RAISING FUNDS FOR SALARIES OF REPORTERS.  
PRACTITIONERS TO TAKE OUT CERTIFICATES.

The Law Society to provide for salaries of Reporters by fees to be paid by Attorneys.

**45.** In order to provide for the Salaries of the Reporters in the Superior Courts, the Benchers of the Law Society of Upper Canada may, by any Rule made by them with the approbation of the Visitors thereof, one of the Judges of each of the Superior Courts of Law and of Equity being one, appoint a sum not exceeding five dollars, in respect of each of the said Courts of Queen's Bench, Common Pleas and Chancery, to be annually paid to the Treasurer of the said Society by every practising Attorney and Solicitor of any of the said Courts, and in case of persons being Solicitors of the Court of Chancery and also Attorneys of both the said Common Law Courts, the Benchers may appoint one sum to be annually paid by every such Practitioner. 18 V. c. 128, s. 8.

Sum to be paid by Attorneys and Solicitors annually for certificates to practise.

## CERTIFICATES HOW ISSUED.

**46.** Attorneys' and Solicitors' Certificates to practise shall be issued by the Secretary of the Society. 18 V. c. 128, s. 9. Secretary to issue the certificates.

**47.** The Secretary of the said Law Society shall be annually furnished with such Certificates (in blank) by the respective Clerks of the Crown and Pleas, and the Registrar in Chancery. 18 V. c. 128, s. 9. To be furnished to him in blank by Clerks of the Crown.

**48.** No such Certificate shall be issued to any Attorney or Solicitor, being at the time a Member of the Society, who at the time of payment of his Certificate fee is indebted to the Society for any Term Fee, or other fee or due payable to the Society, until all such last mentioned fees and dues have been paid to the Treasurer. 18 V. c. 128, s. 9. Certificates not to be issued till all past dues paid.

## WHEN FEES TO BE PAID.

**49.** Every practising Attorney and Solicitor shall annually, in Michaelmas Term, pay to the Treasurer, the Certificate fees appointed by the Society, and thereupon the Secretary shall deliver to him one or more Certificates of his being such Attorney or Solicitor. 18 V. c. 128, s. 10. Certificate fees to be paid annually in Michaelmas Term.

## LISTS OF PRACTITIONERS TO BE FURNISHED, &amp;c.

**50.** The Clerks of the Crown and Pleas respectively, and the Registrar in Chancery, shall annually, during the vacation after Trinity Term, deliver to the Secretary or at his office in Osgoode Hall, certified under their respective hands and the Seals of the said Courts respectively, a Copy of so much of the Roll of Attorney's and Solicitor's of their respective Courts, as contains the names of those admitted to practise therein subsequently to the last return by such Clerks or Registrar respectively made to the said Secretary. 18 V. c. 128, s. 11. Copy to be delivered to Secretary in vacation after Trinity Term.

**51.** The Secretary shall enter all such Certified Copies in a Book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered in such book. 18 V. c. 128, s. 12. Secretary to enter certified copies of Roll in a Book.

## WHAT TO BE DONE IF AN ATTORNEY OR SOLICITOR BE STRUCK OFF THE ROLL.

**52.** Whenever any Attorney or Solicitor is struck off the Roll of any of the said Courts, the Clerk of the Crown or Registrar of such Court shall certify the same under his hand and the seal of the Court to the Secretary of the Society, stating whether such Attorney or Solicitor was struck off at his own request or otherwise, and the Secretary shall attach such certificate When Attorney or Solicitor struck off Roll, Clerk to certify same to Secretary.

to the certified copy of the Roll on which the name of such person stands, and shall in the book to be by him kept as aforesaid, make a note opposite the name of such person, of his having been struck off such Roll. 18 V. c. 128, s. 13.

CLERKS TO FURNISH BLANK CERTIFICATES.

Clerks to furnish blank Attorneys' certificates to Secretary.

**53.** Each of the Clerks of the Crown and Pleas, and the Registrar in Chancery, shall annually, during the Vacation of Trinity Term furnish the Secretary as many blank Attorney's and Solicitor's certificates, (dated of the last day of such Vacation) as there were Attorneys or Solicitors standing on the Rolls of such Courts respectively on the last day of that Term. 18 V. c. 128, s. 14.

Secretary to note date of issue on margin.

**54.** The Secretary shall, in the margin of every certificate issued by him, note under his hand the day of its issue, and shall at the commencement of every new year, destroy all blank certificates of the previous year then remaining unissued. 18 V. c. 128, s. 15.

Secretary to enter in Book alphabetical list of names on the Rolls, and annually on or before 1st February put up in his office, and in the office of Clerks of the Crown alphabetical list of certified Attorneys.

**55.** The Secretary shall, in a second book to be kept in his office for that purpose, enter all the names contained in the copies of Rolls so transmitted to him, alphabetically arranged, with a reference to the numbers of each name on the Roll or Rolls on which the same stands; and shall, annually on or before the first day of February, put up in his office and also in the offices of each of the Clerks of the Crown and Pleas and Registrar in Chancery, an alphabetical list certified by him, under his hand, of all Attorneys and Solicitors who have taken out their certificates for the then current year, and shall, from time to time, add to the list put up in his own office the name of each Attorney or Solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when such certificate was taken out. 18 V. c. 128, s. 16.

EXTRA FEES OF CERTIFICATES NOT TAKEN OUT IN DUE TIME.

If certificates not taken out in term, sums by way of penalty to be paid.

**56.** If any Attorney or Solicitor omits taking out such annual certificate within the time aforesaid, he shall not be entitled thereto until he pays to the Treasurer, not only the certificate fee so appointed as aforesaid, together with any fees or dues that he, if a Member of the said Society, owes the Society, but also the additional sum by way of penalty, in respect of each of such Courts, as follows :

1. If such certificate be not taken out until after the last day of Hilary Term, the further sum of two dollars ;

2. If not until after the last day of Easter Term, the further sum of three dollars ; and

3. If not until after the last day of Trinity Term, the further sum of four dollars. 18 V. c. 128, s. 17.

PENALTY FOR PRACTISING WITHOUT A CERTIFICATE.

**57.** If any Attorney or Solicitor practises in any of the said Courts of Queen's Bench, Chancery, or Common Pleas, respectively, without such certificate, he shall forfeit the sum of forty dollars, which forfeiture shall be paid to the Treasurer of the Law Society for the uses thereof, and may be recovered in either of the said Courts of Common Law. 18 V. c. 128, s. 18.

Attorneys, &c., practising without certificate to forfeit \$40.

**58.** No Attorney or Solicitor, admitted as aforesaid, is required to take out any such certificate until the Michaelmas Term next following his admission. 18 V. c. 128, s. 19.

Certificate need not be taken out till Michaelmas Term next after admission.

**59.** Each of the Clerks and Deputy Clerks of the Crown and Pleas and the Registrar and Deputy Registrars of the Court of Chancery, shall, at the commencement of each year, make out a list of the names of every Attorney and Solicitor who by the papers or proceedings filed or had in their respective offices appears to have practised as such Attorney or Solicitor at any time during the preceding year ending with the thirty-first day of December. 18 V. c. 128, s. 20.

Clerks of Courts and Deputies at beginning of each year, to make out list of Attorneys, &c., who have practised during the previous year.

**60.** Such Clerks, Deputy Clerks, Registrar and Deputy Registrars respectively shall, on or before the first day of Hilary Term in the year next to that for which they are made up, deliver or hand such lists to the Secretary at Osgoode Hall, certified under their respective hands and seals. 18 V. c. 128, s. 20.

And deliver the same to the Secretary.

C A P . X X X V I .

An Act respecting Reporters in the Superior Courts.

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

HOW APPOINTED.

**1.** The Benchers of the Law Society in Convocation may, by Instruments under the Corporate Seal, appoint fit and proper persons (being Members of the Society of the degree of Barrister at Law,) to be Reporters, one for the Court of Queen's Bench, one for the Court of Chancery, and one for the Court of Common Pleas, who shall be amenable to the Society in Convocation for the correct and faithful discharge of their respective duties, and be subject to such rules for the discharge of their duties, including the publishing of their Reports, as the Society in Convocation, with the approbation of the Visitors thereof, think fit to make. 18 V. c. 128, s. 2.

Reporters to be appointed by and amenable to the Society for the faithful discharge of their duties.

## SALARIES.

Salaries of Reporters not to exceed \$600 per year.

2. The Salary of each of the Reporters shall not exceed the sum of six hundred dollars per annum, and may be fixed at, or varied within that amount, as the Society in Convocation, with such approbation as aforesaid may, from time to time, think just. 18 V. c. 128, s. 7.

## APPOINTMENT AND REMOVAL OF TO BE APPROVED BY THE JUDGES.

Reporters not removeable without the assent of the judges.

3. No Reporter shall be appointed or removed without the assent of the Judges of the particular Court to which the Reporter is proposed to be or has been appointed, signified to the Society in writing under the hands of such judges upon report made to them by the Society in Convocation, of the proposed appointment or removal of such person. 18 V. c. 128, s. 2.

## WHAT JUDGMENTS ARE TO BE REPORTED.

Decisions whether written or oral to be reported.

4. Each respective Reporter shall report not only such decisions of the Court to which he is Reporter as may be delivered in writing, but also the substance of such of the oral decisions thereof as are of general importance, and shall without delay cause such reports to be fairly entered in a book, and submit the same for the inspection of the Judges of such Court; which reports, after due Examination and Correction, shall be signed by such Judges respectively, or such of them as are not prevented by absence or sickness from signing the same. 18 V. c. 128, s. 3.

Law Society may require Reporters to report the decision in Practice Court and in Chambers.

5. The Benchers of the Society in Convocation may, by Rules made with such approbation as aforesaid, require the Reporters of the Common Law Courts jointly or separately to report the decisions of the several Judges of such Courts, when sitting in the Practice Court, or at Chambers, and may thereby direct the manner in which such reports shall be made, entered and submitted for the correction and approval of the individual Judges who pronounce the same, and be afterwards published. 18 V. c. 128, s. 4.

Society may require judgments of the Court of Appeal to be reported.

6. The Benchers may also in like manner require the three Reporters, or any two of them jointly, or any one of them separately, to report the decisions of the Court of Error and Appeal, or require each of such Reporters separately to report such of the decisions thereof as are pronounced therein on any Writs, Petitions or other proceeding of Error or Appeal from the particular Court below, of which he is Reporter, and may also direct the manner in which the reports of such last mentioned decisions shall be made, entered, and submitted for correction and approval, and afterwards published. 18 V. c. 128, s. 5. 20 V. c. 5, ss. 20, 21.

## WHEN THE REPORTS SHALL BE PUBLISHED.

7. The Reporters may, and whenever thereto required by the Benchers of the Society in Convocation, shall publish such reports, or a digest thereof, in such manner as the Benchers, by any general Rules made and approved as aforesaid, direct; and the profits to arise from the publication of such reports shall belong to each of such Reporters respectively. 18 V. c. 128, s. 6.

When the reports to be published.

Profits to belong to the Reporter.

## CAP. XXXVII.

## An Act respecting the Appointment of Local Crown Attorneys.

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

1. In every County in Upper Canada, there shall be a Local Crown Attorney for the County, to aid in the Local Administration of Justice, and to perform the duties by this or any other Act assigned to County Attorneys. 20 V. c. 59, ss. 1, 5. No. 9.

County Attorney for every County.

2. The Governor shall appoint a County Attorney for each County in Upper Canada, to hold office during pleasure, and upon the death, resignation or removal of a County Attorney, shall supply the vacancy. 20 V. c. 59, s. 3.

Governor to appoint, remove, &c.

3. No person shall be appointed a County Attorney, or shall act in that capacity, who is not a Barrister at Law of not less than three years' standing at the Upper Canada Bar, and a resident in the County for which he is appointed; But any person now holding the Office of Clerk of the Peace, who is a Barrister at Law, may be appointed to the Office of County Attorney for the County of which he is Clerk of the Peace. 20 V. c. 59, s. 2.

Who qualified to be appointed.

4. No County Attorney shall, by himself or partner in business, act or be directly or indirectly concerned as Counsel or Attorney for any prisoner or party, in respect to any charge against such prisoner or party, of treason, felony or other offence punishable under the criminal Law of this Province. 20 V. c. 59, s. 4.

Neither County Attorney nor his partner to defend persons charged with criminal offences.

## CAP. XXXVIII.

## An Act respecting the Office of Sheriff.

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

## QUALIFICATIONS.

1. No person shall be appointed Sheriff of any County unless—

Qualification  
for office of  
Sheriff.

1. He is possessed of real estate in Upper Canada of the actual value of three thousand dollars above incumbrances ; 3 W. 4, c. 8, s. 8.

Qualification  
how verified.

2. Nor unless, before receiving his Commission, he makes an affidavit to that effect sworn in open session before the Chairman of the Quarter Sessions of the County ; 3 W. 4, c. 8, s. 8.

## SECURITIES.

Bond to be  
given.

3. Nor until he has given a Bond to Her Majesty, Her Heirs and Successors, in the penal sum of Four Thousand dollars, together with two sureties in Two thousand dollars each, to be approved of by the Minister of Finance, with a condition that the intended Sheriff will well and faithfully account for and pay over all the moneys he receives for Her Majesty ; and such Bond and Condition shall be in the form A, or to the like effect ; 3 W. 4, c. 8, ss. 2, 4, 7.

Covenant with  
sureties to be  
given.

4. Nor until he, and two or four sufficient sureties, enter into a joint and several Covenant in Duplicate in the form B, or to the like effect, and such sureties shall not be accepted as sufficient unless the Court of General Quarter Sessions of the Peace for the County for which the appointment is to be made, ascertain and determine, and the Chairman thereof certifies under his hand and seal, that the Court are satisfied that each respective person therein named is worth the full amount for which he is required to become surety ; 3 W. 4, c. 8, ss. 3, 7.

Bond and Co-  
venant to be  
deposited in  
the office of  
the Minister of  
Finance.

Covenant to be  
also deposited  
in office of  
Clerk of the  
Peace.

5. Nor until such Bond and one of such Duplicate Covenants, together with the Affidavit of Qualification and the Certificate of the Chairman of the Quarter Sessions hereinbefore required, have been deposited in the office of the Minister of Finance, and the other of such Duplicate Covenants has been filed in the Office of the Clerk of the Peace of the County, for which filing such Clerk shall be entitled to a fee of fifty cents ; but in case a person has



has been appointed Sheriff of a Junior County, about to be separated from a Union of Counties, under the Act for the regulation of Municipal Institutions in Upper Canada, he shall have six months after the dissolution of the Union to make the affidavit of Qualification, and to give the Securities required by Law, and if he makes default, his office shall, after the expiration of such six months, become vacant. 3 W. 4, c. 8, s. 4,--12 V. c. 78, s. 17.

2. Any person may examine the Covenant of the Sheriff and his sureties, and the Clerk in possession thereof shall, on demand, deliver to any person, who desires the same, a copy thereof, on payment of the following fees :

Any person may examine Sheriff's Covenant on payment of certain fees.

	\$	cts.
For Search and Examination of Covenant.....	0	25
For Copy of Covenant.....	1	00

3 W. 4, c. 8, s. 5.

3. The Covenant entered into shall specify the following sums as the extent to which the parties thereto shall be severally considered as covenanting to afford indemnity, that is to say :

Covenant to specify the sums in which the Sheriff and sureties covenant to afford indemnity.

The Sheriff four thousand dollars ; Two Sureties two thousand dollars each, or four Sureties one thousand dollars each ; 3 W. 4, c. 8, ss. 2, 8, 20, 21.

And such Covenants shall be available to and may be sued upon by any person suffering damages by the default or wilful misconduct of the Sheriff, and such Sureties shall be liable to indemnify the parties to any legal proceeding against any omission or default of the Sheriff in not paying over moneys received by him, and against any damages sustained by any such party in consequence of the Sheriff's wilful or negligent misconduct in his office, and the Sheriff shall be joined in any action to be brought on such Covenant. 3 W. 4, c. 8. s. 21.

Nature of the liability of the sureties.

4. Except as hereinafter mentioned, the person so suing, or any other person, notwithstanding such suit, may bring an action upon the same Covenant for any other default or misfeasance, and such action shall not be barred by reason of any prior recovery, or of any judgment for the Defendant rendered in a former action, or of any other action being depending upon the same Covenant for any distinct cause of action. 3 W. 4, c. 8, s. 12.

Actions on Sheriff's Covenant not to discharge subsequent actions on same Covenant for other causes.

5. In case any of the Sureties has paid or become liable under his Covenant or Bond to pay an amount equal to the sum for which he became Surety, the Bond or Covenant shall as to him be deemed discharged and satisfied as to any claim thereon beyond such payment or liability ; and the Sheriff shall, within four months after such discharge, give anew such Securities as are required by this Act ; but if the amount

Any surety having paid the full amount of his liability shall be discharged, and Sheriff shall procure another surety.

amount which such Surety has paid or has become liable to pay as aforesaid, be not equal to the full amount for which he became Security, the Court, after deducting from such full amount the sums which he has so paid or become liable to pay, shall render judgment against him for any sum not exceeding the balance of the sum for which he became Surety. 3. W. 4, c. 8, ss. 13, 14.

In case of the death, absence or insolvency of any surety, new sureties to be given.

**6.** In case proof be made, by affidavit or otherwise to the Court of General Quarter Sessions of the Peace for the County, that any of the Sureties in any such Bond or Covenant has died or become resident out of Upper Canada, or become insolvent, or that the Covenant has been discharged as aforesaid, the said Court shall give notice thereof to the Sheriff, and the Sheriff shall, within four months after such notice has been given, give anew the like Bond or Covenant (as the case may be), as hereinbefore required, and the Sheriff shall in all other respects observe the same formalities in furnishing Securities, giving notice of death, bankruptcy, insolvency or removal from Upper Canada of any of his Sureties, and in registering and depositing his Bond and Securities as other persons, and shall be liable to all the penalties and forfeitures mentioned in the Act of this Province to regulate the giving of Securities by Public Officers. 3 W. 4, c. 8, ss. 9, 15,—4, 5, V. c. 91, s. 6.

Sureties apprehending insolvency of the Sheriff may notify the Governor, in which case new sureties may be required.

**7.** In case during the period for which any Covenant required by this Act has been given, any one of the Sureties apprehends that the Sheriff has become insolvent, or has not property to the amount of three thousand dollars over and above all incumbrances and debts, and transmits to the Governor an affidavit to that effect made by him and sworn before a Commissioner for taking affidavits in one of the Superior Courts of Common Law, the Secretary of the Province shall thereupon officially notify such Sheriff that he must forthwith furnish new Security in the manner pointed out by this Act, or on affidavit deny that he is insolvent, or allege that he is worth the sum of three thousand dollars over and above all incumbrances and debts, and if the Sheriff does not comply with such requisition within one month next after the sitting of the Court of Quarter Sessions next ensuing such notification, he shall for that cause be removed from office. 3 W. 4, c. 8, s. 10.

New sureties being given not to discharge prior defaults.

**8.** In case any new Surety be given, either at the end of the stated period or by way of substitution for any other Surety within the period, the former Surety shall only be discharged as to defaults or misfeasances suffered or committed after the perfecting of the new Security, and not as to any previous defaults or misfeasances. 3 W. 4, c. 8, s. 11.

Executions against Sheriffs and their sureties, to be

**9.** Upon any Writ of Execution under a judgment recovered on such Covenant, the Plaintiff or his Attorney shall, by an indorsement on the writ, direct the Coroner to levy the amount

amount thereof upon the goods and chattels of the Sheriff in the first place, and in default of goods and chattels of the Sheriff to satisfy the amount, then to levy the same, or the residue thereof, of the goods and chattels of the other Defendants in such writ, and so in like manner with any writ against the lands and tenements upon a judgment on any such Covenant. 3 W. 4, c. 8, s. 16.

first levied on the Sheriff.

**10.** Notwithstanding the Sheriff of a County may have forfeited his office and become liable to be removed therefrom, by reason of his not having complied with the provisions of this Act, he shall nevertheless continue in his office to all intents and purposes, and the liability of himself and of his sureties shall remain until a new Sheriff has been appointed and sworn in his stead. 3 W. 4, c. 8, s. 22.

Any Sheriff forfeiting his office, to continue in office till successor appointed.

**11.** No Sheriff or Deputy Sheriff shall directly or indirectly keep a shop, or trade, traffic, sell, or expose for sale any goods, wares or merchandize either by wholesale or retail, or maintain any action for the price of any goods so sold, excepting always such as by the duties of his office he is legally commanded or empowered to sell; and no Sheriff, Deputy Sheriff, Bailiff or Constable shall directly or indirectly purchase any goods or chattels by him exposed to sale under any execution. 2 G. 4, c. 1, s. 21,—51 G. 3, c. 6, s. 3.

Sheriffs or Deputies not to trade as shop keepers or purchase goods sold by them under execution.

**12.** Every Sheriff shall each day, except Sunday, Christmas day, Good Friday and the Birth day of the Sovereign, keep his Office open from ten o'clock in the forenoon until four o'clock in the afternoon, and during all that time he, his Deputy, or some Clerk competent to do business for him, shall be present to transact the business of the Office. 16 V. c. 175, s. 14.

Office hours at Sheriff's office.

**13.** Every Sheriff shall execute and return before the Judge or Judges assigned to hold the Assizes, or to execute any Commission or to hold any Court of Assize and *Nisi Prius*, or of Oyer and Terminer and Gaol Delivery in his County, all precepts and writs of *Nisi Prius* and other Jury process delivered to him or his Deputy, and such Sheriff shall give his attendance upon such Judge or Judges as well for the returning of such "*tales de circumstantibus*" as may be prayed for the trial of issues, as for the maintenance of good order in Her Majesty's Courts and for the doing and executing of all other things to the office of Sheriff in such case belonging. 2 G. 4, c. 1, s. 31.

Sheriff to return precepts and attend Judges at the Assizes.

**14.** In case a Sheriff dies, the Under Sheriff, or Deputy Sheriff by him appointed, shall nevertheless continue the office of Sheriff, and execute the same, and all things belonging thereunto, in the name of such deceased Sheriff, until another Sheriff has been appointed and sworn into office; and the said Under Sheriff or Deputy Sheriff shall be answerable for the execution of the said office, in all respects, and to all intents and purposes

Upon death of a Sheriff, his Deputy to continue to execute office in his name until appointment of successor.

Deputy and sureties to be responsible for execution of the office in the interval.

purposes whatsoever, during such interval, as the Sheriff so deceased would by law have been if he had been living; and the security given to the Sheriff so deceased by the said Under Sheriff and his pledges, shall remain, and be a security to the Queen, Her Heirs and Successors, and to all persons whatsoever, for such Under Sheriff's due performance of his office during such interval. 3 W. 4, c. 8, s. 23.

SHERIFFS TO MAKE RETURN OF FINES LEVIED.

Sheriffs to transmit quarterly accounts to Minister of Finance.

**15.** Every Sheriff shall, quarterly, and within twenty days after the expiration of each quarterly period, transmit to the Minister of Finance of the Province a just, true and faithful account, to be verified upon oath, of all fines, penalties and forfeitures, which he has been required and commanded to levy and make by any lawful authority, and of the receipt and application of the same, or of the reason why the same have not been received and applied, and each Sheriff shall pay over to the proper Officer or person lawfully entitled to receive the same, the several sums collected by him as aforesaid, within twenty days next after the expiration of the period within which the same has been collected; and every Sheriff neglecting or refusing to transmit such quarterly account, or to pay over any such sum or sums of money so collected by him within the period hereby prescribed, shall incur and be subject to the like penalty, and may be sued for the same in the same manner as is provided and declared with regard to Justices of the Peace neglecting or refusing to make the returns required by the Act respecting the return of Convictions and Fines by Justices of the Peace, and of fines levied by Sheriffs. 4, 5 V. c. 12, s. 8.

Penalty upon neglect.

Forms.

**16.** The following are the forms referred to in the foregoing sections of this Act :

A. See s. 1, No. 3.

Know all men by these presents, that we, A. B., of the County of \_\_\_\_\_, Esquire, (if about to be appointed Sheriff, or) Sheriff of County of \_\_\_\_\_, (if already in the office of Sheriff,) C. D., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, and E. F., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, are held and firmly bound to Our Sovereign Lady the Queen, Her Heirs and Successors, in the several sums following, that is to say: The said A. B., in the sum of four thousand dollars; the said C. D., in the sum of two thousand dollars; and the said E. F., in the sum of two thousand dollars: to be paid to Our Sovereign Lady the Queen, Her Heirs and Successors; for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, his heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

The

The condition of this obligation is such, that if the above bounden A. B., his executors or administrators, shall well and faithfully account for and pay over to Her Majesty's Receiver-General of this Province, or to such person as may be authorized to receive the same, all such sum and sums of money as he shall receive as Sheriff of the County of \_\_\_\_\_, (or as such Sheriff, as the case may be,) as aforesaid, for Our said Lady the Queen, Her Heirs or Successors, from the date of this obligation until the day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, then this obligation to be void, otherwise to remain in full force and virtue.

A. B. [L. S.]  
 C. D. [L. S.]  
 E. F. [L. S.]

Signed, sealed and delivered }  
 in presence of }

B. See s. 1, No. 4.

Know all men by these presents, that we, A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, (if about to be appointed Sheriff, (or) Sheriff of the County of \_\_\_\_\_, (if already in the office of Sheriff,) C. D., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, and E. F., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, (when four sureties are given, the names of the other two to be inserted in like manner,) do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B., as Sheriff of the County of \_\_\_\_\_, shall well and duly pay over to the person or persons entitled to the same, all such moneys as he shall receive by virtue of his said office of Sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his Deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding; nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties hereto, than as follows, that is to say:

Against the said A. B., in the whole .....\$  
 Against the said C. D.,.....\$  
 Against the said E. F.,.....\$

(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord,

A. B. [L. S.]  
 C. D. [L. S.]  
 E. F. [L. S.]

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

## C A P . X X X I X .

## An Act respecting the appointment of Commissioners to take Affidavits and Bail.

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

## TO TAKE AFFIDAVITS AND AFFIRMATIONS.

The Judges of the Superior Courts may appoint Commissioners for taking affidavits.

**1.** The Chief Justice and Justices of the Court of Queen's Bench, or any two of them, of whom the Chief Justice shall be one, and the Chief Justice and Justices of the Court of Common Pleas, or any two of them, of whom the Chief Justice thereof shall be one, or in the event of the death or absence from the Province of the Chief Justice of either of said Courts respectively, then the remaining Justices of the Court of which the Chief Justice has died or is absent, may, by one or more commission or commissions under the seal of said Courts respectively, from time to time empower such and so many persons as they think fit and necessary in the several Counties within Upper Canada, or within Lower Canada, to take and receive all and every such affidavits and affirmations (in cases where by law an affirmation is allowed) as any person or persons desire to make in or concerning any cause, matter or thing depending, or in any wise concerning any of the proceedings in the said respective Courts. 2 G. 4, c. 1, s. 39,—12 V. c. 77, ss. 1, 3,—2 V. c. 2,—12 V. c. 63, s. 48.

To be of the same force as if taken in open Court.

**2.** The affidavits and affirmations aforesaid shall be of the same force as if taken in open Court, and shall be filed in the office of the Court in which the same are taken, and may be read and made use of in the said Court as other affidavits or affirmations taken in such Court, and any person wilfully forswearing himself in any affidavit or making false affirmation before any of the said Commissioners, shall be liable to the same pains and penalties as if such affidavits or affirmations had been made in open Court.

## TO TAKE BAIL.

The Judges may also appoint Commissioners for taking bail.

**3.** The said Chief Justices and Justices of the said Superior Courts respectively, may from time to time in manner aforesaid appoint the same or other persons to be Commissioners in the several Counties in Upper Canada, to take and receive all and every such recognizance or recognizances of Bail as any person or persons may at any time desire to acknowledge or make in any action or suit depending in either of the said Courts, in such manner and form and by such recognizance of Bail as the Justices of the said Courts may take, which recognizance or recognizances

of

of Bail or Bail piece so taken as aforesaid shall be filed in the Office of the Clerk or Deputy Clerk of the Crown in the County in which the same has been taken, together with an affidavit of the due taking of the recognizance by some credible person present at the taking thereof. 2 G. 4, c. 1, s. 40.

4. The recognizance so taken and filed shall be of the like effect and subject to exception as to the Bail, in like manner and within the same time as if taken in open Court. 2 G. 4, c. 1, s. 40. Bail so taken may be excepted to.

5. Any Judge of either of said Courts may take the acknowledgment of Bail in any civil suit, which recognizance shall be filed as aforesaid without oath, and shall be of the like effect as if taken in open Court. 2 G. 4, c. 1, s. 42. Any of the Judges may take bail.

6. Each Commissioner appointed for taking Recognizances of Bail as aforesaid, may in like manner take the same in either of the said Superior Courts and in the County Courts. 8 V. c. 13, s. 20,—12 V. c. 63, s. 48. Commissioners may take bail in all the Courts.

7. The Judges and Clerks of the several County Courts respectively, may take all affidavits and affirmations and all Recognizances of Bail required to be taken in their respective Courts. 8 V. c. 13, s. 20,—16 V. c. 177, s. 33. The Judges and Clerks of County Courts may take affidavits: and bail.

8. Each Commissioner appointed for taking affidavits and affirmations in Upper Canada as aforesaid, may take affidavits and affirmations in either of the said Superior Courts, whether the Court for which he was appointed, or not, and in the Court of Chancery and in all the County and Division Courts. 16 V. c. 119, s. 16,—16 V. c. 177, s. 33,—20 V. c. 56, s. 19. The Commissioners of one Court may take affidavits in all other Courts.

9. The Commissioners for taking Affidavits in the Court of Chancery may administer oaths and take Affidavits in the Courts of Queen's Bench and Common Pleas, and County Courts. 20 V. c. 56, s. 19. *See ante Chap. 12, s. 13.* Including Commissioners of Court of Chancery.

10. Every Commissioner for taking Affidavits appointed by either of the said Superior Courts of Common Law or by the Court of Chancery, shall be deemed to be an Officer of all the said Courts. 20 V. c. 56, s. 19. Each Commissioner to be an Officer of all the Courts.

11. Any of the last mentioned Courts may revoke the Commission of any such Commissioner, whether the Commission was issued by such Court, or by one of the other Courts, and such revocation shall be notified to the other Courts, and shall operate as a revocation in regard to all the Courts and for all purposes. 20 V. c. 56, s. 19. Either of the other Courts may revoke the Commission of any Commissioner.

## 2. THE MEDICAL PROFESSION.

## C A P . X L .

## An Act respecting the Medical Board and Medical Practitioners.

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

The Governor may appoint a Medical Board.

**1.** The Governor may constitute and appoint, under His Hand and Seal at Arms, five or more persons legally authorized to practise Physic, Surgery or Midwifery, in Upper Canada, to be a Board, whereof any three shall be a quorum, to hear and examine all persons who desire to apply for a License to practise Physic, Surgery and Midwifery, or either of them, within Upper Canada. 59 G. 3, c. 13, s. 2, (1st Session.)

The Board may appoint a Secretary.

**2.** The Board, or a majority of the members composing the same, shall appoint from time to time a fit and proper person to be Secretary of the Board. 59 G. 3, c. 2, s. 2, (2nd Session.)

His duties.

**3.** The Secretary shall attend the meetings of the Board, and keep a record of the proceedings of the same in a book or books to be by him provided for that purpose, together with all such matters and things as to the Board appertains. 59 G. 3, c. 2, s. 2, (2nd Session.)

Board to sit four times a year not exceeding one week at a time.

**4.** The Board shall meet and be held in the City of Toronto, four times in each year, viz : on the first Monday in January, April, July and October, respectively, and may be continued by adjournment from day to day until the business before the Board be finished ; but no quarterly sitting shall be so continued by adjournment beyond the Saturday of the week in which the sitting commences. 59 G. 3, c. 2, s. 3, (2nd Session)

Notice of application.

**5.** Every person desirous of being examined by the Board, touching his qualifications for the practice of Physic, Surgery and Midwifery, or either of them, shall give due notice thereof to the Secretary of the Board in writing, setting forth the branch or branches of medical practice he wishes to be examined in. 59 G. 3, c. 2, s. 4, (2nd Session.)

Certificates of the Board.

**6.** If the Board be satisfied by such examination, that the person is duly qualified to practise Physic, Surgery and Midwifery, or either, they shall certify the same under the hands and seals of two or more of such Board. 59 G. 3, c. 13, s. 2.

License.

**7.** If the Governor be satisfied of the loyalty, integrity and good morals of the applicant, he may, on receipt of such certificate, under His Hand and Seal at Arms grant a license to the applicant



applicant to practise Physic, Surgery and Midwifery, or either, conformable to such Certificate. 59 G. 3, c. 13, s. 2, (1st Session.)

**8.** Upon the application of any person exhibiting a diploma or license as Physician or Surgeon, from any University in Her Majesty's dominions, or from the Royal College of Physicians or of Surgeons in London, or a commission or warrant as Physician or Surgeon in Her Majesty's Naval or Military Services, and producing an affidavit made before any Judge of any County Court in Upper Canada, stating that he is the person named in such diploma, license, commission or warrant, the Governor may grant to such applicant a license to practise Physic, Surgery and Midwifery in Upper Canada. 8 G. 4, c. 3, s. 2.

What other Licentiates may be authorized to practise physick, surgery or midwifery, and upon what proof of qualification.

**9.** Such affidavit shall be left by the applicant, and remain in the Office of the Provincial Secretary. 8 G. 4, c. 3, s. 3.

Where affidavit to be left.

**10.** Any person duly licensed or authorized to practise as a Physician, or as a Surgeon, or as both, either in Upper Canada or in Lower Canada, may practise in any part of this Province, for the purpose or purposes for which he might without this Act have practised in one of the aforesaid portions of this Province; but subject to the Laws to which other Practitioners are subject in the portion of this Province in which he practises. 4, 5 V. c. 41.

May practise in any part thereof.

Subject to the laws of the portion in which they so practise.

**11.** Any person, while employed on actual service in Her Majesty's Naval or Military Service, as Physician or Surgeon, may practise Physic, Surgery or Midwifery, in Upper Canada, without any license. 8 G. 4, c. 3, s. 5.

Certain medical officers may practise without license.

**12.** Except Homeopathsists duly authorized by Law, it shall not be lawful for any person, not being licensed as aforesaid, or not having been heretofore licensed by any medical board, or not being actually employed as a Physician or Surgeon in Her Majesty's Naval or Military Service, to practise Physic, Surgery or Midwifery, in Upper Canada, for hire, gain, or hope of reward. 8 G. 4, c. 3, s. 6.

General prohibition to practise without the proper authority.

**13.** Nothing in this Act contained shall prevent any female from practising Midwifery in Upper Canada, or require such female to take out a license. 8 G. 4, c. 3, s. 6.

Females may practise midwifery.

**14.** If any person not licensed, or authorized as aforesaid, or not being actually employed as a Physician or Surgeon in Her Majesty's Naval or Military Service, practises Physic, Surgery or Midwifery, for hire, gain or hope of reward, he shall be guilty of a misdemeanor, and may be prosecuted and punished accordingly. 8 G. 4, c. 3, s. 7.

Practising without authority, declared a misdemeanor.

**15.** Upon the trial of any person charged with such misdemeanor, the burthen of proof as to the license or right of the person

Proof of authority lies upon the defendant.

person tried, to practise Physic, Surgery or Midwifery, in Upper Canada, shall lie upon the Defendant. 8 G. 4, c. 3, s. 7.

Limitation of prosecution—  
one year.

**16.** No prosecution shall be commenced for such misdemeanor after one year from the offence committed. 8 G. 4, c. 3, s. 7.

Fine and imprisonment limited.

**17.** No person convicted of such misdemeanor shall be sentenced therefor to a longer period of imprisonment than six months, or to a greater fine than the sum of one hundred dollars. 8 G. 4, c. 3, s. 7.

Fees.

**18.** The following fees may be taken under this Act, and shall be paid by the applicant or licentiate, as the case may be. 59 G. 3, c. 13, s. 4, (1st session,)—8 G. 4, c. 3, s. 8.

SCHEDULE.

	\$	cts.
1. To the Board for certificate to practise .....	14	00
2. To the Private Secretary of the Governor for every license granted.....	4	00
3. To the County Court Judge for administering affidavit, verifying diploma, &c.....	0	50
4. To the Secretary of the Board.		
"    "    1. For every notice of intention to apply to the Board for examination.....	2	00
"    "    2. For every Certificate of the Board.....	2	00

C A P . X L I .

An Act respecting Homœopathy.

Preamble.

**W**HEREAS the system of Medicine called Homœopathy is much approved and extensively practised in many countries of Europe, in the United States and also in Canada; And whereas it is expedient to extend to duly qualified practitioners of this system privileges similar to those enjoyed by licentiates of medicine under the laws in force in this Province: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

First Board of Examiners appointed.

**1.** Until other persons be appointed, as hereinafter provided, Duncan Campbell, of the City of Toronto, M. D., Joseph J. Lancaster, of the Town of Galt, M. D., Alexander Thompson Bull, of the City of London, M. D., William A. Greenleaf, of the City of Hamilton, M. D., and John Hall, of the City

City of Toronto, M. D., shall be a Board (of whom three shall be a quorum) to examine all persons who may desire to obtain a license to practise medicine, according to the doctrines and teachings of Homœopathy, within this Province.

2. The Board may appoint a Secretary and Treasurer, who shall attend all the meetings, and keep a record of all the proceedings of the Board, in a book to be provided for the purpose. Secretary and Treasurer.

3. The Board shall hold two meetings in the City of Toronto in each year, viz: on the first Tuesday in January and July respectively, which may be continued by adjournment from day to day until the business before the Board be finished, but no session shall exceed one week. Meetings of the Board.

4. The Secretary may at any time, on the requisition of two members of the Board, call an extraordinary meeting of the Board for the purpose of examining candidates, and for the transaction of such other business as may come before it. Extraordinary meetings.

5. Every person who desires to be examined by the said Board, touching his qualifications to practise Physic, Surgery and Midwifery, or either of them, according to the doctrines and teachings of Homœopathy, shall give at least one month's notice in writing to the Secretary of the Board; and must show that he is not less than twenty-one years of age, that he has followed medical study uninterruptedly for not less than four years under the care of one or more duly qualified Medical Practitioners, and that he has attended at some University or Incorporated School of Medicine not less than two six months' courses of Anatomy, Physiology, Surgery, Theory and Practice of Medicine, Midwifery, Chemistry, Materia Medica and Therapeutics, respectively, and not less than one six months' course of Clinical Medicine and Medical Jurisprudence respectively. Notice by persons wishing to be examined: and what it must shew.

6. If the Board be satisfied by such examination that the person is duly qualified to practise either or all the said branches of Medicine, as they are understood and practised by Homœopaths, they shall certify the same under the hands and seals of two or more of such Board. Certificate to be granted.

7. The Governor, on the receipt of such certificate, may, if satisfied of the loyalty, integrity and good morals of the applicant, grant to him a license to practise Physic, Surgery and Midwifery, or either of them, in Upper Canada, conformably to the certificate. License on such certificate.

8. The Governor may, without any special certificate, grant the Provincial License to practise to such of the above named members of the Board as have not yet obtained it. Licenses to Members of the Board.

Board may  
make By-laws.

9. The Board shall have power to make By-laws for the regulation of its own affairs, which, however, shall not take effect until they have been published in the *Canada Gazette*.

Order of re-  
tirement of  
Members.

10. At the meeting in July, one thousand eight hundred and sixty, the Board shall determine by lot which three of its members shall retire, and shall immediately publish their names in one of the Toronto newspapers, and such retiring members shall then only hold office until their successors be appointed; and the other members of the Board shall vacate their seats (if successors be appointed) from and after the meeting in January, one thousand eight hundred and sixty-two.

Elections to  
supply vacan-  
cies.

11. The Practitioners licensed under this Act and resident in this Province may meet at Toronto, on any day during the January session of the Board in one thousand eight hundred and sixty-one, and on any day during such January session in each year thereafter, and may at such meeting elect, by a majority of votes, either two or three fit and proper persons to be members of the said Board in the place of the retiring members (who shall be eligible for re-election,) and the members so elected shall hold office for two years only, or until successors be elected as aforesaid.

## TITLE 6.

### TRADE AND COMMERCE.

#### I.—COMMERCIAL LAW.

#### CAP. XLII.

### An Act respecting Bills of Exchange and Promissory Notes.

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

Statutes 15 &  
17 G. 3, res-  
pecting small  
notes, not in  
force here.

1. The Act of the Parliament of Great Britain, passed in the fifteenth year of the reign of King George the Third, intituled, *An Act to restrain the negotiation of Promissory Notes and inland Bills of Exchange, under a limited sum, within that part of Great Britain called England*, and the Act of the Parliament of Great Britain, passed in the seventeenth year of His said Majesty's reign, intituled, *An Act for further restraining the negotiation of Promissory Notes and inland Bills of Exchange, under a limited sum, within that part of Great Britain called England*, being inapplicable to Upper Canada, shall not extend to

to or be in force therein, nor shall the said Acts make void any Bills, Notes, Drafts or Orders, which have been or may be made or uttered therein. 2 G. 4, c. 12, s. 1.

2. No person, or body corporate shall make or issue any note or undertaking printed, stamped or impressed in the whole or in part from a plate or engraving for the payment of money for an amount less than one dollar. 3 V. c. 4, s. 1.

No notes to be issued for less than one dollar.

3. In case any person since the tenth day of February, one thousand eight hundred and forty, has made or issued, or after this Act takes effect makes or issues any such note or undertaking for the payment of money for an amount less than one dollar, the person who has so made or issued or who makes or issues any such note or undertaking, shall be liable to pay to the holder of such note or undertaking treble the amount for which the same has been or may be hereafter made, to be recovered by action in any Division Court in Upper Canada. 3 V. c. 4, s. 1, and see s. 2.

When maker liable to treble the amount of notes for less than one dollar.

4. Nothing contained in this Act shall authorize any person or body corporate, to issue any note or undertaking for the payment of money, by law prohibited from issuing the same. 3 V. c. 4, s. 3.

This Act not to authorize the issue of notes otherwise prohibited.

5. In case any person accepts a bill of exchange, payable at a Bank, or at any other particular place, without further expression in his acceptance, or makes a promissory note payable at a bank, or at any particular place without further expression in that respect, such acceptance and such promise shall be deemed and taken to be a general acceptance and a general promise respectively. 7 W. 4, c. 5, s. 1.

When acceptances, &c., not expressed to be payable at a particular place only, to be considered general.

6. But if the acceptor expresses in his acceptance that he accepts the bill payable at a Bank, or at any other particular place only and not otherwise or elsewhere; or if the maker of a promissory note expresses in the body of the note that he promises to pay at a Bank, or at any other particular place only and not otherwise or elsewhere, then such acceptance or promise shall be deemed and taken to be a qualified acceptance or promise; and the acceptor or maker shall not be liable to pay the bill or note, except in default of payment when such payment has been first duly demanded at such Bank or other place. 7 W. 4, c. 5, s. 1.

If the words "and not otherwise or elsewhere," be added, then to be special.

7. No acceptance of any bill of exchange shall be sufficient to bind or charge any person, unless such acceptance is in writing on the bill, or if there be more than one part to such bill, then on one of the said parts. 7 W. 4, c. 5, s. 2,—12 V. c. 22, s. 4.

Acceptances of Bills must be in writing.

Bills and notes not affected by usury, in the hands of *bonâ fide* holders for value and without notice.

8. No bill of exchange or promissory note, although given for a usurious consideration, or upon a usurious contract, shall be void in the hands of an endorsee, (or if a note transferable by delivery, in the hands of a person who acquired the same as bearer,) for valuable consideration, unless such endorsee or bearer had, at the time of discounting or paying such consideration for the same, actual knowledge that such bill of exchange or promissory note was originally given for a usurious consideration or upon a usurious contract. 7 W 4, c. 5, s. 3,—12 V. c. 22, s. 23,—16 V. c. 80.

Rate of damages on dishonored foreign bills.

9. The Rate of Damages to be allowed and paid upon the usual protest for non-payment of Bills of Exchange drawn, sold or negotiated within Upper Canada, and although the same may not have been drawn on or by any person residing therein, shall, in the following cases, be as follows: 12 V. c. 76, s. 1.

If drawn in Europe or West Indies.

1. If the Bill has been drawn upon any person at any place in Europe or in the West Indies, or in any part of America not within, this Province or any other British North American Colony, and not within the Territory of the United States, ten per cent. upon the principal sum specified in the Bill; 12 V. c. 76, s. 1.

On other B. N. A. Colonies.

2. If the Bill has been drawn upon any person in any of the other British North American Colonies, or in the United States, four per cent. upon the principal sum specified in the Bill. 12 V. c. 76, s. 1.

Interest to be allowed.

10. In each of such last mentioned cases, the Bill shall also be subject to six per centum per annum of interest on the amount for which the Bill was drawn, to be reckoned from the day of the date of the protest to the time of repayment, and such aggregate amount, together with the expenses of noting, and protesting and the postages, shall be paid to the holder at the current rate of Exchange of the day when the protest for non-payment is produced and repayment demanded, that is to say: the holder of any such Bill returned under protest for non-payment, may demand and recover from the drawer or endorsers, so much current money of this Province as shall then be equal to the purchase of another Bill of the like amount, drawn on the same place, at the same date or sight, together with the damages and interest above mentioned, as also the expenses of noting and protesting the Bill, and all other charges and postages incurred thereon. 12 V. c. 76, s. 1.

By whom payable, and rate of exchange.

Damages and interest allowed in certain cases upon dishonored notes.

11. In case any promissory note payable only at some place in the United States of America, or in some one of the British North American Colonies not being Canada, and not otherwise or elsewhere, be made or negotiated within Upper Canada, and be protested for non-payment, the holder shall, in addition to the principal sum mentioned in the note, recover damages at the rate

rate of four per cent. upon such principal sum, and also interest thereon at the rate of six per centum per annum, to be reckoned from the day of the date of the protest, and such aggregate amount, together with the expenses of protesting the note, and all charges and postages incurred thereon, shall be paid to the holder at the current rate of exchange of the day when the protest is produced and repayment demanded, that is to say,—the holder of any such note returned under protest, may demand and recover from the maker or endorsers thereof so much current money of this Province as shall then be equal to the purchase of a Bill of Exchange of the like amount drawn on the same place at the same date or sight, together with the damages and interest above mentioned, and also the expense of protesting the note, and all charges and postages incurred thereon. 12 V. c. 76, s. 2.

**12.** When the holder of a protested bill or note returned for non-payment notifies the drawer, maker or endorser of the dishonour thereof in person, or delivers notice thereof in writing to a grown up person at his or their counting house or dwelling house, and they disagree about the then rate of Exchange for Commercial Bills, the holder and the drawer, maker or endorser so notified, or any of them, may apply to the President or in his absence to the Secretary of any Board of Trade or Chamber of Commerce in the City or Town, in which the holder of such protested bill or note, or his Agent, resides, or in the City or Town nearest to the residence of such Holder or Agent, and obtain from such President or Secretary a certificate in writing under his hand, stating the said rate of exchange, and the rate stated in such certificate shall be final and conclusive as to the then rate of exchange, and shall regulate the sum to be paid accordingly. 12 V. c. 76, s. 3.

How rate of exchange to be ascertained.

**13.** All Bills, Drafts or Orders drawn by persons in Upper Canada, on persons in this Province, and all Promissory Notes made or negotiated in Upper Canada, if protested for non-payment, shall be subject to interest from the date of the protest, or if interest be therein expressed as payable from a particular period, then from such period to the time of payment; and in case of protest, the expense of noting and protesting, and the postages thereby incurred, shall be allowed and paid to the holder, over and above the said interest. 12 V. c. 76, s. 4.

Inland bills and notes to bear interest.

**14.** In an action brought to recover the amount of any Bill, Draft, Order or Promissory Note, and the damages and interest, the expenses of noting and protesting, and all other charges and postages incurred thereon, specified and mentioned in the preceding sections of this Act, it shall not be necessary to declare specially for such damages, interest, expenses and charges, but the same shall be allowed to the Plaintiff at any trial, assessment or reference, as if the same had been specially declared for. 12 V. c. 76, s. 5.

Damages to be recoverable tho' not specially declared for.

Protest may be made on day of dishonour.

**15.** All Protests of Inland or Foreign Bills of Exchange or Promissory Notes, for dishonour, either by non-acceptance or non-payment, may be made on the day of such dishonour, at any time after non-acceptance, or in case of non-payment, at any time after the hour of three o'clock in the afternoon. 14, 15 V. c. 94, s. 1.

How notice of protest to be served.

**16.** A Notice of such Protest shall be sent to each of the parties to the Bill or Note, and such Notice shall be deemed to have been duly served, for all purposes, upon the party to whom the same is addressed, by being deposited in the Post Office nearest to the place of making presentment of such Bill or Note, at any time during the day whereon such Protest has been made, or the next juridical day then following. 14, 15 V. c. 94, s. 2.

Non-juridical days.

**17.** The undermentioned days shall, for the purposes of this Act, be deemed to be non-juridical days, videlicet: Sunday, Christmas-day, Good Friday, Easter Monday, Ash Wednesday, any day set apart by Royal Proclamation for Fasting or Thanksgiving, the Birthday of the Reigning Sovereign, and the First day of January. 14, 15 V. c. 94, s. 2,—13, 14 V. c. 23, s. 3. *And See* 12 V. c. 22.

All other days to be juridical days.

**18.** All other days shall be deemed and taken to be juridical days. 14, 15 V. c. 94, s. 2.

Bills and notes not to be presented on non-juridical days.

**19.** No Bill of Exchange shall be presented for acceptance on any non-juridical day. 14, 15 V. c. 94, s. 3.

When bills or notes may be presented after the third day of grace.

**20.** All Bills of Exchange and Promissory Notes, whereof the third day of grace falls upon any non-juridical day, shall become due and payable, and be presented for payment upon the juridical day next after such third day of grace. 14, 15 V. c. 94, s. 3,—18 V. c. 10, s. 1.

Form of protest and notice.

**21.** Every such Protest and Notice may be according to the forms following, or to the like effect :

“ On this            day of            , in the year of our Lord,  
 “ one thousand eight hundred and            , at the request  
 “ of            , holder of the Bill of Exchange hereunto an-  
 “ nexed, I,            , a Notary Public for Upper Canada,  
 “ by Royal Authority duly appointed, did exhibit the said Bill  
 “ unto            , at            , being the place where the  
 “ same is payable, and speaking to *him*, did demand payment  
 “ of the said Bill; to which demand *he* answered  
 “            ; Wherefore, I, the said Notary, at the request  
 “ aforesaid, have protested, and do hereby solemnly protest, as  
 “ well against all the parties to the said Bill, as against all other  
 “ persons whom it may concern, for all interest, damages, costs,  
 “ charges, expenses and other losses suffered or to be suffered for  
 “ want



“ want of payment of the said Bill. And afterwards, on the day  
 “ and year mentioned in the margin, I, the said Notary Public,  
 “ did serve due Notice, according to law, of the said Present-  
 “ ment, Non-payment and Protest of the said Bill, upon the se-  
 “ veral parties thereto, by depositing, in Her Majesty’s Post  
 “ Office at \_\_\_\_\_, being the nearest Post Office to the  
 “ place of the said Presentment, Letters containing such Notices,  
 “ one of which Letters was addressed to each of the said parties,  
 “ severally ; the superscription and address of which Letters are  
 “ respectively copied below, as follows, that is to say :

*(Here insert the directions of the letters.)*

“ In testimony whereof, I have hereunto set my Hand and  
 “ affixed my Seal of Office, the day and year first above  
 “ written.

*(Signature)* L. S.

FORM OF NOTICE TO PARTIES.

“ To Mr. \_\_\_\_\_ *(date.)*

“ SIR,

“ Take notice that a Bill of Exchange, dated on the \_\_\_\_\_ day  
 “ of \_\_\_\_\_, for the sum of \$ (or £ ) \_\_\_\_\_, drawn by \_\_\_\_\_,  
 “ on and accepted by \_\_\_\_\_, payable *(three months)* after the  
 “ date thereof, at the Bank of \_\_\_\_\_, in *(Toronto,)* and endorsed  
 “ by A. B. C. D. E. F., &c., was this day presented by me for  
 “ payment at the said Bank, and that payment thereof was re-  
 “ fused, and that \_\_\_\_\_, the holder of the said Bill, looks to  
 “ you for payment thereof. Also, take notice that the same Bill  
 “ was this day protested by me for non-payment.

“ Your obedient servant,

“ A. H.,  
 “ Notary Public.”

*The above forms may be changed to suit Protests for non-acceptance or non-pay-  
 ment of Bills, or non-payment of Notes. 14, 15 V. c. 94, s. 4.*

**22.** The fees to be taken by Notaries Public for the ser- Notary’s fees.  
 vices mentioned in this Act, shall be such as follows, and no  
 more, *Videlicet* :

	\$	cts.
For the Protest of any Bill or Note.....	0	50
For every Notice.....	0	25

14, 15 V. c. 94, s. 5.

All parties to a bill or note may be joined in one action.

**23.** The holder of any Bill of Exchange or Promissory Note, may, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such Bill or Note, include *all or any* of the parties thereto in one action, and proceed to judgment and execution in the same manner as though all the Defendants were joint contractors. 5 W. 4, c. 1, s. 2,—13, 14 V. c. 59.

Defendants may plead separately.

**24.** In any such action, any joint drawer, maker, endorser or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, endorser or acceptor, in the same manner as though this Act had not been passed; but no judgment to be rendered in pursuance of this Act shall be of any effect against a party not served with process. 5 W. 4, c. 1, s. 3.

Judgment may be rendered against one or more.

**25.** In any such action, judgment may be rendered for the Plaintiff against some one or more of the Defendants, and also in favour of some one or more of the Defendants against the Plaintiff, according as the rights and liabilities of the respective parties may appear, either upon confession, default, by pleading, or on trial; and when judgment is rendered in favour of any Defendant, he shall recover costs against the Plaintiff in the same manner as though judgment had been rendered for all the Defendants. 5 W. 4, c. 1, s. 5.

Rights of parties between themselves not to be affected.

**26.** The rights and responsibilities of the several parties to any such Bill or Note, as between each other, shall remain the same as though this Act had not been passed, saving only the rights of the Plaintiff, so far as they may have been determined by the judgment. 5 W. 4, c. 1, s. 8.

When defendants in such suits may be witnesses.

**27.** In every such suit any Defendant shall be entitled to the testimony of any co-defendant as a witness, in case the Defendant or Defendants calling the witness would have been entitled to his testimony had such co-defendant not been a party to the suit, or individually named in the Record. 5 W. 4, c. 1, s. 9.

When executions of deceased defendants may be sued.

**28.** In case an action be brought against more than one Defendant under this Act, who must otherwise have been sued separately, and it happens that any Defendant dies pending the suit, an action may nevertheless be brought against the executors or administrators of such deceased Defendant. 5 W. 4, c. 1, s. 11.

If one or more of several defendants absent.

**29.** When several Defendants are included in one process, under this Act, and any of them cannot be served therewith by reason of absence from or concealment within Upper Canada, then the action may proceed as against the other Defendant or Defendants without prejudice; and the Plaintiff may afterwards sue the Defendant separately who has not been served with process, and may recover costs as if this Act had not been passed. 5 W. 4, c. 1, s. 13.

**30.** In case any of the parties to a Bill of Exchange, Promissory Note or other written Instrument, are designated therein by the initial letter or letters, or some contraction of the Christian or first name or names, they may be designated in the same manner in an affidavit to support an application for a Judge's order to hold to bail, and in any process or declaration, made, sued out, or filed against them upon or in respect of such Bill, Note or Instrument. 7 W. 4, c. 3, s. 9.

When parties signing their initials may be proceeded against by such initials.

**31.** The Plaintiff in any joint action against the drawers, makers, endorsers and acceptors, or any of them, of any Bill of Exchange or Promissory Note, may, unless otherwise provided by rule of Court, declare in the forms numbered one and two upon such Bill or Note, varying the same according to the circumstances of the case. 3 V. c. 8, s. 2.

Forms of declaring.

**32.** In such action, any person sued may set-off against the Plaintiff any payment, claim or demand, whether joint or several, which in its nature and circumstances arises out of or is connected with the Bill or Promissory Note, that forms the subject of such joint action, or the consideration thereof, in the same manner and to the same extent as though such Defendant had been separately sued; and if the jury, after allowing any demand as a set-off, still find a balance in favour of the Plaintiff, they shall state in the verdict the amount which they allow to each Defendant as a set-off against the Plaintiff's demand. 3 V. c. 8, s. 3.

Defendants may plead set-off.

**33.** In case any action be founded upon a lost Bill of Exchange, or other negotiable Instrument, then upon an indemnity to the satisfaction of the Court or a Judge, or of any officer of the Court to whom such indemnity is referred, being given to the Defendant against the claims of any other person upon him in respect of such Instrument, the Court or a Judge may order that such loss shall not be set up as a defence in such action. 19 V. c. 43, s. 292.

When the loss of a bill or note not admissible as a defence.

**34.** The provisions of the Common Law Procedure Act and all rules of Court made under or by virtue thereof, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under the twenty-third and following sections of this Act, and the powers conferred on the Judges by that Act are hereby extended to the making from time to time of all rules and new forms of proceedings necessary for giving effect to this Act. 20 V. c. 57, s. 31.

The Common Law Procedure Act to apply to proceedings under 23rd and following sections of this Act.

**35.** In case several suits be brought on one Bond, Recognizance or other instrument against the different parties to the same, or on one Promissory Note or Bill of Exchange, or against the maker, drawer, acceptor or indorser of such Note or Bill respectively, there shall be collected or received from the Defendant the costs taxed in one suit only, at the election of the

If several suits be brought against separate parties, costs of disbursements only recoverable except in one case.

the Plaintiff, and in the other suits the actual disbursements only shall be collected or received from the Defendant; but this provision shall not extend to any interlocutory costs in any of such suits. 5 W. 4, c. 1, s. 1. See *Common Law Procedure Act, chapter 22, s. 329, p. 255.*

Forms.

**36.** The following forms are those referred to in the foregoing Sections of this Act :

1.—*On a Promissory Note.*—See s. 31.

For that whereas the said \_\_\_\_\_, (*the maker of the Note.*) on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, made his Promissory Note in writing, and thereby promised \_\_\_\_\_, (*setting forth the Note in the usual manner.*) and the said \_\_\_\_\_, (*the first, second or other endorsers.*) duly endorsed the same, and the said \_\_\_\_\_, (*the last endorser*) delivered the said Note, so endorsed, to the Plaintiff, (*aver presentment, notice, &c., where by law necessary in particular case.*) By reason whereof the said \_\_\_\_\_, (*all the Defendants*) became jointly and severally liable to pay to the Plaintiff the said sum of money in the said Note specified. (*Add the usual breach.*)

3 V. c. 8 Schedule.

2.—*On a Bill of Exchange.*—See s. 31.

For that whereas the said \_\_\_\_\_, (*the drawer,*) on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, drew his certain Bill of Exchange in writing directed to \_\_\_\_\_, (*setting forth the Bill according to its tenor and effect.*) and the said \_\_\_\_\_, (*the drawee*) duly accepted the same, and the said \_\_\_\_\_, (*the first and other endorsers,*) afterwards duly endorsed the said Bill of exchange, and the said \_\_\_\_\_, (*the last endorser,*) delivered the said Bill, so endorsed, to the said Plaintiff, (*aver presentment, protest, notice, &c., where by law necessary in the particular case.*) By reason whereof the said \_\_\_\_\_, (*all the Defendants*) became jointly and severally liable to pay to the said Plaintiff the said sum of money in the said Bill specified. (*Add the usual breach.*)

3 V. c. 8 Schedule.

## CAP. XLIII.

## An Act respecting Interest.

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

**1.** Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a Jury to allow it. 7 W. 4, c. 3, s. 20.

Interest may be allowed where it has been usual.

**2.** On the trial of any issue, or on any assessment of damages, upon any debt or sum certain, 1. Payable by virtue of a written instrument at a certain time, the Jury may allow interest to the Plaintiff from the time when such debt or sum became payable, or 2. If payable otherwise than by virtue of a written instrument at a certain time, the Jury may allow interest from the time when a demand of payment is made in writing informing the debtor that interest will be claimed from the date of such demand. 7 W. 4, c. 3, s. 20.

When allowed on debts certain and overdue.

**3.** In actions of Trover or Trespass *de bonis asportatis*, the Jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on Policies of Insurance may give interest over and above the money recoverable thereon. 7 W. 4, c. 3, s. 21.

When by way of damages in actions of tort.

**4.** Except as authorized and provided in the Act of the Province of Canada respecting interest, it shall not be lawful upon any contract to take, directly or indirectly, for loan of any moneys, wares, merchandize, or other commodities whatsoever, above the value of six dollars for the advance or forbearance of one hundred dollars for a year; and so after that rate for a greater or less sum or value, or for a longer or shorter time; and except as aforesaid, all bonds, bills, promissory notes, contracts and assurances whatsoever, whereupon or whereby a greater interest is reserved and taken, shall be utterly void; and every person who shall either directly or indirectly take, accept and receive, a higher rate of interest, shall forfeit and lose for every such offence, treble of the value of the moneys, wares, merchandize and other things lent or bargained for, to be recovered by action of debt in either of the Superior Courts of Common Law in Upper Canada, and a moiety of such forfeiture shall be paid into the hands of Her Majesty's Receiver General for the use of Her Majesty, towards the support of the Civil Government of this Province, and the other moiety to him or them that sue for the same. 51 G. 3. c. 9, s. 6.

In what cases interest for the loan of moneys, &c., shall not exceed six dollars per centum for a year.

All bonds, contracts, &c., whereupon a greater interest is reserved shall be void.

Penalties for receiving a higher rate of interest.

How recovered.

## CAP. XLIV.

## An Act respecting written Promises and Acknowledgments of Liability.

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

Act to apply on and from the 1st January, 1852.

**1.** This Act shall operate and apply retrospectively to the first day of January, one thousand eight hundred and fifty-two, as well as prospectively, and shall be construed as if it had been passed on the said first day of January, one thousand eight hundred and fifty-two. 13, 14 V. c. 61, s. 8.

Written memorandum required to take the case out of the statute of limitations.

**2.** In all actions : 1. Of account and upon the case other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants ; 2. In all actions on simple contract or of debt grounded upon any lending or contract without specialty, and in all actions of debt for arrearages of rent, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the Act, passed in England in the twenty-first year of the Reign of King James the First, respecting such actions as aforesaid, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing to be signed by the party chargeable thereby 13, 14 V. c. 61, s. 1.

Case of two or more joint contractors or executors.

**3.** Where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them. 13, 14 V. c. 61, s. 1.

Where plaintiff may be barred as to one or more defendants but not as to all.

**4.** In actions commenced against two or more such joint contractors, executors or administrators, if it appears at the trial or otherwise that the Plaintiff, though barred by the said Act of King James the First or by this Act, as to one or more of such joint contractors, or executors or administrators, is nevertheless entitled to recover against any other or others of the Defendants, by virtue of a new acknowledgment, promise or payment as aforesaid, judgment shall be given and costs allowed for the Plaintiff as to such Defendant or Defendants against whom he may recover, and for the other Defendant or Defendants against the Plaintiff. P13, 14 V. c. 61, s. 1.

As to non-joinder of defendants who have good defence under the

**5.** If upon a plea in abatement in any such action for the non-joinder of any person or persons, who, it is alleged, ought to have been sued jointly, it appears at the trial or otherwise, that the action could not, by reason of the said Act of King James or this

this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the finding and judgment on such plea, shall be against the party pleading the same. 13, 14 V. c. 61, s. 2.

said Act and this Act.

**6.** If after the pleading of such plea, the Plaintiff, instead of proceeding in the action, abandons or discontinues the same, and commences a new action against the Defendant or Defendants who pleaded such plea and the person or persons named therein as jointly liable with such Defendant or Defendants, and if it appears upon the trial or pleadings in such new action that such action could not, by reason of the said Act of King James or of this Act, be maintained against the person or persons named in the said plea in abatement and joined in the said new action, but against the original Defendant or Defendants alone, the Plaintiff shall thereupon be entitled to recover against the original Defendant or Defendants in the said new action, as well the costs of the original action so abandoned or discontinued on such plea in abatement, as the costs awarded to such other Defendant or Defendants so joined in the said action by reason of the pleading of such plea, in addition to the debt or damages and costs recoverable against the said original Defendant or Defendants, and the said other Defendant or Defendants so joined in the said new action, and not liable therein, shall recover his or their costs against the Plaintiff. 13, 14 V. c. 61, s. 2.

As to costs in new action.

**7.** No indorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment has been made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said Statute of King James. 13, 14 V. c. 61, s. 3.

Indorsement, &c., made by the payee not to take a note, &c., out of the statute.

**8.** The said Act of King James and this Act, shall apply to the case of any debt on simple contract, or of the nature herein-before mentioned, alleged by way of set-off on the part of any Defendant, either by plea, notice or otherwise. 13, 14 V. c. 61, s. 4.

Statute to apply to set-off.

**9.** No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless such promise or ratification be made by some writing signed by the party to be charged therewith. 13, 14 V. c. 61, s. 5.

As to ratification of promise made during non-age.

**10.** No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless such representation or assurance be made in writing signed by the party to be charged therewith. 13, 14 V. c. 61, s. 6.

As to representation regarding the character, credit, &c., of a third party.

Statute of  
frauds extended  
to contracts for  
goods to be de-  
livered at a fu-  
ture time.

**11.** The seventeenth section of an Act passed in England, in the twenty-ninth year of the Reign of King Charles the Second, intituled, *An Act for the prevention of Frauds and Perjuries*, shall extend to all contracts for the sale of goods of the value of Forty Dollars and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. 13, 14 V. c. 61, s. 7.

## C A P . X L V .

### An Act respecting Mortgages and Sales of Personal Property.

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

#### WHEN TO BE REGISTERED.

Mortgages of  
goods not at-  
tended with  
change of pos-  
session, shall be  
registered, or  
else be void as  
against credi-  
tors, &c., of the  
mortgagor with  
an affidavit,  
&c.

**1.** Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, made in Upper Canada, which is not accompanied by an immediate delivery, and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall, within five days from the execution thereof, be registered as hereinafter provided, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the Mortgagee or his agent, if such agent be aware of all the circumstances connected therewith and properly authorized in writing to take such mortgage (in which case a copy of such authority shall be registered therewith). 20 V. c. 3, s. 1.

Contents of  
affidavit.

**2.** Such last mentioned affidavit, whether of the Mortgagee or his agent, shall state that the Mortgagor therein named is justly and truly indebted to the Mortgagee in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the Mortgagor, or of preventing the creditors of such Mortgagor from obtaining payment of any claim against him.

Unless regis-  
tered, mortgage  
void.

**3.** In case such mortgage or conveyance and affidavits be not registered as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the Mortgagor, and against subsequent Purchasers or Mortgagees in good faith for valuable consideration. 20 V. c. 3, s. 1.

Sales of goods  
not attended

**4.** Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change



change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee, or his agent duly authorized in writing to take such conveyance (a copy of which authority shall be attached to such conveyance), that the sale is *bonâ fide* and for good consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and such conveyance and affidavits shall be registered as hereinafter provided, within five days from the executing thereof, otherwise the sale shall be absolutely void as against the creditors of the Bargainor and as against subsequent Purchasers or Mortgagees in good faith. 20 V. c. 3, s. 2.

with delivery shall be registered, or else be void as against creditors, &c., of the vendor.

**5.** In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the Mortgagee repayment of such advances, or in case of a mortgage of goods and chattels for securing the Mortgagee against the indorsement of any bills or promissory notes or any other liability by him incurred for the Mortgagor, not extending for a longer period than one year from the date of such mortgage, and in case the mortgage is executed in good faith, and sets forth fully, by recital or otherwise, the terms, nature and effect of the agreement, and the amount of liability intended to be created, and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the Mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the Mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith and for the express purpose of securing the Mortgagee repayment of his advances or against the payment of the amount of his liability for the Mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the Mortgagor, nor to prevent such creditors from recovering any claims which they may have against such Mortgagor, and in case such Mortgage is registered as hereinafter provided, the same shall be as valid and binding as Mortgages mentioned in the preceding section of this Act. 20 V. c. 3, s. 3.

Mortgages of goods to secure advances or to indemnify indorsers, &c., to be valid if duly registered.

**6.** All the Instruments mentioned in this Act, whether for the sale or Mortgage of goods and chattels, shall contain such sufficient

The property to be well described.

sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. 20 V. c. 3, s. 4.

HOW REGISTERED.

Chattel mortgages to be registered in the office of County Clerks.

7. The Instruments mentioned in the preceding sections shall be registered in the office of the Clerk of the County Court of the County or Union of Counties where the Mortgagor or Bargainor, if a resident in Upper Canada, resides at the time of the execution thereof, and if he be not a resident, then in the office of the Clerk of the County Court of the County or Union of Counties where the property so mortgaged or sold is at the time of the execution of such instrument; and such Clerks shall file all such instruments presented to them respectively for that purpose, and shall endorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein, or intending or desiring to acquire any interest in all or any portion of the property covered thereby. 20 V. c. 3. s. 5.

Who shall enter the same.

8. The said Clerks respectively shall number every such instrument or copy filed in their offices, and shall enter in alphabetical order in books to be provided by them, the names of all the parties to such Instruments, with the numbers endorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. 20 V. c. 3, s. 6.

How to proceed if goods mortgaged are removed to another County.

9. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the County or Union of Counties in which they were at the time of the execution of the mortgage, to another County or Union of Counties before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the Clerk of the County Court in whose office it was first registered, and under the seal of the said Court, and of the affidavits and documents and instruments relating thereto filed in such office, shall be filed with the Clerk of the County Court of the County or Union of Counties to which such goods and chattels are removed, within two months from such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case, the mortgage shall be null and void as against subsequent purchasers and mortgagees for valuable consideration as if never executed. 20 V. c. 3, s. 7.

Mortgages of chattels must be periodically renewed, else cease to be valid.

10. Every Mortgage, or copy thereof, filed in pursuance of this Act, shall cease to be valid as against the creditors of the persons making the same, and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property claimed

claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon and of all payments made on account thereof, be again filed in the office of the Clerk of the said County Court of the County or Union of Counties wherein such goods and chattels may be then situate, with an affidavit of the mortgagee or of his agent duly authorized in writing for that purpose, (which authority shall be filed therewith), stating that such statements are true, and that the said mortgage has not been kept on foot for any fraudulent purpose. 20 V. c. 3, s. 8.

**11.** A copy of such original instrument or of a copy thereof, so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose office the same has been filed, under the Seal of the Court, shall be received in evidence in all Courts, but only of the fact that such instrument or copy and statement were received and filed according to the endorsement of the Clerk thereon, and of no other fact; and in all cases the original endorsement by the Clerk made in pursuance of this Act, upon any such instrument or copy, shall be received in evidence only of the fact stated in such endorsement. 20 V. c. 3, s. 9.

The Clerk's certificate to be evidence of registration.

**12.** All affidavits and affirmations required by this Act shall be taken and administered by any Judge or Commissioner of the Courts of Queen's Bench or Common Pleas, or Justice of the Peace in Upper Canada, and the sum of twenty cents shall be paid for each and every oath thus administered. 20 V. c. 3, s. 13.

Who to administer the affidavits, and Fee.

**13.** On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom such writ, warrant or precept is directed, may seize and sell the interest or equity of redemption in any goods and chattels of the party against whom such writ has issued, and such sale shall be held to convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. 20 V. c. 3, s. 11.

The interest of mortgagor or his equity of redemption saleable in execution.

**14.** For services under this Act the Clerks aforesaid shall be entitled to receive the following fees:

Fees for services.

1. For filing each instrument and affidavit, and for entering the same in a book as aforesaid, twenty-five cents;

2. For searching for each paper, ten cents; and

3. For copies of any document with certificate prepared, filed under this Act, ten cents for every hundred words. 20 V. c. 3, s. 12.

Act not to apply to vessels duly registered.

**15.** This Act shall not apply to mortgages of vessels registered under the provisions of any Act in that behalf. 20 V. c. 3; s. 10,—See 8 V. c. 5.

Existing rights saved.

**16.** All mortgages and sales of goods and chattels registered under the provisions of any former Acts in that behalf, shall be held and taken to be as valid and binding as if the said Acts had not been repealed. 20 V. c. 3, s. 14.

## 2. NAVIGABLE WATERS AND STREAMS.

### C A P . X L V I .

#### An Act relating to Ferries.

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

No license to be granted, &c.

**1.** No license of Ferry in Upper Canada shall in future be granted to any person or body corporate beyond the limits thereof, and all grants of Ferry on the Frontier line of Upper Canada, shall be issued to the Municipality within the limits of which such Ferry exists, and in case of the establishment of any additional Ferry on such Frontier, then to the Municipality in which such additional Ferry is established, and shall be so construed as to extend and apply to all such Ferries on the Provincial Frontier, the circumstances of which do not permit or warrant the peremptory use of Steamboats. 20 V. c. 7, s. 5,—22 V. c. 41. (1859.)

License to be issued by the Governor under the Great Seal.

**2.** Every grant or license of Ferry shall be issued by the Governor under the Great Seal, and under the foregoing section may be granted for any period not exceeding fifty years. 8 V. c. 50, ss. 2, 3,—20 V. c. 7, ss. 1, 2, 8.

Ferries to be leased by public competition and only for a limited time.

**3.** Except as herein otherwise provided, no Ferry in Upper Canada shall hereafter be leased by the Crown, nor shall the Lease thereof be renewed, or any License by the Crown to act as a Ferryman thereat be granted, except by public competition, and after notice of the time and place at which tenders will be received for the Lease or License for such Ferry, inserted at least four times in the course of four weeks in the *Canada Gazette*, and in one or more of the newspapers published in the County in which the Ferry may be situate, and to parties giving such security as the Governor in Council may require; nor shall any such Ferry be leased or the License thereof granted for a longer term than seven years at any one time. 9 V. c. 9, s. 2.

**4.** In every case, except in the case of Municipalities as hereinafter provided, where the limits to which the exclusive privilege of any Ferry extends are not already defined, such exclusive privilege shall not be granted for any greater distance than one mile and a half on each side of the point at which the Ferry is usually kept, but nothing herein contained shall invalidate or infringe upon any existing grant or right of Ferry. 20 V. c. 50, ss. 5, 3. Limits of Ferries.

**5.** In all cases where a ferry is required over any stream or other water within Upper Canada, and the two shores of such stream or other water are in different Municipalities, such Municipalities not being in the same County, the Governor in Council may grant a license to either of such Municipalities exclusively, or to both conjointly, as may be most conducive to the public interest. 20 V. c. 7, s. 1. Governor may grant a license to have a ferry communication between two Municipalities.

**6.** Such license shall confer a right on the Municipality or Municipalities to establish a ferry from shore to shore on such stream or other water, and with such limit and extent as may appear advisable to the Governor in Council, and be expressed in such license. 20 V. c. 7, s. 1. License to confer a right, &c.

**7.** Such license shall be upon condition that the craft to be used for the purpose of such ferry shall be propelled by steam, and be of such dimensions, and the engine thereof be of such power as the Governor in Council may direct; and upon such further conditions as the Governor in Council may think fit and express in such license. 20 V. c. 7, s. 1. Condition of license as to steam.

**8.** The Council of the Municipality to which municipality any such license may be issued, may pass By-laws, not contravening the terms of the license, declaring their determination to sub-let the said ferry, and may sub-let the same for the price, and upon the terms, and to the parties, and on the conditions, and at the rates of ferriage to be paid, which the said Council may deem best. 20 V. c. 7, s. 3. Municipalities may sub-let ferries.

**9.** In all cases where the one shore of such stream or other water is within the limits of a City, Town, or incorporated Village, and the other shore thereof in a Township or rural Municipality, the license shall be issued to the City, Town, or incorporated Village; But in case the Rural Municipality opposite to any such City, Town, or incorporated Village, be an Island, then the license shall be granted to the Island Municipality. 20 V. c. 7, s. 4. Incorporated Cities, Towns and Villages have the preference as to such license.

**10.** If any person unlawfully interferes with the rights of any licensed Ferryman, by taking, carrying, and conveying, at any such Ferry, across the river or stream on which the same is situate, any person, cattle, carriage, or wares, in any boat, vessel, or other craft, for hire, gain, reward, profit, or hope thereof, Penalty for interfering with licensed ferryman.

thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any Lessee of the Crown of any such Ferry, such offender, upon conviction thereof before a Justice of the Peace, shall forfeit and pay such sum of money not exceeding twenty dollars, as the Justice may direct, which sum shall be paid to the party aggrieved, except where he has been examined in proof of the offence, in which case the money shall be applied and accounted for in the same manner as any penalty imposed for a breach of the peace. 8 V. c. 50, s. 1.

Parties may keep boats for their own use.

**11.** Any person may keep at any such Ferry a boat, vessel, or other craft, for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft, to cross the river or stream on which such Ferry is situate; but such privilege shall in no wise be used to take, carry or convey any other persons or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any of such other persons to evade the payment of tolls at such Ferry. 9 V. c. 9, s. 1,—8 V. c. 50, s. 1.

Offender to be committed if penalty be not paid.

**12.** In case the sum forfeited be not paid immediately after conviction, the convicting Justice may commit the offender to the Common Gaol of the County, there to be imprisoned for a term not exceeding two months, unless the forfeiture, and the costs, be sooner paid. 8 V. c. 50, s. 2.

Aggrieved party may appeal.

**13.** Any party aggrieved by any conviction or decision under this Act, may appeal from such conviction or decision in the manner and under the conditions and provisions of the Act respecting appeals in cases of summary conviction. 8 V. c. 50, s. 4.

Title to the ferry.

**14.** On the trial of any offender against this Act, every license heretofore issued or issued under this Act, shall be *prima facie* evidence of title to the Ferry. 8 V. c. 50, s. 3.

Municipal Councils may pass By-laws regulating ferries in certain places.

**15.** The Council of every County, City and Town separated from the County, under the Act respecting the Municipal Institutions of Upper Canada, may pass By-laws for regulating Ferries between any two places in the Municipality; and establishing the rates of ferriage to be taken thereon; but no such By-law shall have effect until assented to by the Governor in Council; and until the Council of the County, City or Town separated as aforesaid pass a By-law regulating such Ferries and in the cases of Ferries not between two places in the same Municipality, the Governor, by order in Council, may from time to time regulate such ferries respectively, and establish the rates to be taken thereon subject to the provisions of this Act. 22 V. c. 99, s. 277, No. 4, and s. 278.

## CAP. XLVII.

## An Act respecting Rivers and Streams.

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

**1.** Except in the case of round or squared timber, or of trees, masts, staves, deals, boards or other sawed or manufactured lumber or saw logs, prepared for transportation to a market, every person and every employer of such person, who cuts and fells any trees into the Grand River, the River Thames, River Nith, River Speed, Otter Creek, the River Credit, the River Otonabee from Sturgeon Lake to Rice lake; the River Scugog, the River Trent from Rice Lake to the Bay of Quinte, Crow River; the Rivers Gananoque, Rideau, Petite Nation, Tay, Mississippi, Bonnechere, Madawaska and Goodwood in Upper Canada, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring of the year by the rising of the water of the said Rivers or Creek, and who does not lop off the branches of such trees and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said Rivers or Streams shall for every such offence forfeit and pay a penalty not exceeding ten dollars. 3 W. 4, c. 28, s. 1,—2 V. c. 16, ss. 1, 4.

Conditions on which timber may be cut on the banks of rivers and floated thereon.

**2.** In case any person throws, or in case any owner or occupier of a mill suffers or permits to be thrown, into any River, Rivulet or water-course in Upper Canada, excepting those hereinafter mentioned, any slabs, bark, waste stuff or other refuse of any saw-mill (except saw dust,) or any stumps, roots, shrubs, tan-bark or waste wood, or leached ashes; or in case any person fells, or causes to be felled, in or across any such river, rivulet or water-course, any timber or growing or standing trees, and allows the same to remain in or across such river, rivulet or water-course, he shall incur a penalty not exceeding twenty dollars and not less than twenty cents for each day during which such obstruction remains in, over, or across such river, rivulet or water-course, over and above all damages arising therefrom. 10, 11 V. c. 20, s. 1,—7 V. c. 36, s. 1,—2 V. c. 16, s. 2,—22 V. c. 99, s. 270.

Penalty on persons obstructing rivers and rivulets.

**3.** This Act shall not apply to any dam, weir or bridge erected in or over any such river, rivulet or water-course, or to any thing done *boná fide* in or for erecting the same, or to any tree cut down or felled across any such river, rivulet or water-course, for the purpose of being used as a bridge from one side thereof to the other; provided such tree does not impede the flow of water or the passing of rafts. 10, 11 V. c. 20, s. 1.

Act not to extend to dams, weirs or trees used as bridges.

Rivers where salmon, pickerel, black bass, or perch do not abound not included.

4. This Act shall not extend to the River St. Lawrence, nor to the River Ottawa, nor to any River or Rivulet wherein Salmon, Pickerel, Black Bass, or Perch do not abound. 14, 15 V. c. 123.

As to obstructions not wilful.

5. No such obstruction happening without the wilful default of any party, or in the *bonâ fide* exercise of his rights, shall subject him to any fine or forfeiture unless upon default to remove the obstruction after notice and reasonable time afforded for that purpose. 10, 11 V. c. 20, s. 1.

How fines to be recovered.

6. All fines, penalties, forfeitures and damages under this Act, when not together exceeding twenty dollars, may respectively, upon the oath of one credible witness, be recovered with costs, in a summary way in the manner provided by the Act of the Province of Canada relative to malicious injuries to property,\* before any one or more of the Justices of the Peace for the County in which the offence has been committed, and unless the conviction be appealed from if the fine or penalty and damages (*as the case may be*) together with the costs, be not paid at the time stated in the conviction, the convicting Justice or Justices, or one of them, when more than one, shall issue his or their warrant of distress to levy the same out of the goods and chattels of the offender; and in case there be not sufficient goods and chattels found to satisfy the same, and in case the offender does not otherwise satisfy the amount within three days after conviction, then such Justice or Justices (*as the case may be*) shall by warrant under hand and seal commit the offender to the common Gaol of the County in which he has been convicted, for the term of ten days in case the conviction be under the first section of this Act, or thirty days in case the conviction be under the second section of this Act, unless the fine, penalty or forfeiture and damages (*as the case may be*) and costs, be sooner paid. 3 W. 4, c. 28, s. 2,—10, 11 V. c. 20, s. 1, *see* 4, 5 V. c. 26, s. 30,—7 V. c. 36, ss. 1, 2, 4.

Party aggrieved may appeal.

7. Any party aggrieved by any conviction or decision under this Act, may appeal in the manner and under the conditions and provisions of the Act of the Province of Canada respecting appeals in cases of summary conviction. 7 V. c. 36, s. 2.

Appropriation of penalties.

8. Of pecuniary penalties levied under this Act, one third shall go to the informer, and the other two thirds shall be paid to the Treasurer of the Municipality in which the offence was committed, and shall be expended in improving the Public Highways therein. 3 W. 4, c. 28, s. 3,—2 V. c. 16, s. 3.

Assessed damages how to be applied.

9. In case of damages to private property arising out of a violation of this Act, such damages may, at the request of the party aggrieved, be assessed by the convicting Justice

or

\* Reference should have been made to the Act respecting the duties of Justices of the Peace out of Sessions in relation to Summary Convictions and Orders which virtually superseded 4, 5 V. c. 26, s. 30.



or Justices and included in the conviction, when such damages, together with the fine or penalty imposed, do not together exceed twenty dollars, and in case damages be assessed the same shall be paid to the party aggrieved, except in cases where he has been examined in proof of the offence, in which case the same shall be applied to the improvement of the public highways in the Municipality as above provided. 7 V. c. 36, s. 3.

## C A P. X L V I I I .

### An Act respecting Mills and Mill-Dams.

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

#### TOLLS.

**1.** No owner or occupier of a Mill, nor any person employed by him, shall demand or take as toll a greater proportion of any grain brought to him to be ground and bolted than one twelfth part thereof, for grinding and bolting the same under a penalty of forty dollars for every such offence; one moiety thereof to be paid to Her Majesty, for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 32 G. 3, c. 7, ss. 1, 2.

No greater proportion to be taken for grinding and bolting grain than one twelfth.

#### BAGS TO BE MARKED.

**2.** No owner or occupier of a Mill shall be bound to receive or be chargeable with the loss of any bag of grain or flour, unless such bag be marked with the initial letters of the Christian and Surname of the owner of the grain, or with some mark distinguishing the bag, which mark of distinction shall be previously communicated and made known to the said owner or occupier of the Mill, or his servant usually attending the same. 32 G. 3, c. 7, s. 3.

Bags must be marked.

#### MILL-DAMS.

**3.** Subject to the provisions of the "Fishery Act," of the Province of Canada, in case a Mill-dam be legally erected on any stream, down which stream lumber is usually brought, or in which stream salmon or pickerel abound, the owner or occupier of such Dam shall construct and maintain a good and sufficient apron thereto, not less than eighteen feet wide by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height where the width of the stream will admit of it; and in case such stream or dam be less than fifteen feet

Owners or occupiers of mills to construct aprons to their dams.

Penalty and its appropriation.

feet wide, the whole Dam shall be aproned in like manner with the same inclined plane ; and every such owner or occupant who neglects to construct or maintain such apron, shall for such offence, forfeit and pay yearly the sum of one hundred dollars ; one moiety thereof to Her Majesty for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 9 G. 4, c. 4, ss. 1, 2,—22 V. c. 86, s. 27.

MILL-DAMS, CONSTRUCTION OF, AND THE PASSAGE OF TIMBER, &c.

Apron or slide to admit passing of logs, &c.

4. Every owner or occupier of a Mill-dam at which an apron or slide is required to be constructed as aforesaid shall, if necessary, alter, or if not already built, shall construct such apron or slide so as to afford depth of water sufficient to admit of the passage over such apron or slide of such saw-logs, lumber and timber as are usually floated down the streams or rivers whereon such Dams are erected ; but any owner or occupier of any such Dam may construct a waste-gate or put up brackets and slash-boards in, upon and across the apron, for the purposes of preventing any unnecessary waste of water therefrom, and may keep the same closed when no person is ready and requires to pass or float any craft, lumber or saw-logs over such apron or slide. 12 V. c. 87, s. 1.

Waste-gates, Slash-boards.

Owners not obliged to remove brackets, until, &c.

5. The owner or occupier of any such Dam shall not be bound to remove the brackets or slash-boards across the apron thereof until the raft, craft, lumber or saw-logs, required to be passed, are ready to pass and have for that purpose gained the main channel of the stream. 12 V. c. 87, s. 1.

ON SMALL STREAMS.

When Aprons and Slides mentioned in Sects. 3 & 4, not required in small streams.

6. No person shall be required to build such aprons or slides as mentioned in the third and fourth sections on small streams, unless required for the purposes of rafting or floating down lumber and saw-logs as aforesaid. 12 V. c. 87, s. 1.

PENALTIES.

Penalty on owner of dam refusing to comply with the requirements of this Act.

7. Every owner or occupier of any Dam mentioned in the fourth section of this Act who, (if not already made and constructed,) neglects or refuses to make and construct and keep in repair an apron of the description therein mentioned shall pay a penalty of two dollars per day for every day of such neglect, and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of two credible witnesses, and if not paid, shall be levied by distress and sale of the goods and chattels of the offender, by a warrant under the hand and seal of such Justices, or one of them, and shall be paid to the Treasurer of the Municipal Corporation having jurisdiction in the locality where such Dam

How enforced.

Dam is erected, for the general uses of the Municipality. 12  
V. c. 87, s. 3.

MILL-DAMS IN SPECIFIED PLACES.

1.—IN THE COUNTY OF HURON.

8. Subject to the provisions of the "Fishery Act," the owner or occupier of every Dam or Weir erected on any river or stream in any of the Townships of Williams, McGillivray, Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tucker-smith, Hibbert, Logan, Fullarton, Osborne, Biddulph, Blanchard, Downie including the Gore of Ellice, North-East Hope, and South-East Hope, or any other tracts of land which on the twenty-ninth day of March, one thousand eight hundred and forty-five, constituted the then District of Huron, shall, if the same has not been already done, construct and maintain, and, if constructed, shall maintain and keep in repair, a good and sufficient apron to such Dam or Weir, at least twenty-eight feet wide (if the Dam or Weir be of greater width, and if not, then of the same width as the Dam or Weir), and at least eight feet in length for every foot rise of such Dam or Weir, under a penalty of one dollar for each day during which the requirements of this section are not complied with; and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of one credible witness; and if not paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such Justices or either of them; one moiety of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor. 4 W. 4, c. 55, s. 1,—8 V. c. 66,—1 V. c. 26.

Dams and weirs  
in the County  
of Huron.

2.—ON THE RIVER MOIRA.

9. Subject to the provisions of the "Fishery Act," the owner or occupier of any Dam on the River Moira or its tributaries, in the County of Hastings, on which lumber is floated to market, shall construct and maintain, and if constructed, shall maintain and keep in repair a good and sufficient apron to such Dam, at least thirty-two feet in width (if the Dam be of that or of greater width, and if not, then of the width of the Dam), and at least five feet in length for every foot rise of such Dam; and the height of the Dam at the place where the apron is constructed, shall be at least two feet lower than the top of the said Dam at any other place (unless it occupy the whole width thereof as aforesaid); but if the rise of the Dam be less than four feet, the height of the Dam at the place where the apron is constructed shall not exceed one half its height at any other place. 11 V. c. 10, s. 2.

On the river  
Moira.

Penalty for  
contravention.

**10.** Every such apron shall be constructed on the main channel of the stream, and its highest part shall be one foot below the level of the Dam at the place where it joins the same, under a penalty of twenty-five cents for each day the requirements of this and the next preceding section are not complied with. 11 V. c. 10, s. 2.

How recovered  
and enforced.

**11.** The said penalty, on the complaint of any person engaged in the lumber trade upon the said River or any tributary thereof, may be recovered before any two Justices of the Peace for the County in which the offence has been committed, upon the oath of one credible witness other than the informer, one half of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor; and if upon conviction such penalty be not forthwith paid, it shall, by warrant under the hand and seal of such Justices, or of one of them, be levied by distress and sale of the goods of the offender. 11 V. c. 10, s. 2.

Owner not  
obliged to  
alter the apron  
if constructed  
before a cer-  
tain period un-  
til renewed.

**12.** The ninth section of this Act shall not oblige the owner or occupier of any Dam on the River Moira to alter the apron thereof, if constructed before the twenty-third day of March, one thousand eight hundred and forty-eight, until the renewal of such apron. 11 V. c. 10, s. 2.

### 3.—ON THE RIVER OTONABEE.

Special provi-  
sions with re-  
gard to the  
river Otonabee.

**13.** No apron to any Mill-dam on the River Otonabee shall be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of one foot, and so in proportion to the height of the Dam; and side pieces of at least one foot in height shall be fixed on the outside of every such apron, to confine the water and prevent the timber from falling off at the sides. 12 V. c. 87, s. 2.

### AS TO PENALTIES WHEN DAMS INJURED BY FLOODS.

If Aprons in-  
jured by floods,  
&c., penalties  
suspended for a  
reasonable  
time.

**14.** In case any apron be carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the Dam to which the same was attached shall not be liable to any such penalty as aforesaid if such apron be repaired or re-constructed in conformity to this Act, as soon as the state of the stream safely permits. 12 V. c. 87, s. 4,—11 V. c. 10, s. 2.

### TIMBER, &c., MAY BE FLOATED DOWN STREAMS AT CERTAIN SEASONS.

All persons  
may float saw  
logs, &c., down  
streams.

**15.** All persons may float saw-logs and other timber, rafts and craft down all streams in Upper Canada during the spring, summer and autumn freshets, and no person shall, by felling trees or placing any other obstruction in or across any such stream, prevent the passage thereof. 12 V. c. 87, s. 5.

**16.** In case there be a convenient apron, slide, gate, lock or opening in any such Dam or other structure made for the passage of saw-logs and other timber, rafts and crafts authorized to be floated down such stream as aforesaid, no person using any such stream in manner and for the purposes aforesaid, shall alter, injure or destroy any such Dam or other useful erection in or upon the bed of or across the stream, or do any unnecessary damage thereto or on the banks thereof. 12 V. c. 87, s. 5.

Persons using streams not to injure dams, &c.

PROTECTION IN CERTAIN CASES OF MILLS OVERFLOWING ADJACENT LANDS.

**17.** In case, in any action brought against the proprietor or occupier of a Mill, for the overflowing of or injury to land, caused by the erection or continuation of a Dam for the purposes of such Mill, it appears that the overflowing or other injury was caused by the erection or continuation of a Dam which was built before the purchase of such land, by the Grantee of the Crown and before the grant thereof to him, and that such purchaser obtained a reduction in the price of such land, or was otherwise indemnified in consequence of its being so overflowed or otherwise injured, then the Jury on the trial of such action may take such facts into their consideration, and, if they think it just and equitable, may, in consequence thereof, find a verdict for the Defendant. 13, 14 V. c. 75, s. 1.

When Grantee of Crown not to recover damages for overflow of his lands.

**18.** In any such action the Defendant may plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, may avail himself of this Act and of the matters of defence herein given. 13, 14 V. c. 75, s. 2.

Defendant may plead general issue, &c.

3. TRADING AND OTHER COMPANIES.

C A P . X L I X .

An Act respecting Joint Stock Companies for the construction of Roads and other Works in Upper Canada.

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

**1.** All Companies incorporated for such purposes as are in this Act mentioned, under any former Acts, before this Act takes effect, shall subsist and continue, notwithstanding the repeal of such Acts, and such Companies shall be subject to, and may avail themselves of the provisions of this Act, and

Existing Companies continued—how this Act shall apply to them.

in all cases of doubts or ambiguity this Act shall be deemed and taken to be declaratory of the meaning of the said Acts. 16 V. c. 190, s. 1.

All actions, &c., to be determined under this Act.

2. All actions, suits or proceedings now pending under any such former Act, may be proceeded with and determined under this Act. 16 V. c. 190, s. 1.

#### FORMATION OF COMPANIES.

Five persons may form a Company for the construction of plank and other roads.

3. Any number of persons not less than five may form themselves into a Company for the purpose of constructing and may construct in, along, or over, any public road or highway, or allowance for road, or on, along, or over any other land, a plank, macadamized or gravelled road, not less than two miles in length, and also any bridges, piers or wharves, connected therewith. 16 V. c. 190, s. 2.

As to taking property.

4. No such Company shall construct any such road or other works, through, over, along or upon any private property or property of the Crown, without having first obtained the permission of the owner or occupier thereof, or of the Crown with the approval of the Governor in Council so to do, except as hereinafter provided. 16 V. c. 190, s. 2.

As to private property.

5. No private property shall be taken for any road or other work as aforesaid, for which a Company has been or may be constituted, without the consent of the owner, if such owner himself commences the work within one year, and completes the same within two years, from the time of his being notified that a Company has been formed for constructing the same. 16 V. c. 190, s. 2.

When Municipal By-law necessary.

6. No such road shall be constructed or pass within the limits of any City, or of any incorporated Town or Village, except by permission, under a By-law of the City, Town or Village, passed for that purpose.

Bridges when part of the road.

7. All bridges in the line of road between the termini of any such road, which are not within the limits of any City, incorporated Town or Village, shall be deemed part of such road, unless specially excepted in the Instrument of association of the Company. 16 V. c. 190, s. 2.

Highest grade.

8. No such road shall be made of a higher grade than one foot elevation to twenty feet along the road, without the sanction of the County Engineer of the County where the road or other work is situated or constructed, and if there be no such officer, then of some competent Engineer who shall be appointed by the County Council for that purpose. 16 V. c. 190, s. 2.

**9.** In case under any Statute made before this Act takes effect, any Company has been formed to construct any Roads or Bridges, Piers or Wharves, connected therewith as aforesaid, and the stock of such Company has been subscribed, and the work in course of completion within the time limited by the Statute under which the Charter was obtained; no Company shall be formed under this Act to construct any line of road for which such prior Charter was so obtained, so long as such Charter remains in force.

As to lines for which other Companies have been chartered.

**10.** No Company, formed under this Act, shall commence any work until thirty days after the Directors have served a written notice upon the Head of the Municipality in the jurisdiction of which such road or other work connected therewith is intended to pass or to be constructed; and if the Municipal Council of such locality passes a By-law prohibiting, varying or altering any such intended line of road, or the plan of any such other work, such By-law shall have the same force and effect, and be as obligatory upon all persons, and upon any such Company, if the Company proceed in the construction of the road or other works, as if the provisions thereof had been inserted in the body of this Act. 16 V. c. 190, s. 3.

Thirty days' notice to be served on the Head of the Municipality, prior to any Company commencing any work.

**11.** If no such By-law be passed within thirty days after service of such notice upon the Head of the Municipality, then the Company may proceed with the intended road or other work without being liable to any interruption or opposition from any source whatever. 16 V. c. 190, s. 3.

If no By-law passed within thirty days, Company may proceed.

**12.** When any new road has been opened, or the line of an old road has been changed, the Municipality having jurisdiction as aforesaid, may pass a By-law permitting or directing the old road, or part of a road, to be closed up and embraced within the enclosure of the person from whom ground was taken to form such new road, provided it does not exclude any person residing on or near the line of the old road from a convenient access to the new road. 16 V. c. 190, s. 3.

When old road may be closed up by By-law.

**13.** No Company shall be incorporated under this Act :

No Company to be formed.

1. Until the Stockholders have subscribed for stock an amount sufficient in their judgment to construct the entire work;

Until a sufficient sum be subscribed.

2. Nor until they have executed an Instrument according to the form or to the purport of the Form A;

And an Instrument be executed.

3. Nor until the Company, or some one of their number, or the Directors named in the said Instrument, have paid to the Treasurer of the Company six per cent upon the amount of the capital stock mentioned in such instrument, and have

And six per cent of capital be paid and instrument registered.

registered such instrument, with a Receipt from the Treasurer of the Company for such payment or instalment, by leaving the original instrument and receipt with the Registrar of any one County in which such road or other work connected therewith is wholly or partly situated or intended to be made. 16 V. c. 190, s. 4.

Registration of Instrument of association, and receipt how made.

**14.** Such Registrar shall register the said instrument and receipt in a registry book to be provided by each Registrar for that purpose, (for which registry he shall be entitled to a fee of fifty cents,) and he shall afterwards retain the original documents in his custody, and shall produce the same upon all occasions when legally required to do so by the Directors or Treasurer of the Company, or otherwise. 16 V. c. 190, s. 4.

General corporate powers of Company so formed.

**15.** When the provisions expressed in the two last sections including the sub-sections have been complied with, the Company shall be a Chartered and Incorporated Company, by the name designated in the instrument registered as aforesaid; and may by their corporate name, purchase, hold and convey, any land, tenements and hereditaments, useful and necessary for the purposes of such Corporation. 16 V. c. 190, s. 5.

Powers of Company to explore the country and to take land and materials.

**16.** Any such Company, or any other Company heretofore chartered under any Act of the Legislature for a like purpose, may explore the country lying between the termini of any road, or supposed to be adapted for the site of any other work connected with such road as aforesaid, and may designate, take, and hold the requisite lands upon the line and within the limits of any such road, or for any such other work according to the provisions hereinafter contained, and may take and carry away stone, gravel, sand, earth and other like materials, from any adjoining or neighbouring lands, and also may cut, make and keep in repair, upon such adjoining or neighbouring lands, such ditches, drains and water courses, as may be necessary for effectually draining or carrying off the water from any such road or other work. 16 V. c. 190, s. 6.

Drainage.

Cuttings.

**17.** Whenever any such road passes through or by any wood or standing timber, such Company may cut down the trees and underwood for one hundred feet on each side of the road, making compensation therefor as hereinafter provided; and for the purpose aforesaid, the Company and their agents, servants and workmen, may enter into and upon the lands of any person, doing no unnecessary damage. 16 V. c. 190, s. 6.

Entry on lands.

In case owner of property refuses to take compensation from the Company, arbitrators to be appointed.

**18.** If the owner or occupier of any land, over, through or upon which the Company desire to construct any such road or other work connected therewith, or from which they desire to take materials, or upon which they intend to exercise any of the powers given to them by this Act, neglects or refuses, upon demand made by the Directors in that behalf, to agree with them upon



upon the price or amount of damages to be paid for or for passing through or over such land, and appropriating the same to and for the uses of the Company, or for materials taken or for the exercise of any such power as aforesaid, the Company may name one Arbitrator, and the owner or occupier of such land may name another, and the said two Arbitrators may name a third, and the said three Arbitrators shall determine the amount which the Company shall pay to such owner or occupier before taking possession of such land or taking materials therefrom or exercising such power as aforesaid. 16 V. c. 190, s. 7.

**19.** If any such owner or occupier neglects to name an Arbitrator for the space of twenty days after having been required so to do by the Company, or if the said two Arbitrators do not, within the space of twenty days after their appointment, name such third Arbitrator, or if any one or more of the Arbitrators, appointed as herein provided, refuses or neglects within the space of ten days after his or their appointment, to take upon him or them the duties hereby imposed, then, upon the application of the Company, or of the said owner or occupier, the Judge of the County Court of the County within which the land lies may nominate any disinterested competent person, from any Township adjoining the Township in which such land lies, to act as an Arbitrator for the person so neglecting to name an Arbitrator, or to act in the place of the Arbitrator so refusing or neglecting as aforesaid, and any award made by a majority of the said Arbitrators shall be as binding as if the three Arbitrators concurred in and made the same. 16 V. c. 190, s. 7.

If the party neglects to name an arbitrator, or arbitrators cannot agree on a third.

County Judge to appoint.

**20.** In ascertaining the amount of compensation, the Arbitrators shall have due regard to the benefits to accrue to such owner or occupier, by the construction of the said road or other work.

Regard to be had to benefits to accrue to owner.

**21.** Upon the amount of the compensation to be paid being determined by the award of the Arbitrators, the Company may tender the amount to the owner or occupier, and he shall thereupon execute a conveyance of the land to the Company, or such other document as may be requisite.

When determined, the Company may tender the amount.

**22.** The Company may after such tender, and whether a conveyance or other document be executed or not, enter upon and take possession of such land, for the use of the Company, and hold the same, or exercise such power as aforesaid in like manner as if the conveyance thereof or other document had been executed.

After which the Company may enter and possess.

**23.** No road, or other such work shall encroach upon any building or pass through or upon any pleasure ground, garden, yard or orchard, nor shall any materials be taken therefrom, nor shall any timber be taken from any inclosed land, without the consent of the owner. 16 V. c. 190, s. 7.

As to gardens, orchards, &c.

Owner not to inclose, &c., in order to evade this Act.

**24.** After a survey of a road has been made, the owner or occupier of land through or along which the road is intended to pass, shall not, by erecting any building or inclosing any part of such surveyed land as a yard, or by planting fruit trees or forming an orchard thereon, prevent the Company taking possession of such land. 16 V. c. 190, s. 7.

How arbitrators shall be appointed when the owner of the lands are absent or unable to sell or the lands are mortgaged, &c.

**25.** In case any lands, required by the Company for the purpose of a road or other such work, or with regard to which any such power is to be exercised as aforesaid, are held or owned by any persons, bodies politic, corporate or collegiate, whose residence is not within this Province or is unknown to the Company, or in case the titles to any such lands be in dispute, or such lands have been mortgaged, or in case the owners of such lands be unknown or unable to treat with the Company for the sale thereof, or for the exercise of any such power by the Company, or to appoint Arbitrators as aforesaid, the Company may name one disinterested competent person, and the Judge of the County Court of the County within which such lands lie, on the application of the said Company, may name another person, from any Township adjoining the Township in which such lands lie, which persons, together with one other such person to be chosen by them, before proceeding to arbitrate, or, (in the event of their disagreeing as to the choice of such other person) to be chosen by such Judge, shall be Arbitrators to determine what amount the Company shall pay for such lands, or for damages and by whom the costs of the arbitration shall be paid, and the decision of a majority of such Arbitrators shall be binding. 16 V. c. 190, s. 8.

A record of the award to be registered.

**26.** A record shall be made and signed by the said Arbitrators, or a majority of them, specifying the amount awarded and the costs; and the record shall be deposited in the Registry Office of the County in or along which the lands are situated, and the Company may thereupon enter upon and take possession of such lands for the use of the Company, and proceed with the construction of their road or other work in, along or over the same. 16 V. c. 190, s. 8.

If the Company have previously offered a sum.

**27.** In any case of arbitration under this Act, if the Company, before the appointment of their Arbitrator, tendered a sum equal to or greater than that awarded by the Arbitrators, the costs of arbitration shall be paid by the opposite party, and may be deducted by the Company from the amount of the award, before payment thereof, and in case such tender be proved to the satisfaction of the Arbitrators, they shall state the fact and the amount thereof in their award. 16 V. c. 190, s. 8.

Award to be paid on demand.

**28.** The Company shall on demand pay to the several parties entitled to the same the amount so awarded. 16 V. c. 190, s. 8.

**29.** If any such road passes through any tract of land or property belonging to or in possession of any tribe of Indians, or if any property belonging to them be taken, or any acts done under authority of this Act occasioning damage to their properties or possessions, compensation shall be made to them therefor, in the same manner as provided with respect to the property of other individuals, and whenever it is necessary that Arbitrators should be chosen by the parties for settling the amount of such compensation, the Chief Officer of the Indian Department within this Province shall name an Arbitrator on behalf of the said Indians; and where the said lands belong to any tribe or body of Indians, the amount awarded shall be paid to the said Chief Officer, for the use of such tribe or body. 16 V. c. 190, s. 9.

Cases of lands belonging to Indians provided for.

**30.** In every case of arbitration under this Act, the Arbitrators appointed shall fix a convenient day for hearing the respective parties, and shall give them eight days' notice at least of the day and place; and having heard the parties or otherwise examined into the merits of the matter brought before them, the Arbitrators or a majority of them shall, within thirty days of their appointment, make their award or arbitrament thereupon in writing, which award or arbitrament shall be final as to the amount in dispute. 16 V. c. 190, s. 10.

Meetings and proceedings of the arbitrators.

**31.** All lands taken by any such Company, for the purpose of any road or other work as aforesaid, and purchased and paid for by the Company, in the manner hereinbefore provided, shall become the property of the Company, free from all mortgages, incumbrances and other charges. 16 V. c. 190, s. 8.

Lands taken to be free of incumbrance.

**32.** If at any time after the formation of any such Company the Directors be of opinion that it is desirable to widen, extend or alter the projected line of road, or to construct any side-roads to intersect the original main road, or to improve or repair any road by substituting stone, gravel, plank or other suitable material, or that the original capital subscribed is not sufficient to complete the work, the Directors, under a Resolution passed by them for that purpose, may either issue debentures, signed by the President and countersigned by the Treasurer of the Company, for sums not less in amount than one hundred dollars each, and not exceeding in the whole one half of their paid up Capital Stock, or may borrow upon security of the Company, by bond, or by mortgage of the road and tolls to be collected thereon, a sufficient sum of money to complete the same, or they may authorize the subscription of an additional number of shares to be named in their Resolution, a copy of which resolution, under the hand of the President and seal of the Company, shall be engrossed at the head of the Subscription List. 16 V. c. 190, s. 11.

If the Directors think it desirable to widen, &c., their works, they may raise a certain amount by loan or the issue of new stock.

List of holders of new stock to be registered.

**33.** When such a number of new shares have been subscribed as the Directors deem it desirable to have registered, the President shall deliver such new list of subscribers to the Registrar having the custody of the original Instrument, and the Registrar shall attach the new list of subscribers to such Instrument, and such list shall thenceforth be deemed part and parcel of the Instrument. 16 V. c. 190, s. 11.

Its effect and the obligations and rights of holders of new stock.

**34.** The subscribers to the list, and those who may thereafter enter their names as subscribers thereon with the consent of the Directors, (signified by a Resolution of the Board under the hand of the President and seal of the Company,) shall be subject to all the liabilities and entitled to all the rights, benefits, privileges and advantages to which the original subscribers are entitled, and as well to the first line of road as to any widening, extension or alteration thereof. 16 V. c. 190, s. 11.

Stock may be called in.

**35.** Such additional shares or stock may be called in, demanded and recovered, in the same manner and under the same penalties as provided or authorized in respect of the original shares or stock of the Company. 16 V. c. 190, s. 11.

Share \$20 each how transferable.

**36.** Each share in any such Company shall be twenty dollars, and shall be personal property, and be transferable upon the books of the Company, in the manner provided by any By-law made by the Directors in that behalf. 16 V. c. 190, s. 12.

Affairs of the Company to be managed by five Directors.

**37.** The affairs, stock, property and concerns of any Company formed as hereinbefore mentioned or provided, shall for the first year be managed and conducted by five Directors, who shall be named in the Instrument registered, and thereafter the Stockholders shall, annually, on the second Monday of December, elect five Directors according to the provisions of a By-law to be passed by the Directors for that purpose. 16 V. c. 190, s. 13.

Provisions of By-laws touching their election.

**38.** Every such By-law shall regulate—

1. The manner of voting ;
2. The place and hour of meeting for the election ; and
3. Any other matters, except the day of election, which the Directors deem necessary to carry out the provisions of this Section. 16 V. c. 190, s. 13.

Notice of By-law to be published.

**39.** Every such By-law shall for three successive weeks be inserted in the newspaper, or one of the newspapers published nearest the place where the Directors usually meet for conducting the business of the Company, and the Directors may alter, change or amend such By-law, and shall publish the same in the

the manner above provided, and a majority of such Directors shall be a *quorum* for the transaction of business. 16 V. c. 190, s. 13.

**40.** If the Annual Election of Directors does not take place at the time appointed, the Directors for the last preceding year shall continue to serve until another Election of Directors be held, and such other Election shall be held at such time within one month after the appointed time as may be provided for by a By-law passed for that purpose. 16 V. c. 190, s. 13.

As to failure to elect Directors at annual election.

**41.** At any Election of Directors, each Stockholder shall be entitled to one vote for every share of stock he holds in the Company, and in respect of which he is not in arrear for any call thereon. 16 V. c. 190, s. 13.

One vote for each share.

**42.** Any Stockholder, who has paid all calls made, shall be eligible as a Director. 16 V. c. 190, s. 13.

Any stockholder not in arrears may be a Director.

**43.** The Directors may elect one of their number to be President, and may appoint such officers and servants as they deem necessary; and in their discretion may take security from such officers and servants, for the due performance of their duties, and that they will duly account for all moneys coming into their hands for the use of the Company. 16 V. c. 190, s. 14.

A President, officers and servants to be appointed.

**44.** If any vacancy happens amongst the Directors during the year for which they have been appointed, such vacancy shall be filled for the remainder of the year, by a Stockholder who shall be nominated by a majority of the remaining Directors, unless some By-law or Regulation of the Company otherwise provides. 16 V. c. 190, s. 15.

Vacancies occurring among Directors how to be filled up.

**45.** At such time and in such payments or instalments (not exceeding ten per cent. at any one time,) as the Directors deem proper, and upon a notice requiring such payment inserted for four successive weeks in the newspaper, or one of the newspapers published nearest the place where the Directors of the Company usually meet for the transaction of business, the Directors may call in and demand from the Stockholders thereof, the sums of money by them respectively subscribed. 16 V. c. 190, s. 16.

Directors to make calls on shares.

**46.** Any Shareholder neglecting or refusing for three months after the time appointed for payment thereof, to pay a rateable share of any calls so made, shall forfeit his shares in the undertaking, and all the profit and benefit thereof, and all such forfeitures shall go to the Company for its benefit. 16 V. c. 190, s. 16.

Shares forfeited if calls be not paid within a certain time.

How forfeitures must be declared.

**47.** No advantage shall be taken of any such forfeiture unless the stock be declared forfeited at a General Meeting of the Company, assembled at any time after such forfeiture incurred. 16 V. c. 190, s. 16.

Forfeiture to be an indemnification, &c.

**48.** Such forfeiture shall be an indemnification to the Shareholder so forfeiting, against all actions, suits or prosecutions for any breach of contract or other agreement between such Shareholder and the other Shareholders with regard to carrying on the undertaking. 16 V. c. 190, s. 16.

Sale of forfeited shares.

**49.** The Directors of the Company may sell to any Shareholder or to any other person, either by public auction or private sale, and in such manner and on such terms as to them seem meet, any shares so declared forfeited, or may pledge such shares for the payment of loans or advances thereon, or of any sums of money borrowed or advanced by or to the Company. 16 V. c. 190, s. 16.

Transfer to purchaser.

**50.** A certificate of the Treasurer of the Company that the forfeiture of the shares was declared, shall be sufficient evidence thereof, and if sold, such certificate expressing therein the fact of sale and the name of the purchaser, together with the receipt of the Treasurer for the price of the shares sold, shall constitute a good title to the purchaser. 16 V. c. 190, s. 16.

Certificate to be registered, &c.

**51.** Such certificate shall be by the Treasurer enregistered in the name and with the place of abode and occupation of the purchaser, and shall be entered in the books required to be kept by the By-laws of the Company. 16 V. c. 190, s. 16.

Purchaser not to see to the application of purchase money.

**52.** The purchaser of the shares so sold shall not be bound to see to the application of the purchase money, nor shall his title to such shares be affected by any irregularity in the proceedings in reference to the sale. 16 V. c. 190, s. 16.

Company may sue for calls instead of forfeiting stock.

**53.** Any such Company may, in any Court having jurisdiction in matters of simple contract to the amount demanded, sue any stockholder in the Company for any call which such stockholder neglects to pay, after notice of the call having been made has been inserted for two weeks in the newspaper, or one of the newspapers published nearest the place where the Directors of the Company usually meet for the transaction of business. 16 V. c. 190, s. 17.

Allegations in such suit.

**54.** In any action or suit brought by the Company against a Stockholder, to recover the money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the Defendant is the holder of one share or more (stating the number of shares) in the Stock of the Company, and that he is indebted to the Company in the sum of money to which the calls in arrear amount, in

in respect of one call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company, by virtue of this Act. 16 V. c. 190, s. 17.

**55.** On the trial or hearing of any such action or suit, it shall be sufficient for the Company to prove that the Defendant, at the time of making the call, was a holder of one or more shares in the undertaking, and that such call was in fact made, and the requisite notice thereof given; whereupon the Company shall be entitled to recover the amount due upon such call, with interest thereon, unless it appears that due notice of the call was not given; and the Company need not prove the appointment of the Directors who made such call, or any other matter whatever. 16 V. c. 190, s. 18.

Proof in such suit.

**56.** When there has been no transfer of the shares, proof of subscription by the Defendant to the original agreement to take stock, shall be sufficient evidence of his holding stock to the amount subscribed.

Proof in case no transfer made.

**57.** Any two or more Companies, formed for the construction or purchase of Roads intersecting or contiguous to each other, may, with the consent of the Stockholders representing or holding at least two thirds of the Capital Stock of such Companies respectively, (such consent being expressed by a resolution to that effect, adopted at a General Meeting of the Stockholders of each Company, to be called for that purpose,) unite and form one Consolidated Company, by such name and on such terms as to them seem meet. 16 V. c. 190, s. 19.

Two or more Companies may, in certain cases, unite as one Company, and how.

**58.** Upon the adoption of such resolutions, the Presidents of such Companies may execute under the seals thereof respectively, an Instrument in the form B., and deliver the same to the Registrar of any one County in which such Roads are wholly or partly situated or intended to be made, who shall register the same, in the manner prescribed by the thirteenth Section of this Act, and from thenceforth such Companies shall form one Consolidated Incorporated Company, by the name designated in such Instrument, with all the powers and subject to all the liabilities of other Companies formed under this Act. 16 V. c. 190, s. 19.

Registry of Instrument.

**59.** All the roads, estate, property and effects with the rights and privileges of such two or more Companies shall, after such consolidation, be vested in and be used and enforced by the Consolidated Company, which shall also be subject to and responsible for all debts, contracts and liabilities of the former Companies, in the same manner and to the same extent as if the Consolidated Company had been originally composed of one Company only, and not by the union of two or more Companies. 16 V. c. 190, s. 19.

Rights and liabilities of Company formed by such union.

Roads or other works and materials for the same vested in Companies and their successors.

**60.** Every road or other work connected therewith, and all materials from time to time provided for constructing, maintaining, widening, extending or repairing the same, and all toll-houses, gates, and other buildings, constructed and acquired by or at the expense of any Company acting under this Act, and used for their benefit and convenience, shall be vested in such Company, and their successors. 16 V. c. 190, s. 20.

Companies may search for and take materials for making or repairing roads.

**61.** Any Municipal Corporation or Company which has already acquired or made, or which hereafter acquires or makes, any such Macadamized, Plank or other Road, may search for and take materials for making and keeping such road in repair, in the same manner as Road Companies for the construction of roads under this Act, and the price or damage to be paid to any person for such materials, or for any thing done in pursuance of the powers hereby given, shall, if not agreed upon by the parties concerned, be settled by arbitration in the manner herein provided, in the case of lands or materials taken or required for the original construction of any such road or other work. 16 V. c. 190, s. 21.

Of what materials roads may be made.

**62.** Any Company formed for the construction of a turnpike road under this Act, or under any Act passed before this Act takes effect, may in their discretion form the same in part or the whole, either of metal, gravel, timber, charcoal or any other suitable material, for constructing a firm, substantial and smooth surface, whether the material be mentioned in the registered Instrument of Incorporation or not. 16 V. c. 190, s. 22,—13, 14 V. c. 72, s. 1.

Municipalities may acquire stock in such Companies.

**63.** Any Municipal Council, having jurisdiction within the locality through or along the boundary of which any such road passes, or in which any such work is constructed, may subscribe for, hold, sell and transfer stock in any Company formed under this, or any former Act passed for the like purpose, and may from time to time direct the Mayor, Reeve, Warden or other Chief Officer of the Municipality on behalf thereof, to subscribe for such stock in the name of the Municipality, and to act for and on behalf of the Municipality, in all matters relative to such stock, and the exercise of the rights of the Municipality as a Stockholder, and the Mayor, Reeve, Warden or other Chief Officer, shall, whether otherwise qualified or not, be deemed a stockholder in the Company, and may vote and act as such, subject to any rules and orders in relation to his authority, made in that behalf by the By-laws of the Municipal Council or otherwise, and may vote according to his discretion in cases not provided for by the Municipality. 16 V. c. 190, s. 23.

Who shall vote on such stock.

Municipalities may raise mo-

**64.** Such Municipal Council may pay all instalments upon the stock they subscribe for and acquire, out of any moneys belonging to



to the Municipality and which are not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the said stock or from the sale thereof, to any purpose to which unappropriated moneys belonging to the Municipality may lawfully be applied. 16 V. c. 190, s. 23.

ney to pay for such stock.

**65.** The Municipal Council of any locality, through or along the boundary of which any such road passes, or within which any such work connected therewith is constructed, may, out of any moneys belonging to the Municipality and not appropriated to any other purpose, lend money to the Company authorized to make the road or construct the work, or to any Company heretofore chartered by Act of the Legislature for a like purpose, and upon such terms and conditions as may be agreed on between the Company and the Municipality making such loan, and the Municipality may recover the money so loaned and appropriate the money so recovered to the purposes of the Municipality. 16 V. c. 190, s. 24.

Municipalities may loan money to Companies.

**66.** The Municipal Council may issue debentures for the payment of any loan negotiated by them with any such Company, in the same manner and subject to the same conditions as required by law with regard to the issuing of other debentures. 16 V. c. 190, s. 24.

And issue debentures.

**67.** The provisions of the last four preceding sections shall, in so far as respects the Municipal Bodies Corporate of Cities and Towns, apply to all cases of Companies formed under this Act, or heretofore chartered by any Act of the Legislature, for the formation of Roads, or the construction of Bridges within or without such Cities and Towns respectively. 16 V. c. 139, s. 1.

The provisions of the last four sections to apply to certain Companies as regards the municipalities.

**68.** Any Company formed under this or any former Act, may sell to any Municipal Council representing the interests of the locality through or along the boundary of which any such road passes or in which the work is situate, and such Municipal authority may purchase, the stock of such Company or any part of the road belonging to such Company, at the value that may be agreed on between the Company and the Municipal Council; and the Municipality may hold the same for the use and benefit of such locality, and shall, after such purchase, stand in the place and stead of the Company, and possess all such powers and authority as the Company theretofore possessed and exercised in respect to such road or part of road, or other work purchased. 16 V. c. 190, s. 25.

Companies may sell their works and rights to Municipalities.

**69.** The Municipal Council may sell any work or Macadamized, Plank or other Toll-road which they have constructed or purchased, or any stock held in any road or other Company, and apply the proceeds of such sale to the payment of existing debts contracted for the construction of the same, or for such stock;

Municipalities may sell roads, &c.

Application of proceeds.

stock; or if no debt exists for such work, road or stock, then to the general purposes of the Municipality, or otherwise, as they may determine. 16 V. c. 190, s. 26.

Sale of works to pass the rights of the Company with respect to such works, to the purchaser.

**70.** In case any Road, Bridge or Pier, or Wharf constructed by any Joint Stock Company, incorporated under the Laws of Upper Canada, has been sold or be sold after this Act takes effect, either by such Joint Stock Company, or under some power granted by them, or under legal process against such Company, the sale or sales shall, in all cases, be deemed to have passed and to pass such Roads, Bridges and Piers, or Wharves to the purchaser or purchasers thereof, with all the rights, privileges and appurtenances, and subject to all the duties and obligations which the Law gave or imposed with reference to such Road, Bridge, Pier or Wharf, whilst the same continued the property of the Joint Stock Company which had constructed the same. 22 V. c. 43. (1859.)

Roads, &c., to be completed within a certain period after incorporation of Companies.

**71.** Every Company shall, within two years from the day of their becoming incorporated under this Act, complete every road or extension thereof, not more than five miles in length, and any other work undertaken by them, and for the completion whereof they have become incorporated, and in default thereof they shall forfeit all the corporate and other powers and authority which they have acquired, and all their corporate powers shall thenceforth cease and determine, unless further time be granted by a By-law of the County in which such road or the greatest portion thereof is situated. 16 V. c. 190, s. 27.

Penalty for default.

Periods for completion in different cases.

**72.** If such road or extension thereof exceeds five miles in length, then such Company shall complete in each and every year after the expiration of the first two years as aforesaid, not less than five miles of such road until the same be entirely finished under pain (unless further time be granted as aforesaid) of forfeiture of their charter and of the corporate powers and authority thereby acquired, so far as concerns the portion of such road which remains unfinished. 16 V. c. 190, s. 27.

#### TOLLS ON ROADS, &c.

Tolls how to be fixed, paid and levied.

**73.** The President and Directors of any Company may from time to time fix, regulate and receive the tolls and charges to be paid by persons passing and repassing with horses, carts, carriages and other vehicles, and for cattle, swine, sheep or other animals, driven upon, over and along the road of the Company, or by persons passing over any bridge with any such carriages or animals, or using any work constructed, made or owned by the Company. 16 V. c. 190, s. 28.

When tolls may be collected.

**74.** Whenever two or more miles of any such road or extension thereof have been completed, tolls may be taken therefor, but

but tolls shall not be taken on any other work of the Company until the same has been completed. 16 V. c. 190, s. 28.

**75.** Tolls may be taken by any Company at each time of passing each gate upon the road constructed or owned by the Company, for any portion of such road on either side or on both sides of the said gate (not being more than five miles) to the next gate or gates on the same road, if any, and not exceeding five miles in the whole, or for the whole of such road if the length thereof do not exceed five miles, and there be only one gate thereon, at the following rates, per mile that is to say : 16 V. c. 190, s. 29.

Limitation of  
tolls.

1. For every vehicle, whether loaded or otherwise, and for the horse or other beast, or one of the horses or other beasts drawing the same, one penny; and for every additional horse or other beast drawing any such vehicle, one half penny;

2. For every horse with or without a rider, one half penny;

3. For each head of neat cattle, one half penny;

4. For every score or number less than a score, of sheep or swine, one half penny; and

5. In addition to the above rates, one half penny for every one hundred pounds, over and above four thousand, which a loaded vehicle weighs.

**76.** Every vehicle loaded with masts, spars, hewn or round timber or otherwise, exceeding in weight two tons, shall, at each time of passing each gate, pay for each ton over and above two tons, the sum of fifty cents, and all vehicles with wheels, used for the above purpose, shall have not less than five inch tires, under penalty of paying double the amount of toll above provided. 16 V. c. 190, s. 29.

Extra tolls.

**77.** Whenever a road constructed under this or any former Act, intersects a road constructed or owned by another chartered Company, no higher rate of toll shall be demanded from the persons travelling along the said last mentioned road, for the distance travelled between such intersection and either of its termini, than the rate per mile charged by the said Company for travelling along the entire length of their road so intersected; but it shall be incumbent on such persons to produce a ticket from the last Toll-gate on the intersecting road as evidence of their having travelled only from such intersection. 16 V. c. 190, s. 29.

When any such  
road intersects  
another.

**78.** Any Company formed under this or any former Act may, with the sanction of the Council of the County having jurisdiction in the locality, charge a higher rate of toll than is hereby authorized,

Tolls at bridges may, with consent of Municipal Council

oil, exceed the said rates.

authorized, at any toll-gate erected at any bridge upon or connected with any road constructed by such Company; and the Council, in sanctioning such additional toll, may take into account the cost of such bridge, and may calculate the toll as if for so many additional miles of road as might have been constructed by the like expenditure. 16 V. c. 190, s. 30.

Collection of extra tolls.

**79.** Such last mentioned tolls shall be collected in the same manner, and persons evading the same shall be liable to the same penalties as herein provided with respect to other tolls. 16 V. c. 190, s. 30.

Companies authorized to erect toll and check-gates, &c.,

**80.** Every such Company may erect such number of toll-gates, check-gates, and side-bars in, along or across the said roads, and upon any other such work respectively, and fix, regulate and collect such tolls not exceeding the rates hereinbefore provided, to be collected at each gate, check-gate, or side-bar, as they deem expedient, and may from time to time alter such tolls, toll-gates, check-gates and side-bars, and may erect and maintain such toll-houses, toll-gates, check-gates, side-bars and other buildings and erections as are necessary and convenient for the due management of the business of the Company. 16 V. c. 190, s. 31.

As to vehicles merely crossing a road.

**81.** No tolls shall be taken for merely crossing any road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed one hundred yards. 16 V. c. 190, s. 31.

Tickets to be given at check-gates to pass principal gate, and *vice versa*.

**82.** In case any Company deems it necessary or convenient to erect a check-gate on any part of their road, they shall not demand toll at both the check-gate and the gate to which it acts as a check; but tickets shall be issued at the check-gate, on payment of the toll demanded, clearing the principal gate, and *vice versa*; and the distance regulating the rates of toll shall not be calculated between any of the check-gates and the principal gates on such road, but only between the principal gates themselves. 16 V. c. 190, s. 32.

Directors may commute for tolls.

**83.** The Directors of any Road Company may, from time to time, commute with any person whose place of abode adjoins or is within half a mile of the gate nearest to his place of abode on such road. 16 V. c. 190, s. 33.

Company to keep road in repair.

**84.** After any road or portion of a road, bridge or other such work, constructed or acquired by any Company or Municipality under this or any former Act, has been completed and tolls established thereon, the Company or Municipality shall keep the same in repair. 16 V. c. 190, s. 34.

Engineer to examine the road.

**85.** If any such Company or Municipality suffers any portion of their road, on which tolls have been taken, to get out of repair,

repair, the Judge of the County Court in the County in which such road is situated may, upon the requisition of twelve freeholders residing within such County, stating that such road is so much out of repair as to impede or endanger Her Majesty's subjects and others travelling thereon, direct the engineer for the County, and if there be no such County officer, then any competent engineer, to examine the road. 16 V. c. 190, s. 34.

**86.** The engineer, so appointed shall, upon receiving such directions, immediately inspect and examine the road, and if upon examination it be found so much out of repair as to impede or endanger Her Majesty's Subjects and others travelling thereon, as stated in the requisition, he shall notify the President of the Company or Head of the Municipality to whom the road belongs, by leaving a written notice with any of the keepers of the toll-gates belonging to such Company or Municipality, stating, that in pursuance of directions from the Judge of the County Court, he has inspected their road and found it to be out of repair, and requiring them to take notice thereof, and to cause the same to be repaired within a certain time to be named in such notice, and the time shall be such as in the opinion of the engineer will be sufficient for making the required repairs. 16 V. c. 190, s. 34.

Notice to Company if the road be out of repair.

**87.** If the Directors of the Company or Municipal Council, after the service of such notice, refuse or neglect to repair the road, in a good and efficient manner, within the period limited in the notice, then, from and after the expiration of such period, and until such repairs be completed, neither the Directors or Council, nor any person authorized by them, shall demand or take any toll from any person travelling, with or without any beast or vehicle, for passing through the nearest toll-gates on either side of the portion or portions of road so reported to be out of repair. 16 V. c. 190, s. 35.

Toll's not to be collected after a certain period until repairs are made.

**88.** If after the expiration of the period limited in the notice before mentioned, and before the required repairs have been completed, any person acting as a Keeper of any such toll-gate demands or takes any toll, or refuses to allow any person travelling as aforesaid to pass through such toll-gates, without payment thereof, he shall, upon conviction before a Justice of the peace for the County in which such toll-gate is situated, upon the oath of one credible witness, forfeit and pay a sum of not less than one dollar, nor more than four dollars, for every such offence, to be collected or enforced in the manner prescribed for the collection or enforcement of other penalties under this Act. 16 V. c. 190, s. 36.

Penalty for taking toll when the road is out of repair.

How collected.

**89.** If any person, being either the renter or collector of tolls at any gate on any road, takes a greater toll than is authorized by law, he shall for every such offence forfeit and

Penalty for taking more than the proper toll.

pay the sum of twenty dollars, to be recovered in the same manner as other penalties imposed by this Act. 16 V. c. 190, s. 37.

As to money  
change.

**90.** No Gate Keeper shall be bound to give change for a larger amount than one dollar 16 V. c. 190, s. 38.

Exemption  
from toll.

**91.** The following persons shall be exempted from the payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay or landing place, or passing any turnpike roads or bridges, or passing any toll-gate or road made or improved under this or any former Act :

1. Her Majesty's officers and soldiers being in proper staff, or regimental or military uniform, dress or undress, and their horses, (but not when passing in any hired or private vehicle) ;

2. Recruits marching by route ;

3. Prisoners under military escort ;

4. Enrolled pensioners in uniform, when called out for training or in aid of the civil power ;

5. Carriages and horses belonging to Her Majesty or employed in Her service when conveying such persons or their baggage, or returning therefrom ;

6. Persons, horses or carriages going to or returning from a funeral ;

7. Any person with horse or carriage going to or returning from his usual place of religious Worship on the Lord's Day ;

8. Any farmer residing on the line of any such road passing any Toll-Gate opposite to and immediately adjoining his farm, when going to or returning from his work on such farm. 16 V. c. 190, s. 39.

Tolls may be  
charged on  
mail carriages,  
&c.

**92.** Tolls may be charged on vehicles carrying the Mails upon any road or bridge constructed under this or any former Act, or under any special or private Act of Incorporation, but as regards all roads and bridges constructed by the Provincial Government or Board of Works, and transferred to any Company on condition that the Mail should pass free over the same, an exemption from toll shall continue in favor of the Mails ; and in the case of any such last mentioned road or bridge, there shall be no such exemption in favor of any Mail Stage or other Vehicle drawn by two horses and carrying the Mail and containing or having more than four passengers travelling thereby, or in favor of any Mail Stage or other Vehicle drawn by four horses and carrying the

Exception as to  
certain roads.

Exception li-  
mited on the  
roads last men-  
tioned.

the Mail and containing or having more than eight passengers travelling thereby. 16 V. c. 190, s. 40.

**93.** But every such Mail Stage or Vehicle drawn by two horses, and containing more than four passengers, and every such Mail Stage or Vehicle drawn by four horses and containing or having more than eight passengers travelling thereby, shall for every extra passenger beyond four or eight respectively, be liable at each gate to a toll of one penny. 16 V. c. 190, s. 40.

Rate of toll if mail carriage has more than 4 or 8 passengers respectively.

**94.** Nothing herein contained shall affect the rate of toll which any party is entitled to collect under any lease or contract executed before the fourteenth June, one thousand eight hundred and fifty-three. 16 V. c. 190, s. 40.

As to roads under lease before the 14th June, 1853.

**95.** If any person not exempted by law from paying toll, wilfully passes or attempts to pass any toll-gate, check-gate or side-bar lawfully established, without first paying the legal toll, he shall forfeit a sum not exceeding twenty dollars and costs, to be recovered in the same manner as other fines and forfeitures may be levied under this Act, and in case no sufficient distress can be found to satisfy a Warrant issued against the goods and chattels of the offender, such offender shall then be committed to the Common Gaol of the County for any period not exceeding one month. 16 V. c. 190, s. 41.

Penalty for passing or attempting to pass gates, &c., without payment of toll.

**96.** In case the offender after conviction neglects or refuses to pay the amount of the fine and costs, and it be by affidavit, made to appear to the satisfaction of the acting Justice, that the offender has no goods or chattels within the jurisdiction of such Justice, a Warrant of Commitment may issue, and the party convicted may be imprisoned thereon in the first instance upon any conviction under the last preceding Section of this Act, without issuing any Warrant of Distress against goods and chattels. 16 V. c. 190, s. 41.

Imprisonment in first instance in certain cases.

**97.** If any person, subject or liable to the payment of any toll by virtue of this or any former Act, neglects or refuses after demand thereof, to pay the same, the person authorized to collect such toll, may by himself, or taking such assistants as he thinks necessary, seize or distrain any horse, cattle, carriage or other thing in respect of which such toll is imposed, together with their respective bridles, saddles, gears, harness or accoutrements (except the bridle or reins of any horse or other beast separate from such horse or beast) or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods and chattels of the person so required to pay. 16 V. c. 190, s. 42.

Mode of enforcing payment of tolls in case of refusal to pay.

**98.** If the toll so neglected or refused to be paid, and the reasonable charges of such seizure and distress be

if toll not paid within four days after

seizure, sale  
to take place.

not paid within the space of four days next after such seizure and distress made, the person so seizing and distraining, after having given four days' public notice thereof, may sell the horse, beast, cattle, carriage and things so seized and distrained, or a sufficient part thereof, returning to the owner thereof upon demand the overplus of the money arising from such sale (if any), and what shall remain unsold after such tolls and the reasonable charges occasioned by such seizure, distress and sale, have been deducted. 16 V. c. 190, s. 42.

Penalty on  
persons using  
a road and  
turning off the  
same in order  
to avoid pay-  
ment of toll.

**99.** If any person, after proceeding on such road with any waggon, carriage or other vehicle or animal liable to pay toll, turns out of the road into any other road or field or piece of land, for the purpose of avoiding the payment of toll, and enters upon the said road beyond any of the said gates or check-gates by crossing the road or otherwise without paying toll, whereby the payment of toll is evaded, such person, or the owner of such vehicle or animal, shall, for every such offence, forfeit and pay the sum of two dollars and costs; and any one Justice of the Peace for the County in which such part of the road is situated shall, on conviction of the offender, fine him in the said penalty and costs, and shall cause the same to be levied as aforesaid. 16 V. c. 190, s. 43.

Penalty on  
persons allow-  
ing others to  
pass through  
their lands to  
avoid payment  
of toll.

**100.** If any person permits or suffers any other person to pass through any lands occupied by such first mentioned person, or through any gate, passage or way thereon, with any carriage, sleigh, horse, mare, gelding or any other animal liable to the payment of toll, (such other person, before or after passing through such lands, having travelled more than one hundred yards upon the road,) whereby payment of the toll is avoided, the person so offending, and also the person riding or driving, or the owner of the animal or carriage the payment whereon is so avoided, shall, on conviction before any one Justice as aforesaid, incur a penalty not exceeding four dollars and not less than one dollar, to be levied as aforesaid, with costs. 16 V. c. 190, s. 44.

Penalty on  
persons leav-  
ing horses, &c.,  
on the road so  
as to avoid pay-  
ment of toll.

**101.** If any person leaves upon a Toll road any horse, cattle, or carriage by reason whereof the payment of any toll or duty is avoided or lessened, or takes off any horse or cattle from any vehicle, either before or after having passed through any toll-gate, or, after having passed through any toll-gate, adds or puts any horse or other beast to any such carriage and draws therewith upon any part of any such road, so as to increase the number of horses or other beasts drawing the vehicle after the same has passed through such toll-gate, whereby the payment of all or any of the tolls has been evaded, he shall forfeit and pay a sum not exceeding four dollars, to be levied as aforesaid, with costs. 16 V. c. 190, s. 45.



**102.** In case any person falsely represents himself to any toll-gatherer or gate-keeper, as being entitled to any exemption mentioned in this or any other Act, or evades the payment of toll by any false representation or other fraudulent act, he shall forfeit to the Company or Municipality owning the road, the sum of four dollars and costs, to be recovered summarily before a Justice of the Peace in the manner provided by this Act for the recovery of other penalties. 16 V. c. 190, s. 46.

Penalty on persons falsely claiming exemption from toll.

**103.** If any person wilfully and maliciously burns, breaks down, injures, cuts, removes or destroys in whole, or in part, any toll-house, turnpike-gate, wall, lock, chain, or other fastening, rail, post, bar, or other fence, belonging to any toll gate or toll-house, set up, erected or used for the purpose of preventing the passing by such gate, of persons, carriages or other property liable to the payment of toll at such gate, or any house, building, engine or weighing machine erected or used for the better ascertainment or security of any such toll, he shall be guilty of a misdemeanor, and on conviction thereof, shall be punished either by imprisonment in the Provincial Penitentiary, for a term not exceeding three years nor less than two years, or by fine and imprisonment in the Common Gaol for any term less than two years, at the discretion of the Court before whom the offender is convicted. 16 V. c. 190, s. 47.

Penalty on persons injuring roads or other works of any Company.

**104.** In case any person---

1. Removes any earth, stone, plank, timber or other materials used or intended to be used in or upon any road for the construction, maintenance and repair thereof; or

Penalty on persons removing materials used in constructing road.

2. Drives any loaded wheel carriage or other loaded vehicle, upon that part of any road constructed under this or any former Act, between the stones, plank or hard road and the ditch, further than may be necessary in passing another vehicle, or in turning off or upon such road; or

Or driving off the metal and on the soft part of the road.

3. Causes any injury or damage to be done to the bridges, culverts, posts, rails or fences; or

Damaging bridges, &c.

4. Hauls or draws upon any part of any such road, any timber, stone or other thing carried principally or in part upon wheeled carriages or upon sleighs, so as to drag or trail upon such road to the prejudice thereof; or

Or hauling timber, &c., so as to injure road.

5. Leaves any waggon, cart or other carriage upon such road without some proper person in the custody or care thereof, longer than may be necessary to load and unload the same, except in case of accident, and in cases of accident for any longer time than may be necessary to remove the same; or

Or leaving any carriages on the road.

Laying timber, stones, rubbish.

6. Lays any timber, stones, rubbish or other thing whatsoever upon the road to the prejudice, interruption and danger of any person travelling thereon; or

Leaving stones in the road used to block carriage.

7. Having blocked or stopped any cart, waggon or other carriage in going up a hill or rising ground, causes or suffers to remain on such road any stone or other thing with which such cart or carriage had been blocked or stopped; or

Or injuring lamp posts, &c.

8. Pulls down, damages, injures or destroys any lamp or lamp post put up, erected or placed in or near the side of such road or any toll-house erected on such road, or wilfully extinguishes the light of any such lamp; or

Damaging table of tolls, &c.

9. Wilfully pulls down, breaks, injures or damages any table of tolls put or fixed at any gate, check-gate or bar, on any part of such road, or any sign-board erected by any Company upon any road or bridge constructed by them; or

Defacing mile post, &c.

10. Wilfully or designedly defaces or obliterates any of the letters, figures or marks thereon, or on any finger post or mile post or stone; or

Throwing rubbish into drains.

11. Throws any earth, rubbish or any other matter or thing into any drain, ditch, culvert or other water course made for draining any such road; or

Carrying away any stones, gravel, &c.

12. Without permission carries away any stones, gravel, sand or other materials, dirt or soil from any part of such road, or digs any holes or ditches on the allowance for the same; or

Allowing swine to run at large.

13. Allows any swine to run at large to the injury of the road,—every such person shall, upon conviction thereof in a summary way before any Justice of the Peace in or near the place where the injury has been done, be sentenced to pay all damages sustained by such Company, which damages shall be ascertained by the Justice on hearing the complaint; and also be sentenced to pay a fine of not more than ten dollars nor less than one dollar, together with all costs; which damages, fines and costs shall be paid within a time to be limited by the Justice, and in default thereof the same shall be levied as hereinafter provided. 16 V. c. 190, s. 48.

Company and their servants not to impede the free use of the whole graded portion of the road.

**105.** No Company or Municipality, or Contractor, Sub-Contractor, or person employed by such Company or Municipality, Contractor or Sub-Contractor, shall leave or place upon the graded part of any road constructed or acquired by such Company or Municipality under this Act or any former Act, whether such part of the road be or be not macadamized, gravelled or planked, any stone, gravel, plank, timber, or other materials whatsoever, so as to prevent the public from using or

or to impede the free use of the whole of such graded portion of road; and for any offence against this Section, such Company, Municipality, Contractor, or Sub-Contractor, or other person shall be responsible for all damages arising from the offence; and such Contractor, Sub-Contractor, or other person shall also incur a penalty of not less than one dollar, nor more than twenty dollars, to be recovered summarily before a Justice of the Peace in the manner provided by this Act for the recovery of other penalties. 16 V. c. 190, s. 49. Penalties.

**106.** For offences against the last preceding section in the case of roads owned by Companies, the penalty shall be paid to the Municipality within which such road is situate; and in the case of roads owned by Municipalities, one half of the fine shall be paid to the complainant, and the residue to the Receiver-General for the public uses of this Province. 16 V. c. 190, s. 49. Application of penalties.

**107.** Every fine and forfeiture authorized to be summarily imposed by this Act, may be recovered upon information and complaint before any Justice of the Peace of the County within which the same has been incurred, and may be levied and collected by distress and sale of the offender's goods and chattels, under the authority of a Warrant of Distress for that purpose, to be issued by the Justice before whom the conviction is had, and in case there be no goods or chattels to satisfy the Warrant, the offender may be committed to the Common Gaol of the County for any period not exceeding one month; but nothing in this Section contained shall interfere with the provisions made in the ninety-sixth Section of this Act, for issuing a Warrant of Commitment in the first instance (upon conviction for any offence therein mentioned.) 16 V. c. 190, s. 50. Recovery of fines and forfeitures under this Act.

**108.** In any proceeding or prosecution, before a Justice of the Peace under this Act, the Justice may summon the party complained against to appear at a time and place to be named in the Summons, and if he does not appear, then upon proof of the due service of the Summons upon such party either personally or by leaving a copy thereof at his usual place of abode, the Justice may proceed either to hear and determine the case *ex parte*, or to issue his Warrant for apprehending and bringing the party before himself or some other Justice of the Peace, or the Justice may, if he thinks fit, without previous Summons, issue the Warrant, and the Justice before whom the party appears or is brought, shall hear and determine the case. 16 V. c. 190, s. 51. Party not appearing on summons may be arrested or the case may be heard *ex parte*.

**109.** Each fine and forfeiture collected under this Act shall, unless otherwise provided, be paid to the Treasurer of the Company or Municipality owning the road, or other work in Application of fines, &c., when not otherwise provided.

in respect of which such fine and forfeiture have been imposed for the use of such Company or Municipality. 16 V. c. 190, s. 52.

Suits to be brought within six months.

**110.** No action or suit shall be brought for any matter or thing done in pursuance of this Act, unless such action or suit be brought within six months next after the fact committed, and the Defendant in any such action or suit may plead the general issue only, and on the trial give this Act and the special matter in evidence. 16 V. c. 190, s. 53.

Officers and Stockholders may be witnesses.

**111.** In any action or suit brought by or against any such Company, upon a contract or for any matter or thing whatsoever, any Stockholder, or any officer or servant of the Company, shall be competent as a witness, and his testimony shall not be deemed inadmissible on the ground of interest, or of his being such servant or officer. 16 V. c. 190, s. 54.

Companies formed *bonâ fide* under former Acts confirmed notwithstanding informality in their formation, &c.

**112.** Notwithstanding any irregularity in the formation, registration or management of any Company for the construction or purchase of any road or other work connected therewith under the provisions of any Act passed before the fourteenth day of June, one thousand eight hundred and fifty-three, and notwithstanding all the requirements of any such Act had not been strictly complied with, all such Companies which had theretofore *bonâ fide* proceeded in the construction or purchase of any road or other work, shall be held to be duly organized, formed, registered, constituted and managed under such Act; But nothing in this clause contained shall be construed to confirm the establishment or management of any such Company, when any irregularity has occurred in the formation, registration or management of the same, unless such Company had *bonâ fide* proceeded with the construction of or had purchased such road or work before the said fourteenth day of June, one thousand eight hundred and fifty-three. 16 V. c. 190, s. 55.

Must have proceeded with their work.

**113.** Nothing in this Act contained shall affect the rights of any party in any proceeding, action or suit in any Court of Law or Equity pending at the time this Act takes effect. 16 V. c. 190, s. 55.

As to pending cases.

Directors to report annually to the proper Municipality.

**114.** The Directors of every Company incorporated under this or any former Act, shall, in the month of January in each year, report to the Municipal Council of the County having jurisdiction within the locality through or along the boundary of which the road passes, or wherein the other work has been constructed :

1. The cost of the work ;
2. The amount of all money expended ;

3. The amount of the Capital Stock, and how much paid in ;
4. The whole amount of tolls expended on such work ;
5. The amount received during the year from tolls and all other sources, stating each separately ;
6. The amount of dividends paid ;
7. The amount expended for repairs ; and
8. The amount of debts due by the Company, specifying the object for which such debts respectively were incurred. 16 V. c. 190, s. 56.

**115.** Every Company formed under this or any former Act shall keep regular books of account, in which shall be entered a correct statement of the assets, receipts and disbursements of the Company. 16 V. c. 190, s. 56. Company to keep regular books.

**116.** Such Books shall be at all times open to the inspection of any person or persons who may for that purpose be appointed by the Municipality having jurisdiction as aforesaid. 16 V. c. 190, s. 56. Open to the inspection of the Municipality.

**117.** Every such Inspector may take copies or extracts from the books, and may require and receive from the Keeper of such books, and also from the President and each of the Directors of the Company, and from all the other officers and servants thereof, all such information as to such books, and the affairs of the Company generally, as such Inspector deems necessary for the full and satisfactory investigation into and report upon the state of the affairs of the Company. 16 V. c. 190, s. 56. And afford the Officers of the Municipality all information required.

**118.** After twenty-one years from the time of completing any such road or any other work authorized to be constructed by any Company under this or any former Act, any Municipal authority representing the interests of the locality through or along the boundary of which such road passes or in which the work is situated, may purchase the stock of the Company at the current value thereof at the time of purchase, and hold the same for the use and benefit of the said locality. 16 V. c. 190, s. 57. After 21 years from the completion of the work, the proper Municipality may purchase the stock of the Company at its current value.

**119.** If the Company and the Municipality cannot agree upon the value, the same shall be ascertained by Arbitrators to be appointed and to act in the manner hereinbefore provided in other cases ; and such Municipal authority shall thenceforth stand in the place and stead of the Company, and shall possess all such powers and authority as the Company had theretofore possessed and exercised. 16 V. c. 190, s. 57. Value of stock to be determined by arbitrators.

Legislature may amend this Act.

**120.** Notwithstanding the privileges conferred by this Act, the Legislature may, at any time hereafter, in their discretion, make any such additions to this Act, or such alterations in any of its provisions, as they think proper for affording just protection to the public, or to any person or persons, body corporate or politic, in respect to their estate, property, or right or interest therein, or any advantage, privilege or convenience connected therewith, or in respect to the same. 16 V. c. 190, s. 58.

Certain sections of this Act to extend to all Turnpike Roads constructed under Statutes.

**121.** The provisions contained in the tenth, eleventh, twelfth, sixteenth to the thirty-sixth, forty-third, forty-fifth to sixty-ninth, seventy-first and seventy-third to one hundred and nineteenth sections of this Act, all inclusive, shall extend to and regulate all Turnpike Road Companies in Upper Canada in the collection of Tolls or otherwise, whether constructed under this or any Act in the first section of this Act referred to, or under an Act passed in the Session held in the twelfth year of Her Majesty's Reign, chapter five, and intituled, *An Act for the better management of the Public Debt, Accounts, Revenue and Property*, or constructed by or belonging to the Municipality of any County, Town or Village, authorized to construct or acquire a road under any Act of the Parliament of this Province; But lower rates of toll upon any road hereafter transferred to any Company by the last mentioned Act, may be fixed or established in the order of the Governor in Council, transferring the same to any such Company; And the provisions contained in the sixteenth to thirty-sixth, fifty-seventh to sixty-ninth, seventy-third and seventy-fourth, eightieth to ninetieth, ninety-second to one hundred and tenth, one hundred and eighteenth to one hundred and twentieth, all inclusive, together with this provision, shall also extend to Road Companies having private Acts of Incorporation, but no other Sections of this Act shall apply to such Companies. 16 V. c. 190, s. 59.

Road Companies to lay down in grass all cleared lands belonging to them and adjoining their roads.

Penalty for default.

**122.** Every Company incorporated under this Act or any of the Acts in the first section of this Act referred to, shall, whenever it may be necessary, sow with grass seed all cleared land or ground belonging to such Company and adjoining their road or roads, and cause the same, so far as may be, to be covered with grass or turf, and cause all thistles and other weeds growing on such land or ground, to be cut down and kept constantly cut down, or to be rooted out of the same; and if any such Company fails so to do, such Company shall thereby incur a penalty of two dollars for each day on which they fail to comply with any of the requirements of this section, within eight days after having been required to comply with the same by a notice to be served on the Company on the part of the Reeve of the Municipality of the Township within which the land or ground lies. 16 V. c. 190, s. 60.

**123.** If the Company has not, after the expiration of such eight days, complied with the notice, the Reeve may cause all such things to be done as the Company were by the notice lawfully required to do, and the Municipality may recover to and for the use and purposes of the Municipality, the expense of so doing, together with such penalty, and all costs and charges, from the Company by action of debt, in any Court having jurisdiction in civil cases to the amount sought to be recovered. 16 V. c. 190, s. 60.

If after 8 days the Company does not comply with notice, Reeve may, &c.

**124.** The following are the forms referred to in the foregoing sections of this Act :

FORM A. See Sec. 13, No. 2.

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, we, the undersigned Stockholders, met at \_\_\_\_\_ in the \_\_\_\_\_ County of \_\_\_\_\_, in the Province of \_\_\_\_\_, Canada, and resolved to form ourselves into a Company, to be called (*here insert the corporate name intended to be taken by the Company,*) according to the provisions of a certain Act of the Parliament of the Province, intituled, *An Act, &c., (insert the title of this Act)* for the purpose of constructing a road from *the commencement of the intended road* to *(the termination thereof, describing the line of intended road, or other such work as aforesaid;)* And we do hereby declare that the Capital Stock of the said Company shall be \_\_\_\_\_ dollars, to be divided into \_\_\_\_\_ shares, at the price or sum of twenty dollars each ; And we, the undersigned Stockholders, do hereby agree to take and accept the number of shares set by us opposite to our respective signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said in part recited Act, and of the Rules, Regulations and By-laws of the said Company, to be made or passed in that behalf ; and we do hereby nominate (*the names to be here inserted*) to be the first Directors of the said Company.

Name.	Number of Shares.	Amount.

## B. See Sec. 58.

Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, the Stockholders of the "Township of \_\_\_\_\_ Road Company," (as the case may be), and the Stockholders of the "Town or Municipality of \_\_\_\_\_ Road Company," (as the case may be), met at \_\_\_\_\_, in the County of \_\_\_\_\_, and then and there, by a majority of the Stockholders holding or representing at least two thirds of the Capital Stock of each of the said Companies respectively, resolved to unite the said Companies into one Consolidated Incorporated Company, to be called the \_\_\_\_\_ Consolidated Road Company \_\_\_\_\_, according to the provisions of the fifty-seventh, fifty-eighth and fifty-ninth Sections of a certain Act of Parliament of this Province, intituled, *An Act, (here insert title of this Act,)* upon the terms following, that is to say :  
*(here set out the terms upon which the Companies agree to unite.)* And we do hereby declare that the Capital Stock of the said united Company is \_\_\_\_\_ shares of *(as the case may be)*, divided into \_\_\_\_\_ twenty dollars each.

In testimony whereof, we have hereunto set our Hands and affixed the Seals of the said respective Companies, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_.

A. B. President, &c. [L. s.]

C. D. President, &c. [L. s.]

C A P . L .

## An Act respecting Joint Stock Companies for the construction of Piers, Wharves, Dry Docks and Harbours.

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

How Companies may be formed.

1. Any number of persons, not less than five, may form themselves into a Company for the purpose of constructing a Pier or Wharf, or for dredging or deepening or making a Harbour, or for the erection of a Dry Dock and Marine Railway connected therewith. 16 V. c. 124, s. 1.

Company to register articles of Association with Registrar of County.

2. When a Company has been formed under this Act, and a sufficient amount of Stock has been taken, adequate in their judgment to complete the work, the Stockholders shall execute an Instrument according to the form following :

Be



Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, we, the undersigned Stockholders, met at \_\_\_\_\_, in the County of \_\_\_\_\_, in the Province of Canada, and resolved to form ourselves into a Company, to be called (*insert the name intended to be taken by the Company,*) according to the provisions of a certain Act of the Parliament of this Province, intituled, *An Act, &c. (insert the title of this Act,*) for the purpose of constructing a Pier (*or Piers,*) Wharf (*or Wharves,*) and making (*or dredging*) a Harbour (*or constructing a Dry Dock,* at (*name of the place.*) And we do hereby declare that the capital Stock of the said Company shall be \_\_\_\_\_ dollars, to be divided into \_\_\_\_\_ Shares, at the price or sum of twenty dollars each. And we, the undersigned Stockholders, do hereby agree to take and accept the number of Shares set by us opposite to our respective signatures; and we do hereby agree to pay the calls thereon, according to the provisions of the said in part recited Act, and of the Rules and Regulations, Resolutions and By-laws of the said Company to be made or passed in that behalf; and we do hereby nominate (*the names to be here inserted*) to be the first Directors of the said Company.

Name.	Number of Shares.	Amount.

And the said stockholders shall register such Instrument with the Registrar of the County in which the work is situated. 16 V. c. 124, s. 2.

3. When the requirements contained in the preceding Section have been complied with, the Company shall thenceforth become and be a chartered and incorporated Company, by the name designated in the Instrument registered; and by such name, they and their successors may acquire any lands, tenements and hereditaments useful and necessary for the purpose of the Corporation, and may, in their discretion, sell and convey the same. 16 V. c. 124, s. 3.

Company to be a Corporation on certain requirements being complied with.

4. Before any such Company proceeds with their work, they shall obtain the consent of the Municipality within which the work is proposed to be made, and such Municipality may fix the limit and boundary of a proposed Harbour. 16 V. c. 124, s. 1.

Consent of Municipality to be obtained.

5. No Company so formed shall take any private property without the consent of the owner, or take or interfere with any property belonging to the Crown without the approval of the Governor in Council, or obstruct any Harbour in use, or interfere.

Company not to take private or Crown property, without consent: nor interfere.

interfere with Companies previously chartered.

interfere with any Company chartered or any Board of Commissioners incorporated for the construction of a Harbour when this Act takes effect. 16 V. c. 124, s. 1.

Affairs to be managed by five Directors.

**6.** The affairs, stock, property and concerns of every such Company shall, for the first year, be managed by five Directors, to be named in the Instrument registered, and thereafter to be annually elected by the Stockholders, on the second Monday of December in each year, according to the provisions of a By-law to be passed by the Directors for that purpose. 16 V. c. 124, s. 4.

When, by whom and how Directors elected.

Requirements of By-law.

**7.** Such By-law shall regulate :

1. The manner of voting ;
2. The place and hour of meeting for the election ;
3. The qualification of voters and of Candidates for the Direction ; and
4. Any other matters, except the day of election, which the Directors deem necessary to carry out the foregoing provisions. 16 V. c. 124, s. 4.

By-law, how published, &c.

**8.** Such By-law shall be published for three successive weeks in the newspaper, or one of the newspapers, published nearest the place where the Directors of the Company usually meet for conducting the business of the Company.

Directors may amend By-law.

**9.** The Directors may alter, change or amend such By-law, whenever they see proper, but they shall always publish the amended By-law in the manner above provided.

Majority of Directors to be a quorum.

**10.** A majority of the Directors shall be a *quorum* for the transaction of business. 16 V. c. 124, s. 4.

Failure to elect Directors not to dissolve Company.

**11.** If the annual Election of Directors for any cause do not take place at the time appointed, the Company shall not thereby be dissolved, but the Directors for the time being shall, in that case, continue to serve until another election of Directors has been held, and such other election shall in such case be held within one month thereafter, at the time provided by a By-law to be passed by the Directors of the Company for that purpose. 16 V. c. 124, s. 4.

Stockholders not in arrear entitled to one vote for every share held by him.

**12.** At any election of Directors, each Stockholder shall be entitled to one vote for every share of Stock he holds or is possessed of in the Company, and upon which such Stockholder is not in arrear for or upon any call in respect thereof. 18 V. c. 22, s. 1.

**13.** Any Stockholder who has paid all calls made, shall be eligible as a Director. 16 V. c. 124, s. 4,—18 V. c. 22. s. 1. And eligible as Director.

**14.** The Directors may elect one of their number to be the President, and may appoint such officers and servants as they deem necessary, and may in their discretion, take security from each of them for the due performance of his duty, and that he will duly account for all moneys coming into his hands to the use of the Company. 16 V. c. 124, s. 7. Directors to elect President and take security from officers.

**15.** Each share in every Company shall be twenty dollars and shall be regarded as personal property, and shall be transferable upon the books of the Company, in the manner provided by By-law to be made by the Directors in that behalf. 16 V. c. 124, s. 5. Shares to be \$20 each--to be personal property and transferable.

**16.** Any such Company may sue any Stockholder in the Company for the amount of any call or calls of Stock which such Stockholder neglects to pay after public notice thereof for two weeks in the newspaper, or one of the newspapers, published nearest the place where the Directors of the Company usually meet for the transaction of business, or after a personal demand for payment has been made from such defaulting Stockholder by the Treasurer of the Company. 16 V. c. 124, s. 6. After two weeks' notice of call, Stockholders may be sued.

**17.** The oath of the Treasurer shall be deemed sufficient proof of such notice or of such demand, and a copy thereof shall be filed in the office of the Clerk of the Court where the suit is heard or decided, or where the trial takes place. 16 V. c. 124, s. 6. Treasurer's oath, evidence of demand.

**18.** If a vacancy happens amongst the Directors during the current year of their appointment, by death, resignation, or permanent residence without the County or Counties in which the work is situated, or by any other cause, the vacancy shall, unless otherwise provided by some By-law or Regulation of the Company, be filled up for the remainder of the year in which it happens by a person to be nominated by a majority of the remaining Directors. 16 V. c. 124, s. 8. Vacancies amongst Directors, how filled up, &c.

**19.** The Directors of every Company shall annually, in the month of January, report to the Municipality within which the work is situate, under the oath of the Treasurer of the Company— Directors to make annual report to Municipality.

1. The state and nature of their work ;
2. The amount of all money expended ;
3. The amount of their Capital Stock, and how much is paid in ;

4. The amount of dividends paid and the amount expended for repairs ; and

5. The amount of debts due by the Company. 16 V. c. 124, s. 13.

Company to keep books of account, &c.

**20.** Every Company shall keep regular books of account, in which shall be entered a correct statement of the assets, receipts and disbursements of the Company, and such books shall be at all times open for the inspection of any person for that purpose appointed by the Municipality. 16 V. c. 124, s. 13.

Directors may increase capital stock.

**21.** If the Directors of any Company find the Stock already subscribed insufficient to finish the contemplated Work, they may increase the Capital Stock of the Company. 16 V. c. 124, s. 14.

President and Directors to fix tolls, &c.

**22.** The President and Directors of the Company shall, subject to the approval of the Governor, fix and regulate, from time to time, the tolls, rates, dues or wharfage to be received from all vessels entering their Harbour or lying at their Pier or Wharf, and for loading and unloading all goods, wares or merchandize in such Harbour, as to them seems meet ; but such tolls, rates, dues or wharfage shall not in any case exceed the amount herein specified. 16 V. c. 124, s. 9.

Company may detain vessels and goods, sell the same to pay tolls and other dues.

**23.** Any such Company or their Agent, Officers or Servants, may detain any goods, wares or merchandize, or any vessel, boat or craft, until the legal tolls or charges thereon have been paid, and may sell any vessel or boat for the charges for repairs thereof when such charges have remained unpaid for the space of thirty days, and in cases where the charges for wharfage or storage dues on goods, wares or merchandize have remained unpaid for the space of one year, the Company, their Agents, Officers or Servants, after giving ten days' notice of sale, may, by public auction, sell such goods, wares or merchandize, or such part thereof as may be necessary to pay such dues, and shall return the overplus, if any, to the owner or owners thereof. 16 V. c. 124, s. 10.

Municipal Corporations may hold stock in Company.

**24.** Any Municipal Corporation having jurisdiction in the locality in which any such work is to be constructed, may subscribe for, obtain, hold, or depart with, and transfer Stock in the Company, and may from time to time direct the Mayor, Reeve, Warden or other Chief Officer of the Municipality, to subscribe for such Stock in the name of the Municipality, and to act for the Municipality in all matters relative to such Stock and the exercise of the rights of the Municipality as a Stockholder, and such Chief Officer shall, whether otherwise qualified or not, be deemed a Stockholder in the company, and may vote and act as such, subject to the rules and orders in relation to his authority, which may be made

made in that behalf by the Municipal Council, but voting according to his discretion in cases not provided for by such Council. 16 V. c. 124, s. 11.

**25.** Any Municipality so taking Stock may pay for the same out of any moneys belonging to the Municipality, and not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the stock or from the sale thereof, to any purpose to which unappropriated moneys belonging to the Municipality may lawfully be applied. 16 V. c. 124, s. 11.

Municipality may pay for stock out of unappropriated moneys of Municipality.

**26.** Any Company may sell to any Municipality representing the interest of the locality in which the work is situate, and any such Municipality may purchase the Stock of such Company at the value agreed on between them, and such Municipality shall hold the same for the use and benefit of the locality; and shall, in all respects thereafter, stand in the place of the Company, and shall possess all such powers and authority as the Company had theretofore possessed and exercised. 16 V. c. 124, s. 12.

Municipalities may purchase stock.

**27.** Any Municipality desirous of purchasing any such work, may borrow money or raise the means of paying therefor, by By-law to be passed under the provisions of the Act respecting the *Consolidated Municipal Loan Fund*. 16 V. c. 124, s. 12.

Municipality may borrow money to purchase work under Municipal Loan Fund Act.

**28.** Any such Company may borrow money on the security of such work, not exceeding one half the value thereof. 16 V. c. 124, s. 15.

Company may borrow money on security of work.

**29.** In case any Pier or Wharf constructed by any Joint Stock Company incorporated under the Laws of Upper Canada has been sold or be sold after this Act takes effect, either by such Joint Stock Company or under some power granted by them, or under legal process against such Company, the sale or sales shall, in all cases, be deemed to have passed and to pass such Piers or Wharves to the purchaser or purchasers thereof, with all the rights, privileges and appurtenances, and subject to all the duties and obligations which the Law gave or imposed with reference to such Pier or Wharf, whilst the same continued the property of the Joint Stock Company which had constructed the same. 22 V. c. 43, s. 1. (1859.)

Sale of works to pass the rights of the Company to the purchaser.

**30.** So soon as any such Pier, Wharf or Harbour is so far completed as to be capable of receiving and sheltering vessels, and of safely loading and unloading the same, the Company may demand and take as toll or a wharfage to and for their own use and benefit, on all goods, wares and merchandize shipped on board or landed out of any vessel, boat or other craft from or upon any such Pier or Wharf within

Company may demand tolls, when, and amount, &c.

within the bounds of every such Harbour, not exceeding the following, that is to say :

	s. d.	\$ cts.
Pot or Pearl Ashes.....per barrel	0 4	or 0 06 $\frac{2}{3}$
Pork, Whiskey, Beef, Salt, Lard or Butter, “	0 3	0 05
Flour..... “	0 2	0 03 $\frac{1}{3}$
Lard or Butter.....per firkin or keg	0 1	0 01 $\frac{2}{3}$
Grain of all kinds.....per bushel	0 1	0 01 $\frac{2}{3}$
Horned Cattle or Horses.....each	0 4	0 06 $\frac{2}{3}$
Calves, Sheep or Swine..... “	0 1	0 01 $\frac{2}{3}$
Merchandize.....per ton	3 0	0 60
Sawed Lumber, per 1,000 feet board measure.	1 3	0 25
Square or round Timber...per 100 cubic feet.	0 9	0 15
Saw-logs.....	0 1 $\frac{1}{2}$	0 02 $\frac{1}{2}$
Pipe Staves.....per M.,	2 0	0 40
West India Pipe Staves..... “	0 6	0 10
Unenumerated Articles.....per ton	2 0	0 40
Boats of 12 tons or under.....each	1 0	0 20
“ over 12 tons and not over 50..... “	2 0	0 40
“ over 50 tons..... “	3 0	0 60

16 V. c. 124, s. 16.

Municipality, after 21 years, may purchase the stock of Company.

**31.** Any Municipal Council representing the interests of the locality in which the work is situate, may, after twenty-one years from the time of such work being so far completed as that tolls were and have been collected thereon, purchase the Stock of such Company at the current value thereof at the time of purchase, and shall hold the same for the use and benefit of such locality; and such Municipality shall thenceforth stand in the place of the Company, and the Council thereof shall possess all such powers and authority as the Company had theretofore possessed and exercised. 16 V. c. 124, s. 17.

Legislature may alter and amend this Act.

**32.** Notwithstanding the privileges conferred by this Act, the Legislature may, at any time hereafter, in their discretion, make any such additions to this Act, or such alterations of any of its provisions, as they think proper, for affording just protection to the public, or to any person or persons, body corporate or politic, in respect to their estate or property, or right or interest therein, or any advantage, privilege or convenience connected therewith, or in respect to any right, public or private, that may be affected by any of the powers given to any such corporation. 16 V. c. 124, s. 18.

C A P . L I .

An Act for the promotion of Agriculture in Upper Canada.

Preamble.

**I**T being expedient to encourage the formation of Joint Stock Companies authorized to hold land and erect edifices to be used for the holding of periodical fairs or exhibitions for agricultural purposes, and that a general law should exist to enable

Joint Stock Companies to purchase and hold land for the purposes aforesaid, and to construct suitable buildings thereon, and to empower Municipal Corporations to subscribe a portion or the whole of the necessary capital for the purposes aforesaid: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** Any number of persons, not less than five, may, in Upper Canada, form themselves into a Company under the provisions of this Act, for the purposes aforesaid. 22 V. c. 44, s. 1. (1859.)

Companies may be formed for purposes mentioned in the Preamble.

**2.** When any number of persons not less than five have subscribed a sufficient quantity of stock to amount to a sum equal in their judgment to the amount required for the purchase of the ground necessary for an edifice to be used for the purposes mentioned in the preamble to this Act, and the erection of such edifice thereon and of the additional ground required for the holding of Agricultural fairs or exhibitions, and have executed an instrument according to the form in the schedule A to this Act contained; and have paid to the Treasurer of such intended Company twenty-five per cent. upon the capital stock intended by such Company to be raised for the purposes aforesaid, and have registered such instrument at full length together with a receipt from the Treasurer of such Company for such first instalment of twenty-five per cent. with the Registrar of the County or city in which such edifice is to be or is intended to be built, such Company shall thenceforth become and be a body corporate by such name as may be designated in the instrument so to be registered as aforesaid; and they and their successors by their corporate name shall be capable of taking, purchasing, having and holding any piece or parcel of land in Upper Canada for the purpose of erecting such edifice as aforesaid, and also for holding such fairs or exhibitions as aforesaid; such parcel of land not to contain more than one hundred acres. *Ibid*, s 2.

Conditions on which any such Company may become incorporated.

Name and corporate powers.

**3.** The affairs, property and concerns of every such Company, formed under the provisions of this Act, shall be managed by not less than three nor more than nine Directors, who shall be shareholders, and subjects of Her Majesty, and a majority of whom shall form a quorum capable of doing business. *Ibid*, s. 3.

Directors.

Quorum.

**4.** The said Directors shall in the first instance be chosen by ballot from among the subscribers to the said instrument so to be registered as aforesaid, and thereafter shall be annually elected by the said stockholders, on the second Monday in January in each and every year; and upon the first and every such election of Directors each shareholder shall be entitled to one vote for every share he may hold or be possessed of up to ten, and one vote for every five shares above ten; but no stockholder shall be allowed to vote at any election unless he has paid all calls upon each share he may hold. *Ibid*, s. 3.

Election.

Voters.

Shares must be paid up.

President.

**5.** The Directors or a majority of them shall, at their first annual meeting, elect one of their number to be president of such Company, and the president, if present, (or if not present then some Director chosen for the occasion), shall preside at all meetings, and in case of equality shall have the casting vote. 22 V. c. 44, s. 4. (1859.)

Casting vote.

By-laws, &amp;c.

**6.** The said directors may pass By-laws for the regulation of the affairs of such Company, and shall keep a book in which shall be recorded all By-laws and proceedings and to which any person shall have access for the purpose of searching the same and making extracts therefrom, without payment of any fee whatsoever. *Ibid*, s. 4.

Secretary and Officers.

**7.** Every such Company shall have a Secretary and Treasurer and such subordinate officers as the Company by its By-laws may require, who shall be elected by the Directors and required to give such security for the faithful performance of the duties of their respective offices as the Company by its By-laws may provide. *Ibid*, s. 5.

Shares.

To be personally.

**8.** Each share in every such Company shall be twenty dollars, and shall be regarded as personal property, and shall be transferable upon the books of such Company, in such manner as may be provided for by the Directors in that behalf. *Ibid*, s. 6.

Calls.

**9.** The Directors of any such Company may call in and demand from the stockholders thereof respectively all sums of money by them subscribed, at such times and in such payments or instalments as such Directors deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment be not made by the stockholders respectively, within sixty days after a personal demand, or after notice requiring such payment has been published for six successive weeks in the newspaper nearest the place where the business of the Company is being carried on as aforesaid. *Ibid*, s. 7.

Forfeiture of shares for non-payment.

Municipalities may take stock, &amp;c.

**10.** Any Municipal Corporation in Canada may subscribe for, acquire, accept, and hold, and may depart with and transfer stock in any Company to be formed under the authority of this Act, and from time to time may direct the Mayor, Warden, or other chief officer thereof, on behalf of such Municipality, to subscribe for such stock in the name of such Municipality, and to act for and on behalf of such Municipality, in all matters relative to such stock, and the exercise of the rights of such Municipality as a stockholder; and the Mayor, Warden, or other chief officer shall, whether otherwise qualified or not, be deemed a stockholder in the Company, and may vote and act as such, subject always to such rules and orders in relation to his authority, as may be made in that behalf by such Municipality, by their By-laws, or otherwise, but acting according to his discretion  
in

Mayor, &amp;c., to represent such stock.



in cases not provided for by such Municipality; and such Municipality may pay for all instalments of the stock which they subscribe for and acquire, out of any moneys belonging to such Municipality and not specially appropriated to any other purpose, and may apply the money arising from the dividends or profits on the said stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to such Municipality may be lawfully applied. 22 V. c. 44, s. 8. (1859.)

Municipality  
may pay calls,  
&c.

**11.** Any Municipal Corporation in Canada may lend money to any Company that may be formed under this Act out of any moneys belonging to the Municipality, and not appropriated to any other purpose, and may effect such loan upon such terms and conditions as may be agreed upon between such Company and the Municipality making such loan, and may recover the money so lent, and may appropriate the moneys so recovered to the purposes of such Municipality. *Ibid*, s. 9.

Municipal Cor-  
porations may  
lend money to  
the Company.

**12.** Any such Company so to be incorporated as aforesaid may, in any Court having jurisdiction in matters of simple contract to the amount demanded, sue for, recover, and receive of or from any stockholder in such Company, the amount of any call or calls of stock which such stockholder may neglect to pay after public notice thereof in the newspaper nearest the place where the business of the Company is being carried on as aforesaid. *Ibid*, s. 10.

Recovery of  
calls of stock.

**13.** In any action or suit brought by any such Company against any stockholder to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the Defendant is the holder of one share or more (stating the number of shares) in the stock of the said Company, and that he is indebted to the Company in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, (stating the number and amount of each of such calls,) whereby an action hath accrued to the Company, by virtue of this Act. *Ibid*, s. 11.

What only  
need be stated  
in any action  
for calls.

**14.** On the trial or hearing of such action it shall be sufficient for the Company to prove that the Defendant, at the time of making such call, was a holder of one share or more in the undertaking, (and when there has been no transfer of the shares, then the proof of subscription to the original agreement to take stock shall be sufficient evidence of holding stock to the amount subscribed,) and that such call was in fact made, and notice thereof given as is required; and it shall not be necessary for the Company to prove the appointment of the Directors who made such call, or any other matter whatsoever; and thereupon the Company shall be entitled to recover the amount due upon such call with interest thereon, unless it appears that due notice of such call was not given. *Ibid*, s. 12.

What only  
need be proved  
in any such  
action.

Members, &c.,  
of the Compa-  
ny may be  
witnesses.

**15.** In any action or suit brought by or against any such Company upon any contract, or upon any matter or thing whatsoever, any stockholder, or any officer or servant of the Company shall be competent as a witness, and his testimony shall not be deemed inadmissible on the ground of interest, or of his being such servant or officer. 22 V. c. 44, s. 13. (1859.)

Limitation of  
suits for things  
done under this  
Act.

**16.** If any action or suit be brought against any person or persons for any matter or thing done in pursuance of this Act, such action or suit shall be brought within six months next after the fact committed, and not afterwards; and the Defendant or Defendants in such action or suit may plead the general issue only, and give this Act and the special matter in evidence on the trial. *Ibid*, s. 14.

SCHEDULE A.—See s. 2.

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, we, the undersigned stockholders, met at \_\_\_\_\_, in the County of \_\_\_\_\_, in the Province of Canada, and resolved to form ourselves into a Company, to be called *(here insert the corporate name intended to be taken by the Company)* according to the provisions of a certain Act of the Parliament of this Province, intituled, *An Act for the promotion of Agriculture in Upper Canada*, for the purpose of purchasing a parcel of land in the County of \_\_\_\_\_, and erecting thereon suitable buildings to be used for the purpose of holding periodical fairs or exhibitions for agricultural purposes; And we do hereby declare that the capital stock of the said Company shall be \_\_\_\_\_ dollars, to be divided into shares at the price or sum of twenty dollars each; And we, the undersigned stockholders, do hereby agree to take and accept the number of shares, set by us opposite to our respective signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said in part recited Act, and of the rules, regulations, resolutions and By-laws of the said Company, to be made or passed in that behalf: And we do hereby nominate *(the names to be here inserted)* to be the first Directors of the said Company.

Name.	No. of Shares.	Amount.

## TITLE 7.

## MUNICIPAL INSTITUTIONS.

## CAP. LII.

## An Act respecting Mutual Insurance Companies.

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

- 1.** Ten freeholders in any Municipality or Village may call a meeting of the freeholders of such Municipality or Village, to consider whether it be expedient to establish therein a Fire Insurance Company, on the principle of Mutual Insurance. 6 W. 4, c. 18, s. 1,—18 V. c. 120, s. 2,—20 V. c. 74, s. 1. Ten freeholders of any district may call a meeting to establish a Fire Insurance Company.
- 2.** In case the meeting is to be a meeting of the freeholders of the County, and in case one or more newspapers be published therein, such meeting shall be called by an advertisement mentioning the time, the place within the County and the object of the meeting, published for three weeks immediately preceding such meeting, in all the public newspapers published in the County. 6 W. 4, c. 18, s. 1,—18 V. c. 120, s. 2. Meeting to be advertised.
- 3.** In case no newspaper be published in the County, such advertisement may be posted up in some public place, in three or more Townships of the County. 6 W. 4, c. 18, s. 1,—18 V. c. 120, s. 2. How if no newspaper published in the county.
- 4.** In case the meeting is to be a meeting of the freeholders of a Village, or of any Municipality, other than a County, the advertisement calling the meeting shall be published, in manner and for the time aforesaid, in the newspaper or newspapers in or nearest to such Municipality or Village. 18 V. c. 120, s. 2. Meeting for establishing a Town or Village Company.
- 5.** Nothing hereinbefore contained shall prevent the establishing of more Mutual Insurance Companies than one in any County. 18 V. c. 120, s. 1,—6 W. 4, c. 18, s. 1. There may be more than one Company in the same County.
- 6.** In case thirty of such freeholders at least are present at such meeting, and a majority of them determine that it is expedient to establish such Company, they may elect three persons from among the then present freeholders of the Municipality or Village (as the case may be) to open and keep a book, in which all freeholders in the Municipality or Village may sign their names and enter the sums for which they respectively bind themselves to effect Insurance with the Company. 6 W. 4, c. 18, s. 2,—18 V. c. 120, s. 3. Subscription book to be opened if the majority be for establishing a Company.

When subscribers amount to forty and the subscriptions to \$40,000, Company to be formed.

**7.** Whenever forty or more persons duly qualified have signed their names in the Subscription Book, and bound themselves to effect Insurance amounting together to forty thousand dollars, or upwards, such persons and all other persons thereafter becoming members of the Company by effecting Insurances therein, shall be a body corporate and politic, by and under the name and style of "The Mutual Fire Insurance Company, of the Municipality (naming it) or Village" (naming it), for which the Company has been established. 6 W. 4, c. 18, s. 4,—18 V. c. 120, s. 4.

Company may adopt a corporate name.

**8.** Any such Company may, by a By-law passed in the usual manner, adopt any corporate name which the Directors deem expedient, provided they retain the appellation of Mutual, but such corporate name shall not thereafter be changed so long as the Company subsists. 22 V. c. 46, s. 2. (1859.)

Company may purchase and sell Real and Personal Estate.

**9.** Every such Company and their successors, may, by and in the Corporate name, purchase, have and hold any estate, real, personal or mixed, to and for the use of the Company, and may from time to time let, convey and otherwise depart therewith on account of and for the benefit of the Company. 6 W. 4, c. 18, s. 4,—18 V. c. 120, s. 4.

The members may mutually insure each other.

**10.** The Company by the name aforesaid may mutually insure the respective dwelling Houses, Stores, Shops and other buildings, household furniture, and merchandize, of the members thereof, against damage or loss by fire, whether the same happens by accident, lightning, or any other means, excepting that of design in the assured, or by the invasion of an Enemy or by Insurrection. 6 W. 4, c. 18, s. 4,—18 V. c. 120, s. 4.

Every Company may divide its business into two branches.

**11.** Every Company, when established, may separate their business into two branches or departments, one for the Insurance of isolated buildings and property not hazardous, and the other for Insuring buildings and property hazardous and not hazardous. 18 V. c. 120, s. 6,—20 V. c. 74.

Scale of risks to be made for each branch.

**12.** The Directors of every such Company shall make a scale of risks for each branch, and direct that the accounts of each shall be kept separate and distinct the one from the other. 18 V. c. 120, s. 7.

Members of one branch not to be liable for claims on the other.

**13.** Members of any such Company Insuring in one branch shall not be liable for any claims on the other branch. 18 V. c. 120, s. 8.

Expenses to be divided between each branch proportionably.

**14.** All necessary expenses incurred in the conducting and management of such Companies shall be assessed upon and divided between each branch in proportion to the amounts insured in such branches respectively. 18 V. c. 120, s. 8.

**15.**

**15.** Any ten members of a newly formed Insurance Company, may call the first meeting of such Company, in the case of a County Insurance Company, at such time and place within the County, and in the case of any other Municipality or of a Village Mutual Insurance Company, at such time and place within the Municipality or Village, as they may determine. 6 W. 4, c. 18, s. 23,—18 V. c. 120, s. 5. First meeting.

**16.** They shall call such meeting, by advertising the same in such of the public newspapers printed and published within the County, Municipality or Village, or nearest thereto, as they think proper, giving at least thirty days' notice of the time, place and design of such meeting, as for the purpose of choosing the first Board of Directors, of making and establishing By-Laws, and of transacting any business necessary and proper to carry this Act into effect. 6 W. 4, c. 18, s. 23,—18 V. c. 120, s. 5. How called.

**17.** No policy of Insurance shall be issued by a County Insurance Company until application has been made for insurance on fifty thousand dollars at the least, and in the case of a Municipality other than a County, or of a Village Insurance Company, not until application has been made for insurance on forty thousand dollars at least. 6 W. 4, c. 18, s. 23,—18 V. c. 120, s. 5. No policy to issue until \$50,000 has been applied for insurance.

**18.** Every such Company may hold lands, but such lands only as are requisite for the accommodation of the Company in relation to the convenient transaction of their business, or such lands as have been *bonâ fide* mortgaged to them by way of security, or conveyed to them in satisfaction of debts contracted in the course of their dealings, previously to such conveyance or purchased at sales upon judgments obtained for such debts. 6 W. 4, c. 18, s. 3. Limitation as to lands, &c., to be held by the Company.

**19.** The Company shall not deal or trade in buying or selling any goods, merchandize or commodities, nor shall the Company or the Directors in any way exercise the business of Banking. 6 W. 4, c. 18, s. 3,—22 V. c. 46, s. 10. (1859.) Company not to trade, &c.

**20.** The Company may (if the Directors thereof for the time being think fit) admit as a member thereof the owner of any property, moveable or immoveable, lying within any part of Upper Canada or of Lower Canada, and may insure the same whether the owner of such property be or be not a freeholder in the Municipality, or Village, in which the Company has been incorporated; and every person so admitted a member of the Company shall have the same rights and be subject to the same liabilities as the other members of the Company 4, 5 V. c. 64, s. 1,—22 V. c. 46, s. 6. (1859.) Company may insure any property within Upper Canada or Lower Canada.

**21.** Every person who becomes a member of the Company by effecting insurances therein, shall, before he receives his Indorsed Notes to be deposited with Company

payable to an officer.

his policy, deposit his promissory note payable to the Company, or to some officer thereof, or to some other person for the purpose of being endorsed by such person in favor of, or to the Company, or to some officer thereof, for such a sum of money as shall be determined by the Board of Directors. 4, 5 V. c. 64, s. 4,---16 V. c. 192, s. 3.

Part thereof to be paid to the Treasurer.

**22.** A part of the sum secured by such note, to be determined by the Board of Directors, shall be immediately paid to the Treasurer, for the purpose of discharging the incidental expenses of the institution; and the remainder of such note shall be payable in part or the whole at any time when the Board deems the same requisite for the payment of losses or other expenses. 16 V. c. 192, s. 3.

At the expiration of the insurance, note to be returned.

**23.** At the expiration of the term of insurance, the note, or such part of the same as remains unpaid, after deducting all losses and expenses occurring during the said term, shall be relinquished and given up to the signer thereof. 16 V. c. 192, s. 3.

May take premium in cash.

**24.** Any such Company may collect premiums in cash for insurance for terms not longer than one year, and such portion of the premium notes as the Directors may consider equitable and necessary on all insurances for terms longer than one year. 22 V. c. 46, s. 4. (1859.)

Insurer to be member of the Company during the term of his policy.

**25.** Every person insured by the Company, and the heirs, Executors, Administrators and assigns of every such person continuing to be insured therein, shall be members thereof, during the terms specified in their respective policies, and no longer, and shall at all times be subject to the provisions of this Act. 6 W. 4. c. 18, s. 6.

Insurances not to exceed seven years.

**26.** The Company may make insurance for any term not exceeding seven years. 6 W. 4, c. 18, s. 17

Policies to be void in certain cases.

**27.** If the assured has a title in fee simple unincumbered to the building or buildings insured, and to the land covered by the same, any Policy of Insurance thereon issued by the Company, which is signed by the President and countersigned by the Secretary, shall be deemed valid and binding on the Company, but not otherwise; but if the assured has a less Estate therein, or if the premises be incumbered, the Policy shall be void, unless the true title of the assured, and of the incumbrance on the premises, be expressed therein and in the application therefor. 6 W. 4, c. 18, s. 17.

Policy void in case of insurance in any other Company without con-

**28.** If insurance on any house or building subsists in the Company, and in any other office, or by any other person at the same time, the insurance in the Company shall be void, unless the double insurance subsists with the consent of the Directors, signified

signified by endorsement on the back of the Policy, signed by the President and Secretary. 6 W. 4, c. 18, s. 22. sent of Directors.

**29.** Whenever notification in writing shall be given to any Company by an applicant for insurance, or by a person already insured, of his intention to insure, or of his having insured an additional sum on his property in some other Company, the said additional assurance shall, be deemed to be assented to, unless the Company, so notified, shall, within two weeks after the receipt of such notice, signify to the party in writing their dissent; and in case of such dissent, the liability of the insured on the premium note shall cease from the date of such dissent on account of any loss that may occur to such Company thereafter. 22 V. c. 46, s. 13. Party intending to effect additional Insurance elsewhere may notify the Company.

**30.** In case any house or other building be alienated by sale or otherwise, the policy shall be void and shall be surrendered to the Directors of the Company to be cancelled, and thereupon the assured shall be entitled to receive his deposit note or notes, upon payment of his proportion of all losses and expenses that had accrued prior to such surrender, but the grantee or alienee may have the policy assigned to him, and upon application to the Directors such alienee on giving proper security to their satisfaction for such portion of the deposit or premium note as remains unpaid, and with their consent within thirty days next after such alienation, may have the policy ratified and confirmed to him for his own use and benefit, and by such ratification and confirmation the party causing the same shall be entitled to all the rights and privileges and be subject to all the liabilities to which the original party insured was entitled and subjected. 6 W. 4, c. 18, s. 19. Policy rendered void on alienation of property insured. But the assignee may have the same confirmed to him by Directors.

**31.** It being expedient to provide for the speedy and certain payment of losses incurred by enabling Mutual Insurance Companies to possess a guarantee capital: Therefore any Mutual Fire Insurance Company, formed under this Act or any former Act, may raise by subscription of its members or some of them, or by the admission of new members not being persons assured the Company, or by loan, or otherwise, a guarantee capital of any sum not exceeding five hundred thousand dollars, which guarantee capital shall belong to such Company, and be liable for all the losses, debts, and expenses of the Company; and subscribers of such capital stock shall in respect thereof have such rights as the Directors of the Company declare and fix by a By-law to be passed before such capital is raised; and unless such capital be paid off in the manner hereinafter provided, such By-law shall not be repealed or altered without the consent of the majority of votes of the shareholders of such capital, either personally or by proxy, at a meeting held for that purpose of the holders of such capital, each holder being entitled to a vote for every share of forty dollars held by him. 22 V. c. 46, s. 1. Any Mutual Insurance Company may raise a guarantee capital not to exceed \$500,000. Rights of subscribers to such capital.

Company may create a Reserve Fund and pay off guarantee capital.

**32.** Any such Company may create from the surplus profits of the Company, from year to year, a Reserve Fund for the purpose of paying off the guarantee capital, after which its affairs and property shall revert to and be vested in the parties insured, as the sole members of the Company. 22 V. c. 46, s. 3.

Periodical division of profits.

**33.** Every such Company make a periodical division of the profits of the Company equitably among the stockholders and policy holders of the Company, after providing for the Reserve Fund above referred to. 22 V. c. 46, s. 5.

Alteration of premises after insurance made.

**34.** If any alteration be made in any house or building by the proprietor thereof, after an insurance has been made thereon with the Company, whereby it is exposed to greater risk or hazard from fire than it was when insurance was effected, the insurance thereupon shall be void, unless an additional premium and deposit after such alteration be settled with and paid to the Directors, but no alterations or repairs in buildings not increasing such risk or hazard shall affect the insurance previously made thereon. 6 W. 4, c. 18, s. 20.

Affairs of the Company to be managed by a Board of Directors.

**35.** The property, affairs and concerns of the Company shall be managed by a Board of Directors to be chosen annually on the first Monday in June, and such Board shall consist of not less than seven nor more than fifteen members. 6 W. 4, c. 18, s. 7,—22 V. c. 46, s. 7. (1859.)

Number of Directors. Quorum.

**36.** Every such Company may, under a By-law to be passed for that purpose, elect any number of Directors, not less than seven nor more than fifteen; and any three Directors shall be a quorum. 22 V. c. 46, s. 7. *See post.* s. 63.

One to be chosen President.

**37.** One of such Directors shall be chosen President, and the President and Directors shall hold their offices for one year. 6 W. 4, c. 18, s. 7,—4, 5 V. c. 64, s. 3.

Qualification of Directors.

**38.** The Directors shall be members of the Company, and insurers therein for the time they hold office, to the amount of eight hundred dollars at least, and shall be elected at such place within the Municipality or Village, and at such time of the day, as a majority of the Board for the time being appoint; and public notice thereof shall be given in such of the provincial newspapers published within such Municipality or Village, and in such other manner as the Board of Directors, for the time being, orders and directs, and at least thirty days previous to the time of holding the Election. 6 W. 4, c. 18, s. 7.

Disqualification.

**39.** No agent, paid officer or employee of any such Company shall be eligible to be elected a Director, or be allowed to hold proxies or to interfere in the election of Directors of such Company. 22 V. c. 46, s. 12. (1859.)



**40.** The Election of Directors shall be held and made by such members of the Company as attend for that purpose in their own proper persons, or by proxy, all of which proxies shall bear date at least three months before the election at which they are used, and be filed with the Secretary of the Company within the same period. 6 W. 4, c. 18, s. 7,—22 V. c. 46, s. 12. (1859.)

Directors may be elected personally or by proxy.

**41.** The elections for Directors shall be by ballot; and the persons (not less than seven nor more than fifteen *as the case may be*) having the greatest number of legal votes thereat, shall be the Directors. 6 W. 4, c. 18, s. 7.

Mode of Election.

**42.** If at any such election two or more members have an equal number of votes, in such manner that a less number of persons than the whole number to be elected appear to have been chosen Directors, by a plurality of votes, then the said members of the Company shall proceed to elect by ballot until it is determined which of the persons so having an equal number of votes shall be the Director or Directors, so as to complete the whole number of Directors to be elected, and the Directors so chosen shall, as soon as may be after the election, proceed in like manner to elect by ballot one of their own number to be President. 6 W. 4, c. 18, s. 7.

In case of a tie.

Election of President.

**43.** If any vacancies happen among the Directors, during the current year of their appointment, by death, resignation or removal from the Municipality or Village, such vacancies shall be filled up for the remainder of the year, by a person or persons duly qualified to be nominated by a majority of the remaining Directors, and as soon as may be after the vacancy occurs. 6 W. 4, c. 18, s. 7.

Vacancies to be supplied.

**44.** Each member of the Company shall be entitled to the number of votes proportioned to the amount by him insured at least one month prior to the time of voting, according to the following rates, that is to say :

Number of votes in proportion to shares.

For any sum amounting to four hundred dollars, one vote ;

Sixteen hundred dollars, two votes ;

Three thousand six hundred dollars, three votes ;

And one vote for every two thousand four hundred dollars above three thousand six hundred dollars. 6 W. 4, c. 18, s. 8.

**45.** In case an election of Directors be not made on the day on which it ought to be made, the Corporation shall not for that cause be dissolved, but the election may be held on any subsequent day within ten months from the day appointed for holding the annual election according to the provisions of the by-laws and ordinances of the Corporation. 6 W. 4, c. 18, s. 9.

Corporation not dissolved by non-election of Directors on day specified.

Directors appointed at subsequent day to have all the powers contained in this Act.

Directors to give bonds to the Treasurer.

**46.** The Directors elected at such subsequent day shall have all the powers contained in this Act, as if elected on the annual day of election, and shall hold office for the remainder an the current year of their election. 6 W. 4, c. 18, s. 9.

**47.** Every Director of the Company, before he enters upon the duties of his office, shall give a bond to the Treasurer of the Municipality or Village in which the Company has been formed, in the sum of two thousand dollars, together with two sufficient sureties in the sum of one thousand dollars each, (or such further sum as may be fixed by any by-law or ordinance,) and to the satisfaction of such Treasurer, conditioned for the faithful discharge of the duties of the office of such Director, agreeable to the provisions of this Act, and the by-laws, regulations, ordinances, requirements and restrictions made in pursuance thereof. 6 W. 4, c. 18, s. 24.

The Treasurer may institute suits thereon.

And shall certify to the Court the name of the plaintiff, required to give security for costs.

**48.** On the complaint of any person injured by the misconduct of any Director, the Treasurer, upon receiving security to indemnify him against costs, shall institute a suit at law against such Director and his sureties upon such bond, and shall certify to the Court the name of the Plaintiff in any such suit, and the Court may, on motion of the Defendants in the cause, order the prosecutor to find sureties to indemnify the Defendants for their costs, should he fail to prosecute or recover. 6 W. 4, c. 18, s. 24.

Reply, in case defendants plead performance of bond.

**49.** If the Defendants plead performance of the condition of such bond, the prosecutor may reply as many breaches respecting his interest as he thinks fit. 6 W. 4, c. 18, s. 24.

Damages to be assessed and Judgment to be entered for the whole penalty for the benefit of any other plaintiff.

**50.** The Jury on the trial of such issues as may be put to them, shall assess damages for such breaches as the Plaintiff proves, and the Court shall enter up judgment for the whole penalty of the bond, and issue execution in favour of the Plaintiff for such a sum as the Jury have found for damages and costs; and the judgment shall remain for the benefit of such other person or persons as may by *Scire Facias* or Writ of Revivor thereon shew that they have been injured by any breaches of the condition of such bond. 6 W. 4, c. 18, s. 24.

If the plaintiff fails to recover in such suit.

**51.** If the Plaintiff fails to recover in such suit, the Court shall award costs to the Defendants, and issue execution for the same against the Plaintiff. 6 W. 4, c. 18, s. 24.

Treasurer and Secretary to give bond.

**52.** Every Treasurer and Secretary to any such Company, shall, before he enters upon the duties of his office, give a bond to the Company in the sum of two thousand dollars, with two sufficient securities in one thousand dollars each, to the satisfaction of the Board of Directors, conditioned for the faithful discharge of the duties of the office of such Treasurer and Secretary, agreeable to the provisions of this Act, and of the

the by-laws, rules and regulations of the Company, made pursuant thereto. 6 W. 4, c. 18, s. 25.

**53.** The Board of Directors for the time being shall superintend and have the management of the funds and property of, and of all matters relating to and not otherwise provided for by the Company. 6 W. 4, c. 18, s. 10.

Directors to superintend and manage business of Company.

**54.** The Board may, from time to time—

Duties of Board.

1. Appoint a Secretary, Treasurer, and such other Officers, Agents and Assistants, as to them seem necessary ;

2. Prescribe their duties ;

3. Fix their compensation or allowances ;

4. Take such security from them as they deem necessary, or as may be required by this Act, for the faithful performance of their respective duties ; and

5. Remove them at pleasure and appoint others instead ;

6. Determine the rates of insurance, the sum to be insured on any building, and the sum to be deposited for the insurance thereof ;

7. Direct the making and issuing of all policies of insurance ;

8. Provide books and stationery and other things needful for the office of the Company, and for carrying on the affairs thereof ;

9. Draw upon the Treasurer for the payment of all losses by and for expenses incurred in transacting the concerns of the Company ;

10. Hold their meetings monthly, and oftener if necessary, for transacting the business of the Company ; and

11. Shall keep a record of their proceedings. 6 W. 4, c. 18, s. 10.

**55.** The Directors of any such Company may—

May invest the funds of the Company.

1. Invest the capital and funds of the Company in mortgages on real estate, Bank stock, shares in Building Societies, and such other securities as the Directors deem profitable and safe ; 22 V. c. 46, s. 9. (1859.)

2. And may issue certificates or scrip for shares in the guaranteed capital stock of the Company ; 22 V. c. 46, s. 10.

3.

Directors may call in guarantee capital.

**3.** And may recover in any Court of competent jurisdiction any assessment or call on the shares of guarantee capital, or cancel such shares and forfeit the instalments already paid, as they may think fit. 22 V. c. 46, s. 8. (1859.)

Directors dissenting may record their reasons.

**56** Any Director disagreeing with the majority of the Board at any meeting, may enter his dissent with his reasons therefor on record. 6 W. 4, c. 18, s. 10.

Directors may issue debentures or promissory notes for losses.

**57.** The Directors shall have power from time to time, under By-laws to be passed regulating the manner in which such powers shall be exercised, to issue Debentures or to make Promissory Notes of the Company, bearing interest, or to make or accept Bills or Drafts for such sums and to such an amount as may be necessary for the purpose of paying or of raising money by loan for the purpose of paying any loss or losses sustained by the Company, or of expenses or for other purposes of the Company; but they shall not issue any note payable to bearer, or intended to circulate as money or as a Bank note. 16 V. c. 192, s. 1—22 V. c. 46, s. 10. (1859.)

Not exceeding one fourth unpaid on the deposit notes.

**58.** The whole amount of such Debentures, Promissory Notes, Bills or Drafts, at any one time outstanding, shall not exceed one fourth part of the amount then unpaid on the Deposit or Premium Notes held by the Company. 16 V. c. 192, s. 1.

Limitation of amount and when to become payable.

**59.** Such Debentures, Promissory Notes, Bills or Drafts, shall not in any instance be drawn so as to become due and payable in more than twelve months after the issuing thereof; nor shall any such Debenture or note be for a less sum than one hundred dollars. 16 V. c. 192, s. 1.

Out of what funds to be paid.

**60.** Such Debentures, Notes, Bills or Drafts, and the interest thereon shall be paid solely out of moneys to be collected on the Deposit or Premium Notes of Members of the Company, and not by new Debentures or Notes or money raised by the issue of new Debentures or Notes. 16 V. c. 192, s. 1.

Directors of Company may assess the members in order to pay debentures or notes.

**61.** The Directors of the Company may always assess upon the Members thereof in proportion to the amount of their Deposit or Premium Notes respectively, such sum or sums as may be necessary to pay any such Debentures or Notes, Bills or Drafts, then outstanding, and the interest thereon. 16 V. c. 192, s. 1.

Authority to make By-laws, &c.

**62.** The Board of Directors may, from time to time, make and subscribe such by-laws, ordinances, rules and regulations, as to them appear needful and proper, respecting the funds and property of the Company, the duty of the Officers, Agents and Assistants thereof, the effectual carrying out the objects contemplated by this Act, and all such other matters as appertain to the business of the Company, and are not contrary to the laws of Upper Canada, and may, from time to time, alter and amend the same, except in cases with regard to which it is provided

Or amend the same.

provided that any such By-law shall not be repealed, or where such repeal would affect the rights of others than members of the Company, in any of which cases such By-laws shall not be repealable. 6 W. 4, c. 18, s. 11,—22 V. c. 46, s. 11, (1859.)

When not repealable.

**63.** Three Directors shall constitute a quorum for the transaction of business; and the decision of a majority of the quorum, present at any sitting of the Board, shall be binding and conclusive on the Board. 6 W. 4, c. 18, s. 11,—4, 5 V. c. 64, s. 3,—22 V. c. 46, s. 7, (1859). See *Ante*, s. 36.

Three Directors to constitute a quorum.

**64.** In case of an equality of votes at any such sitting of the Board, the President shall have a casting vote. 6 W. 4, c. 18, s. 11.

President to have a casting vote.

**65.** The Board may convene at any time a general meeting of the Company upon any urgent occasion. 6 W. 4, c. 18, s. 11.

Board may convene general meetings.

**66.** Every member of the Company shall pay his proportion of all losses and expenses accruing to the Company during the continuance of his policy. 6 W. 4, c. 18, s. 13.

Every member to pay proportion of losses.

**67.** All the right and estate of the assured, at the time of insurance, to the buildings insured by the Company, to the lands on which the same stand, and to all other lands thereto adjacent, mentioned and declared liable in the policy of assurance, shall stand pledged to the Company; and the Company may sell, demise or mortgage the same or any part thereof, to meet the liabilities of the assured, for his proportion of any losses or expenses accruing to the Company during the continuance of his policy, which sale, demise or mortgage, shall be made in the manner specified in the policy of the assured. 6 W. 4, c. 18, s. 13.

Company to have a lien on buildings insured to meet liabilities of insurers.

**68.** In case of any loss or damage by fire happening to any member upon property insured with the Company, such member shall give notice thereof in writing to the Board or to some one of the Directors, or to the Secretary of the Company, within thirty days after such loss or damage has happened; and the Directors shall ascertain and determine the amount of such loss or damage. 6 W. 4, c. 18, s. 14.

Proceedings in case of loss by fire.

Directors to determine amount of loss.

**69.** If the party be not satisfied with the determination of the Directors, the question shall then either be submitted to three disinterested persons as referees, one of whom shall be named by the Board, and one by the suffering party, and the third by the two referees, and the decision or award of a majority of them shall be binding; or the suffering party may bring an action against the Company for the loss or damage sustained. 6 W. 4, c. 18, s. 14.

In cases of difference, amount to be settled by arbitration.

Or party suffering may bring an action.

If plaintiff recovers more than the Directors determine, he shall recover the excess and costs.

**70.** If upon the trial of such an action a greater sum be recovered than the amount determined upon by the Directors, the party suffering shall have judgment therefor against the Company, with interest thereon from the time such loss or damage happened, and notice of such loss or damage was given, with costs of suit. 6 W. 4, c. 18, s. 14.

If no more be recovered than amount determined by the Board, plaintiff to pay costs.

**71.** If no more be recovered than the amount so previously determined upon by the Board, the Plaintiff in the suit shall have judgment for such amount only, and he shall not be entitled to costs against the Defendants, but the Defendants shall be entitled to costs against the Plaintiff as in the case of a verdict for the Defendant. 6 W. 4, c. 18, s. 14.

Execution not to issue against Company until six months after judgment.

**72.** No execution shall issue against the Company upon any judgment until after the expiration of six months from the recovery thereof. 6 W. 4, c. 18, s. 14.

Justices of the Peace may swear and examine witnesses, &c.

**73.** Any Justice of the Peace may examine on oath, or solemn affirmation, any party or person who comes before him to give evidence touching any loss by fire in which any Mutual Insurance Company is interested, and may administer the requisite oath or affirmation. 12 V. c. 86, s. 2.

Directors to settle the amount which members are to pay on every loss by fire.

**74.** The Directors, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining the same, or after the recovery of any judgment against the Company for such loss or damage, shall settle and determine the sums to be paid by the several members thereof, as their respective proportion of such loss, and shall publish the same in such manner and form as they see fit, or as the by-laws prescribe. 6 W 4, c. 18, s. 15.

In what proportion members to pay on deposit notes, and to whom.

**75.** The sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the Treasurer within thirty days next after the publication of the notice. 6 W. 4, c. 18, s. 15.

In default of payment, Directors may sue for whole amount of deposit notes.

**76.** If any member for thirty days after the publication of such notice neglects or refuses to pay the sum assessed upon him, as his proportion of any loss or damage, the Directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit. 6 W. 4, c. 18, s. 15.

Balance to be returned to the party at expiration of insurance.

**77.** The money thus collected shall remain in the Treasury of the Company, subject to the payment of such losses and expenses as may thereafter accrue during the continuance of the policy; and the balance, if any remaining, shall, after thirty days from the expiration of the term for which insurance was made, be, on demand, returned to the party from whom it was collected. 6 W. 4, c. 18, s. 15.

- 78.** The Directors shall settle and order the payment of all losses within three months after they have been notified as aforesaid. 6 W. 4, c. 18, s. 18. Losses to be paid within three months.
- 79.** No allowance is to be made in any case for gilding, historical or landscape painting, stucco or carved work. 6 W. 4, c. 18, s. 18. No allowance for ornamental work.
- 80.** In case it happens that the whole amount of deposit notes is insufficient to pay the loss occasioned by any fire or fires, the sufferers insured by the Company shall receive, towards making good their respective losses, a proportionate dividend of the whole amount of such deposit notes, according to the sums by them respectively insured; and in addition thereto a sum to be assessed in the manner provided by by-law of the Company on all the members of the Company, not exceeding one per cent on the amount by them respectively insured. 6 W. 4, c. 18, s. 16. Provision for payment in case losses exceed the whole amount of deposit notes. By assessment on the members.
- 81.** The members respectively shall never be required to pay at any one time for any loss or damage occasioned by fire, more than the one per cent insured in the Company, in addition to the amount of their deposit notes. 6 W. 4, c. 18, s. 16. Not exceeding one per cent. at any one time.
- 82.** Any member upon payment of the whole of his deposit note, and surrendering his policy before any subsequent loss or expense occurs, shall be discharged from the Company, and except as provided in the eightieth section, no member shall be liable beyond the amount of his premium note. 18 V. c. 120, s. 9,—6 W. 4, c. 18, s. 16. Members paying deposit notes before loss, discharged from liability.
- 83.** In case any building situated upon leased lands, and insured by the Company, be destroyed by fire, the Directors may retain the amount of the premium note given for insurance thereof until the time has expired for which insurance has been made, and at the expiration thereof the assured shall have the right to demand and receive such part of the retained sum as has not been expended in losses and assessments. 6 W. 4, c. 18, s. 21. Directors may retain premium notes on leased lands until expiration of insurance.
- 84.** It shall be no objection to the evidence of any person adduced as a witness in any suit, action or proceeding, civil or criminal, in which any Mutual Insurance Company in Upper Canada is a party or interested, that such person is a Member of such Company, or that his property is insured by it, provided he be not a party to such suit, action or proceeding named on the record. 12 V. c. 86, s. 3. Members may be witnesses in certain suits, provided they be not parties.
- 85.** The Legislature may at any time hereafter make such additions to this Act, or such alterations in any of its provisions as they think proper. 6 W. 4, c. 18, s. 26. This Act may be altered.

## CAP. LIII.

## An Act respecting Building Societies.

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

Societies how  
incorporated.

**1.** In case any twenty or more persons, in Upper Canada, agree to constitute themselves a Building Society, and execute, under their respective hands and seals, a declaration to that effect, and deposit the same with the Clerk of the Peace in the County in which they reside, (who for receiving such deposit shall be entitled to a fee of fifty cents,) such persons, and such other persons as afterwards become members of the Society, and their several and respective executors, administrators and assigns, shall be a corporation, body corporate and politic, as a Building Society, by the name and style mentioned in such declaration, for raising by monthly or other periodical subscriptions of the several members of the Society, in shares not exceeding the value of four hundred dollars for each share, (and in subscriptions not exceeding four dollars per month for each share,) a stock or fund to enable each member to receive out of the funds of the Society the amount or value of his shares therein, for the purpose of erecting or purchasing one or more dwelling house or houses, or other freehold or leasehold estate, or for any other purpose whatsoever, and the amount or value of such shares shall be secured to the Society by mortgage or otherwise on any real estate belonging to the member at the time of his borrowing money from the Society, or on any other real estate acquired by such member, until the amount or value of his shares with the interest thereon, have been fully paid, together with all fines or liabilities incurred in respect thereof. 9 V. c. 90, s. 1,—13, 14, V. c. 79, s. 4.

Powers of  
Society.

**2.** The several members of the Society may from time to time assemble together, and make such proper rules for the government of the same as the majority of members so assembled deem meet, so as such rules are not repugnant to the provisions of this Act, or any other law in force in Upper Canada ; and they may impose and inflict such reasonable fines, penalties and forfeitures upon the several members of the Society infringing such rules as the majority of the members think fit, and to be respectively paid to such uses, for the benefit of the Society, as the Society by such rules direct ; and they may also from time to time amend or rescind such rules, and make new rules in lieu thereof, under such restrictions as are in this Act contained.

Members of  
Society may  
make rules,  
&c., impose  
fines, &c.

Except in cases  
of withdrawal,  
members not to  
receive profits

**3.** Except in the case of the withdrawal of a member, according to the rules of the Society then in force, no member shall receive or be entitled to receive from the funds of the Society



Society any interest or dividend by way of annual or other periodical profit upon any share in the Society until the amount or value of his share has been realized. on share, till value of same realized.

**4.** Every such Society may, besides interest, receive from any member a *Bonus* on any share, for the privilege of receiving the same in advance prior to the same being realized, without becoming thereby liable to any forfeitures or penalties imposed by any Laws in force in Upper Canada, relating to Usury. 9 V. c. 90, s. 2,—22 V. c. 85, s. 6. Society may receive *bonus* in addition to interest.

**5.** Every such Society shall, from time to time, elect and appoint any number of the members of the Society to be a Board of Directors, the number and qualification thereof to be declared in the rules of the Society, and may delegate to such Directors all or any of the powers given by this Act to be executed. 9 V. c. 90, s. 3. Society from time to time to elect Directors.

**6.** The Powers of the Directors shall be declared by the rules of the Society, and they shall continue to act during the time appointed by such rules. 9 V. c. 90, s. 3. Powers of Directors to be declared by rules.

**7.** In case Directors are appointed for any particular purpose, the powers delegated to them shall be reduced to writing and entered in a book by the Secretary or Clerk of the Society. 9 V. c. 90, s. 3. Powers of Directors in certain cases to be recorded in books of Society.

**8.** The Directors shall choose a President and Vice President, and they shall in all things delegated to them act for and in the name of such Society, and the concurrence of a majority of the Directors present at any meeting shall at all times be necessary in any act of the Board. 9 V. c. 90, s. 3. Concurrence of majority of Directors necessary.

**9.** All acts and orders of such Directors, under the powers delegated to them, shall have the like force and effect as the acts and orders of the Society at a General Meeting. 9 V. c. 90, s. 3. Acts of Directors to be binding.

**10.** The transactions of the Directors shall be entered in a book belonging to the Society, and shall at all times be subject to the review, allowance and disallowance of the Society, in such manner and form as the Society by their general rules direct and appoint. 9 V. c. 90, s. 3. Proceedings of Directors to be entered in books of Society.

**11.** Every such Society shall, in or by one or more of their Rules, declare the objects for which the Society is intended to be established, and thereby direct the purposes to which the money from time to time subscribed to, received by and belonging to the Society, shall be appropriated, and in what shares or proportions and under what circumstances any member of the Society, or other person, may become entitled to the same, or any part thereof. 9 V. c. 90, s. 4. Society by rule to declare objects of Society and declare how moneys to be applied.

Moneys not to be misapplied under penalties.

**12.** All such Rules shall be complied with and enforced ; and the moneys so subscribed to, received by or belonging to the Society, shall not be diverted or misapplied either by the Treasurer or Directors, or any other officer or member of the Society entrusted therewith, under such penalty or forfeiture as the Society by any Rule inflicts for the offence. 9 V. c. 90, s. 4.

Rules to be recorded in a book.

**13.** The Rules for the management of every such Society shall be recorded in a book to be kept for that purpose, and such book shall be open at all reasonable times for the inspection of the members. 9 V. c. 90, s. 5.

Entry of rules in book, notice to members.

**14.** The Rules so recorded shall be binding on the several members and officers of the Society, and the several contributors thereto, and their representatives, and they shall be deemed to have full notice thereof by such record. 9 V. c. 90, s. 6.

Examined copy of rules entered in book to be evidence.

**15.** The entry of the Rules in the books of the Society, or a true copy of the same, examined with the original and proved to be a true copy, shall be received as evidence thereof. 9 V. c. 90, s. 6.

Rules not to be removed by Certiorari.

**16.** Such Rules shall not by *Certiorari*, or other legal Process, be removed into any of Her Majesty's Courts of Record. 9 V. c. 90, s. 6.

Rules entered in book not to be altered except at a general meeting.

**17.** No Rule so recorded as aforesaid shall be altered or rescinded, unless at a General Meeting of the Members, convened by public notice written or printed, signed by the Secretary or President of the Society in pursuance of a requisition for that purpose made by not less than fifteen of the Members, stating the objects for which the meeting is called, and addressed to the President and Directors ; and each member of the Society shall within fifteen days after such requisition, be notified through the Post Office, of the proposed alterations ; and such general meeting shall consist of not less than one third of the shareholders, three-fourths of whom must concur in the proposed alterations or repeal. 9 V. c. 90, s. 7.

Rules to specify time and place for holding meeting.

**18.** The Rules of the Society shall specify the place or places at which it is intended that the Society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of the officers appointed for the management of its affairs. 9 V. c. 90, s. 8.

Directors to appoint Officers.

**19.** The Directors shall from time to time, at any of their usual meetings, appoint such persons as they think proper, to be officers of the Society, grant such salaries and emoluments as they deem fit, and pay the necessary expenses attending the management of the Society ; and shall from time to time when necessary elect such persons as may be necessary for the purposes

purposes of the Society, for the time and for the purpose expressed in the Rules of the Society, and may from time to time discharge such persons, and appoint others in the room of those who vacate, die or are discharged. 9 V. c. 90, s. 9.

**20.** Every such officer or other person appointed to any office in any wise concerning the receipt of money, shall before entering upon the duties of his office, execute a Bond with two sufficient sureties in such form and for such amount as the Directors determine, for the just and faithful execution of his office, according to the Rules of the Society. 9 V. c. 90, s. 9.

Officers appointed to receive moneys to give security.

**21.** Every such Society may take and hold any real estate, or securities thereon, *bonâ fide* mortgaged, or assigned to it, either to secure the payment of the shares subscribed for by its members, or to secure the payment of any loans or advances made by, or debts due to the Society, and may proceed on such mortgages, assignments or other securities, for the recovery of the moneys thereby secured, either at law or in equity or otherwise, and generally may pursue the same course, exercise the same powers and take and use the same remedies to enforce the payment of any debt or demand due to the Society as any person, or Body Corporate may by Law take or use for a like purpose.

Society may take and hold real estate mortgaged by Society for certain purposes.

**22.** Every such society may, in the names of the President and Treasurer for the time being, invest any surplus funds in the stocks of any of the Chartered Banks or other public securities of the Province, and all dividends, interest and proceeds arising therefrom shall be brought to account and be applied to the use of the Society, according to the Rules thereof. 9 V. c. 90, s. 10,—13, 14 V. c. 79, s. 2.

May invest surplus funds.

**23.** Every such Society may declare forfeited to the Society the shares of any member who is in default or who neglects to pay the number of instalments or monthly subscriptions fixed by any Stipulation or By-law, and may expel such member from the Society, and the Secretary shall make a minute of such forfeiture and expulsion in the Books of the Society; or instead of such forfeiture and expulsion, the Society may recover the arrears by an action of debt. 13, 14 V. c. 79, s. 3.

May forfeit shares.  
May expel member.  
May sue for amount of shares.

**24.** If the amount in arrear does not exceed forty dollars the action may be brought in the Division Court of the Division wherein the office of the Society is kept. 13, 14 V. c. 79, s. 3.

May sue in Division Court.

**25.** Whenever any such Society has received from a Shareholder an assignment, mortgage or transfer of any real estate to secure the payment of any advances, and containing an authority to such Society to sell the real estate in case of non-payment of any stipulated number of instalments or sum of

Society may sell real estate mortgaged in certain cases.

of money, and to apply the proceeds of such sale to the payment of the advances, interest and other charges due to the Society, such stipulations and agreements shall be valid and binding, and the Society may cause the same to be enforced either by foreclosure or by an action or proceeding in either of Her Majesty's Superior Courts of Common Law, in which action the venue shall be laid in the County in which the lands lie, and the action may be brought in the names of the President and Treasurer of the Society, describing them as such, or in the corporate name of the Society. 13, 14 V. c. 79, s. 1.

Representatives of officers of Society to deliver over papers and moneys after demand.

**26.** If any person appointed to an office by the Society, and being entrusted with and having in his possession by virtue of his office, any moneys or effects belonging to the Society, or any deeds or securities relating thereto, dies or becomes bankrupt or insolvent, his legal Representative, or other person having a legal right, shall, within fifteen days after demand made by the order of the Directors of the Society, or the major part of them assembled at any meeting thereof, deliver over all things belonging to the Society, to such persons as the Directors appoint. 9 V. c. 90, s. 11.

Property of Society vested in President and Treasurer.

**27.** All real and personal estate, property and effects, and all titles, securities, instruments and evidences, and all rights and claims of or belonging to the Society, shall be vested in the President and Treasurer and their Successors in office for the time being for the use of the Society and the respective members thereof, according to their respective claims and interests, and shall, for all purposes of bringing or defending actions or suits civil or criminal, be deemed to be, and shall be stated to be, the property of the President and Treasurer, in the proper names of the President and Treasurer for the time being.

President and Treasurer may bring and defend suits.

**28.** The President and Treasurer may bring or defend any action, suit or prosecution, criminal or civil, respecting any property, right or claim aforesaid, and may sue and be sued, plead and be impleaded in their proper names as President and Treasurer of the Society without other description.

Suits not to abate by death or removal from office.

**29.** No such suit, action or prosecution shall be discontinued or abated by the death or removal from office of the President or Treasurer, but shall continue in their names; and the succeeding President and Treasurer shall have the same rights and liabilities, and shall pay or receive like costs as if the action, suit or prosecution had been commenced or been defended in their names, for the benefit of or to be satisfied out of the funds of the Society. 9 V. c. 90, s. 12.

Secretary of Society a competent witness.

**30.** In all suits and prosecutions, the Secretary of the Society shall be a competent witness, notwithstanding he may also be Treasurer of the Society, and his name used in the suit or prosecution as such Treasurer. 9 V. c. 90, s. 13.

**31.** The President, Vice-President and Directors of the Society, in their private capacity, shall be exonerated from all responsibility in relation to the liabilities of the Society. 9 V. c. 90, s. 14.

President and Directors relieved of responsibility.

**32.** The rules of the Society shall provide that the Treasurer or other principal Officer thereof shall, once at least in every year, prepare a general statement of the funds and effects of or belonging to the Society, specifying in whose custody or possession, such funds or effects are then remaining, together with an account of all sums of money received or expended by or on account of the Society since the publication of the preceding periodical statement. 9 V. c. 90, s. 15.

Rules to provide that Secretary shall furnish annual statement of funds.

**33.** Every such periodical statement shall be attested by two or more members of the Society not being Directors, appointed Auditors for that purpose, and shall be countersigned by the Secretary or Clerk of the Society, and every member shall be entitled to receive from the Society without charge a copy of such periodical statement.

Secretary's statement to be attested by Auditors.

**34.** This Act shall for all purposes extend to aliens, denizens and females; and co-partners and corporate bodies may hold shares in any Society incorporated under the provisions of this Act, in the same manner as single individuals; and this Act shall be construed in the most beneficial manner for promoting the ends thereby intended. 13, 14 V. c. 79, s. 4,—9 V. c. 90, s. 16.

Act extends to aliens, females and bodies corporate.

**35.** The word "Society" in the foregoing sections of this Act shall be understood to include and to mean Building Society and Institution established under the provisions and authority of this Act, or any former Act respecting Building Societies; the word "Rules" to include Rules, Orders, By-laws and Regulations; the words "Real Estate" shall extend and apply to immoveable estate and property generally; and the word "securities" shall extend and apply to privileges, mortgages, (equitable as well as legal,) and incumbrances upon real and immoveable estate, as well as to other rights and privileges upon personal estate and property. 9 V. c. 90, s. 16.

Interpretation clause.

**36.** Whereas under the Act passed in the ninth year of Her Majesty's Reign intituled, *An Act to encourage the establishment of certain Societies, commonly called Building Societies, in that part of the Province of Canada formerly constituting Upper Canada*, certain Building Societies have been established called Permanent Building Societies, which have in a great measure superseded those Societies called terminating Building Societies, and are conducted on more certain and equitable principles than the said terminating Building Societies, by enabling persons to become members thereof at any time for investment therein or to obtain the advance of their shares

Preamble.  
9 V. c. 90.

shares or share by giving security therefor, and to fix and determine with the said Society the time and amount which such members shall repay such advanced share or shares and obtain the release of the said security, without being liable to the contingency of losses or profits in the business of the said Society ; And whereas doubts had arisen as to whether such Permanent Building Societies were within the meaning and intention of the said recited Act ; Therefore, any Permanent Building Society established under the said hereinbefore recited Act and the amended Act thereto, or established under this Act, after this Act takes effect, and conducted on the principle hereinbefore mentioned, which has fulfilled and observed or which fulfils and observes all the conditions necessary to be fulfilled and observed for the establishment of a Building Society under the said recited Acts, or under this Act, (as the case may be) shall be and the same is hereby declared to be and to have been a Building Society within the meaning and intention of the said recited Acts and of this Act, and to be and to have been entitled to all the powers, benefits and advantages of the said recited Acts and of this Act ; and any person or persons who have signed the Rules and Regulations of any such Building Society entered and recorded in a book, as in the fifth section of the said recited Act, passed in the ninth year of Her Majesty's reign and in the thirteenth section of this Act is required, and have subscribed his or their name or names as a shareholder or shareholders for one or more shares, shall, from the time of such signature and subscription, be and be deemed to have been a member or members of such Building Society ; and the production of such Society, kept as in the fifth section of the said Act and in the thirteenth section of this Act is required, signed by such person and duly witnessed, shall, at all times and for all purposes, be sufficient evidence of membership in such Building Society. 22 V. c. 45, s. 1, (1859.)

Permanent Societies having fulfilled certain conditions declared to be within this Act.

And their subscribers to be members.

Evidence of membership.

How By-laws of Permanent Societies may be passed or amended.

**37.** Any Permanent Building Society may alter, amend, repeal or create any Regulation, Rule or By-law for the working of the said Society at a public meeting of the members of such Society, convened as is directed by the said seventeenth section of this Act, and at which public meeting one third of the members of the said Society, entitled to vote by the Rules of the said Society, and representing not less than two thirds of the unadvanced Stock of such Society, do, either in writing under their hand or by a vote at such meeting, concur in such alteration, amendment or repeal of such Regulation, Rule or By-law, or in the creation of any new Rule, Regulation or By-law. 22 V. c. 45, s. 2, (1859.)

Amount to which Societies may borrow money, limited.

**38.** Every such Society, by its Rules, Regulations and By-laws authorized to borrow money, shall not borrow, receive, take or retain, otherwise than in stock and shares in such Society, from any person or persons, any greater sum than three-fourths of the amount

amount of capital actually paid in on unadvanced shares, and invested in real securities by such Society; and the paid in and subscribed capital of the Society shall be liable for the amount so borrowed, received or taken by any Society. 22 V. c. 45, s. 3, (1859.)

**39.** When any share or shares in any Society have been fully paid up according to the rules of the Society, or have become due and payable to the holder thereof, then and in such case the holder of such share or shares may either withdraw the amount of his share or shares from the said Society, according to the rules and regulations thereof, or invest the amount of his said share or shares in the Society, and receive therefrom periodically such proportion of the profits made by such Society as may be provided for by a By-law to be passed for the purpose; and the amount of such share or shares so invested shall become fixed and permanent capital or shares in the said Society not withdrawable therefrom, but transferable in the same manner as other shares in the said Society. 22 V. c. 45, s. 4.

Shareholder whose share is paid up, may receive or invest the amount.

**40.** Such Society may advance to members on the security of investing on unadvanced shares in the said Society, and may receive and take from any person or persons, or bodies corporate, any Real or Personal Security of any nature or kind whatever as Collateral Security for any advance made to Members of the Society. 22 V. c. 45, s. 5.

Advances on security of investing on unadvanced shares.

**41.** Any Society may hold absolutely Real Estate for the purposes of its place of business, not exceeding the annual value of Six Thousand Dollars. 22 V. c. 45, s. 6.

Holding real estate.

**42.** Such Society shall not be bound to see to the execution of any Trust, whether expressed, implied, or constructive, to which any share or shares of its stock may be subject; and the receipt of the party in whose name any such share or shares stand in the books of the Society, or if such share or shares stand in the name of more parties than one, the receipt of one of the parties shall, from time to time, be a sufficient discharge to the Society for any payment of any kind made in respect of such share or shares, notwithstanding any Trust to which such share or shares may then be subject, and whether or not such Society has had notice of such Trust; and the Society shall not be bound to see to the application of the money paid upon such receipt. 22 V. c. 45, s. 7, (1859.)

Society not bound to see to trusts to which its stock is subject.

What receipts shall be sufficient.

## C A P . L I V .

## An Act respecting the Municipal Institutions of Upper Canada.

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

## EXISTING INSTITUTIONS CONTINUED.

- Municipal Corporations.** 1. The Inhabitants of every County, City, Town, Village, Township, Union of Counties and Union of Townships incorporated at the time this Act takes effect, shall continue to be a Body Corporate, and every Police Village then existing shall continue to be a Police Village, with the Municipal boundaries of every such Corporation and Police Village respectively then established. 22 V. c. 99, *passim*.
- Police Villages.** 2. The Trustees of every Police Village existing when this Act takes effect, shall be deemed the Trustees respectively of every such Village as continued under this Act.
- Heads, Officers, By-laws, &c., continued.** 3. The Head and Members of the Council, and the Officers, By-laws, Contracts, Property, Assets and Liabilities of every Municipal Corporation, and the inspecting Trustees of every Police Village existing when this Act takes effect, shall be deemed the Head and Members of the Council, and the Officers, By-laws, Contracts, Property, Assets and Liabilities of such Corporation and the Inspecting Trustees of such Police Village as continued under and subject to the provisions of this Act.

## NAMES AND GOVERNING BODY.

## 1.—CORPORATIONS.

- Names of Corporations.** 4. The name of every Body Corporate continued, or erected under this Act, shall be *The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships* (as the case may be ) of (naming the same.)
- Names of Provisional Corporations.** 5. The Inhabitants of every Junior County upon a Provisional Council being or having been appointed for the County, shall be a Body Corporate under the name of *The Provisional Corporation of the County of* (naming it.)
- The Councils to govern.** 6. The powers of every Body Corporate under this Act, shall be exercised by the Council thereof.

## 2.—POLICE VILLAGES.

- Trustees in Police Villages to govern.** 7. The Police regulations of every Police Village shall be enforced through the Police Trustees.

## NEW MUNICIPALITIES.

## COUNTIES AND TOWNSHIPS.

- Extension of Corporate Municipalities.** 8. The Inhabitants of every County or Union of Counties erected by Proclamation into an independent County or Union of



of Counties, and of every Township or Union of Townships erected into an independent Township or Union of Townships, and of every locality erected into a City, Town or Incorporated Village, and of every County or Township separated from any Incorporated Union of Counties or Townships, and of every County or Township or of the Counties or Townships if more than one, remaining of the Union after the separation, being so erected or separated after this Act takes effect, shall be a body Corporate under this Act.

#### NEW POLICE VILLAGES.

**9.** On the Petition of any of the Inhabitants of an unincorporated Village, the Council or Councils of the County or Counties within which the village is situate, may, by By-law, erect the same into a Police Village, and assign thereto such limits as may seem expedient.

New Police Villages.

#### NEW INCORPORATED VILLAGES.

**10.** When the census returns of an unincorporated Village with its immediate neighbourhood, taken under the direction of the Council or Councils of the County or Counties in which the Village and its neighbourhood are situate, shew that the same contain over seven hundred and fifty inhabitants, and when the residences of such inhabitants are sufficiently near to form an Incorporated Village, then, on petition, by not less than one hundred resident freeholders and householders of the village and neighbourhood, the Council or Councils of the County or Counties in which the Village and neighbourhood are situate shall, by By-law, erect the Village and neighbourhood into an Incorporated Village, apart from the Township or Townships in which the same are situate, by a name and with boundaries to be respectively declared in the By-law, and shall name in the By-law the place for holding the first Election, and the Returning Officer who is to hold the same.

When population 750, County Council may by By-law incorporate new Villages and name place for first election, and a returning officer.

**11.** When the newly Incorporated Village lies within two or more Counties, the Councils of the Counties shall, by By-law, annex the Village to one of the Counties; and if within six months after the petitions for the incorporation of the Village are presented, the Councils do not agree to which County the Village shall be annexed, the Wardens of the Counties shall memorialize the Governor in Council, setting forth the grounds of difference between the Councils; and thereupon the Governor shall, by Proclamation, annex the Village to one of such Counties.

When the Village lies within two counties, how to be annexed to one of them by the Councils or Governor.

**12.** In case the Wardens do not, within one month next after the expiration of the six months, memorialize the Governor as aforesaid, then one hundred of the freeholders and householders on the census list may petition the Governor to

When by the Governor.

settle

settle the matter, and thereupon the Governor shall, by Proclamation, annex the Incorporated Village to one of the said Counties.

Additions to Villages by Governor.

**13.** In case the Council of an Incorporated Village petitions the Governor to add to the boundaries thereof, the Governor may, by Proclamation, add to the Village any part of the localities adjacent, which, from the proximity of streets or buildings therein, or the probable future exigencies of the Village, it may seem desirable to add thereto.

**ERECTION OF VILLAGES INTO TOWNS, AND TOWNS INTO CITIES.**

Towns and Cities how formed.

**14.** A Census of any Town or Incorporated Village may at any time be taken under the authority of a By-law of the Council thereof.

Town containing over fifteen thousand Inhabitants may be made a City; and Village containing over three thousand, a Town.

**15.** In case it appears by the Census return taken under any Act of Parliament, or under any such By-law, that a Town contains over fifteen thousand Inhabitants, the Town may be erected into a City; And in case it appears by the return that an Incorporated Village contains over three thousand inhabitants, the Village may be erected into a Town; But the change shall be made by means of and subject to the following proceedings and conditions:

1st—Notice to be given.

Firstly—The Council of the Town or Village, shall for three months after the Census return, insert a notice in some newspaper published in the Town or Village, or, if no newspaper be published therein, then the Council shall for three months post up a notice in four of the most public places in the Town or Village, and insert the same in a newspaper published in the County in which the Town or Village is situate, setting forth in the notice the intention of the Council to apply for the erection of the Town into a City, or of the Village into a Town, and state the limits intended to be included therein;

2nd—Proof of publication of notice and of census.

Secondly—The Council of the Town or Village shall cause the census returns to be certified to the Governor in Council, under the signature of the Head of the Corporation and under the Corporate Seal, and shall also cause the publication aforesaid to be proved to the Governor in Council, then, in the case of a Village, the Governor may, by Proclamation, erect the Village into a Town by a name to be given thereto in the Proclamation;

Proclamation in the case of a Village.

3rd—Existing debts to be adjusted.

Thirdly—In case the application is for the erection of a Town into a City,—the Town shall moreover pay to the County of which it forms part, such portion, if any, of the debts of the County as may be just, or the Council of the Town shall agree

agree with the Council of the County as to the amount to be so paid, and the periods of payment with interest from the time of the erection of the new City, or in case of disagreement the same shall be determined by arbitration under this Act; and the Council shall prove to the Governor in Council the payment, agreement or arbitration;

Then, the Governor may, by Proclamation, erect the Town into a City, by a name to be given thereto in the Proclamation. 4th—Governor may proclaim such City a Town.

**16.** The Governor may include in the new Town or City such portions of any Township or Townships adjacent thereto and within the limits mentioned in the aforesaid notice as, from the proximity of streets or buildings, or the probable future exigencies of the new Town or City, the Governor in Council may consider it desirable to attach thereto. Extension of limits of such Town or City.

**17.** The Governor may divide the new Town or City into Wards with appropriate names and boundaries, but no Town shall have less than three Wards, and no Ward less than five hundred inhabitants. Wards.

**18.** In case any tract of land so attached to the Town or City be belonged to another County, the same shall thenceforward for all purposes cease to belong to such other County, and shall belong to the same County as the rest of the Town or City. Lands detached from Counties.

#### NEW DIVISION OF WARDS IN CITIES AND TOWNS.

**19.** In case two thirds of the Members of the Council of a City or Town, do in Council before the Fifteenth day of July in any year, pass a resolution affirming the expediency of a new division into Wards being made of the City or Town, or of a part of the same, either within the existing limits or with the addition of any part of the localities adjacent, which from the proximity of streets or buildings therein, or the probable future exigencies of the City or Town, it may seem desirable to add thereto respectively, the Governor may, by proclamation, divide the City or Town, or such part thereof into Wards, as may seem expedient, and may add to the City or Town any part of the adjacent Township or Townships, which the Governor in Council on the grounds aforesaid considers it desirable to attach thereto. New division of Wards in Cities and Towns.

#### LIBERTIES IN CITIES ABOLISHED.

**20.** There shall be no liberties or outer Wards in Cities. No liberties.

#### EXISTING BY-LAWS CONTINUED.

**21.** In case a Village be incorporated, or an Incorporated Village or Town with or without additional area, be erected By-laws to continue in erected

Cities, Towns and Villages:

When not to be repealed.

erected into a Town or City, the By-laws in force therein respectively shall continue in force until repealed or altered by the Council of the new Corporation; But no such By-laws shall be repealed or altered unless they could have been or can be legally repealed or altered by the Council which passed the same.

When the limits of a Municipality are extended.

**22.** In case an addition be made to the limits of a Municipality, the By-laws of the Municipality shall extend to the additional limits, and the By-laws of the Municipality from which the same has been detached shall cease to apply to the addition, except only By-laws relating to roads and streets, and these shall remain in force until repealed by By-laws of the Municipality added to.

#### LIABILITY TO DEBTS TO CONTINUE.

Liability to debts to continue.

**23.** In case of the formation of an Incorporated Village, or of the erection of an Incorporated Village into a Town, or of a Town into a City, the Village, Town or City shall remain liable to all the debts and liabilities to which the Village or Town was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality.

And in case of an extension of limits.

**24.** After an addition has been made to a Village, Town or City, the Village, Town or City shall pay to the Township or County from which the additional tract has been taken, such part (if any) of the debts of the Township or County as may be just; and in case the Councils do not, within three months after the first meeting of the Council of the Municipality to which the addition has been made, agree as to the sum to be paid, or as to the time of payment thereof, the matter shall be settled by arbitration under this Act.

#### COUNCILS AND OFFICERS TO CONTINUE.

Former Councils and Officers to exercise jurisdiction over new Municipalities, &c., until new Councils are organized.

**25.** In case any place be erected into an Incorporated Village, or an Incorporated Village into a Town, or a Town into a City, the Council and the members thereof having authority in the place or Municipality immediately before such erection, shall, until the Council for the newly erected Corporation be organized, continue to have the same powers as before; and all other Officers and Servants of the place or Municipality shall, until dismissed, or until successors be appointed, continue in their respective offices, with the same powers, duties and liabilities as before.

#### WITHDRAWAL OF TOWNS FROM THE JURISDICTION OF THE COUNTY.

Town may be withdrawn

**26.** The Council of any Town may pass a By-law to withdraw the Town from the jurisdiction of the Council of the County

County within which the town is situated, upon obtaining the assent of the electors of the Town to the By-law in manner provided by this Act, subject to the following provisions and conditions :

from jurisdiction of County by By-law on certain conditions.

1. After the final passing of the By-law, the amount which the Town is to pay to the County for the expenses of the administration of Justice and the use of the Gaol, as well as for the then existing debt of the County, if not mutually agreed upon, shall be ascertained by arbitration under this Act ; and the agreement or award shall distinguish the amounts to be annually paid for the said expenses, and for the then debt of the County, and the number of years the payments for the debt are to continue ;

Amount to be paid by Town towards expenses of administration of justice to be settled.

2. In adjusting their award, the arbitrators shall, among other things, take into consideration the amount previously paid by the Town, or which the Town may be then liable to pay, for the construction of roads or bridges by the County, without the limits of the town ; and also what the County may have paid, or be liable to pay, for the construction of roads or bridges within the Town ; and they shall also ascertain and allow to the Town the value of its interest in all County property except roads and bridges within the Town ;

Matters to be considered as settling the same.

3. When the agreement or award has been made, a copy of the same and of the By-law, duly verified by affidavit, shall be transmitted to the Governor, who shall thereupon issue his proclamation withdrawing the Town from the jurisdiction of the Council of the County ;

Copy of agreement to be sent to the Governor.

Proclamation.

4. After the proclamation has been issued, the offices of Reeve and Deputy Reeve of the Town shall cease ; and no By-law of the Council of the County shall have any force in the Town, except so far as relates to the care of the Court House and Gaol, and other County property in the Town ; and the Town shall not thereafter be liable to the County for, or be obliged to pay to the County or into the County Treasury, any money for County debts or other purposes, except such sums as may be agreed upon or awarded as aforesaid ;

Effect of such Proclamation.

5. After the lapse of five years from the time of the agreement or award, or such shorter time as may be stated in the agreement or award, a new agreement or a new award may be made, to ascertain the amount to be paid by the Town to the County for the expenses of the administration of Justice ;

New agreement after five years.

6. After the withdrawal of a Town from the County, all property theretofore owned by the County, except Roads and Bridges within the Town, shall remain the property of the County.

Property after withdrawal.

## TOWNSHIPS.

## ERECTION OF NEW TOWNSHIPS.

New Township beyond the limits of Incorporated Counties may be attached thereto by proclamation.

**27.** In case a Township be laid out by the Crown in territory forming no part of an Incorporated County, the Governor may by proclamation erect the Township, or two or more of such Townships lying adjacent to one another, into an Incorporated Township or Union of Townships, and annex the same to any adjacent Incorporated County; and the proclamation shall appoint the Returning Officer who is to hold, and the place for holding, the first Election in the Township or Union of Townships.

## SEPARATION OF UNITED TOWNSHIPS.

Junior Township containing 100 freeholders, &c., to become a separate Municipality.

**28.** When a Junior Township of an incorporated Union of Townships has one hundred resident freeholders and householders on the assessment-roll as last finally revised and passed, such Township shall, upon the first day of January then next thereafter, become separated from the Union.

When Junior Township containing less than 100, but exceeding 50, may be separated, and how.

**29.** In case a Junior Township has at least fifty but less than one hundred resident freeholders and householders on the last revised assessment-roll, and two thirds of the resident freeholders and householders of the Township, petition the Council of the County to separate the Township from the Union to which it belongs; and in case the Council considers the Township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining Township for Municipal purposes,—the Council may, by By-law, separate the same from the Union; and the By-law shall name the Returning Officer who is to hold, and the place for holding the first Election under the same.

## ANNEXATION OF GORES.

The Governor may annex Gores to adjacent Townships.

**30.** The Governor may, by Proclamation, annex to any Township, or partly to each of more Townships than one, any Gore or small tract of land lying adjacent thereto and not forming part of any Township, and such Gore or tract shall thenceforward for all purposes form part of the Township to which it is annexed.

## ANNEXATION OF NEW TOWNSHIPS.

New Townships, &c., within the limits of Incorporated Counties, to be united to adjacent Townships, and how.

**31.** In case a Township be laid out by the Crown in an incorporated County or Union of Counties; or in case there is any Township therein not incorporated and not belonging to an Incorporated Union of Townships,—the Council of the County or United Counties shall, by By-law, unite such Township for Municipal purposes, to some adjacent Incorporated Township

Township or Union of Townships in the same County, or Union of Counties, and if such adjacent Township or adjacent Union is divided into Wards, then also to one Ward or partly to each of two or more Wards thereof.

**32.** In case of there being at any time in an Incorporated County or Union of Counties two or more adjacent Townships not incorporated and not belonging to an Incorporated Union of Townships; and in case such adjacent Townships have together not less than one hundred resident freeholders and householders within the same,—the Council of the County or Union of Counties may, by By-law, form such Townships into an independent Union of Townships.

Townships not incorporated or united may be formed into unions, and how.

**33.** In case the united Townships are in different Counties, the By-law shall cease to be in force whenever the union of the Counties is dissolved.

Townships in different Counties.

#### SENIORITY OF TOWNSHIPS.

**34.** Every Proclamation or By-law forming a Union of Townships shall designate the order of seniority of the Townships so united, and the Townships of the Union shall be classed in the By-law according to the relative number of freeholders and householders on the last revised assessment-roll.

Seniority of Townships, how regulated.

#### COUNTIES.

#### NEW COUNTIES.

**35.** The Governor may, by Proclamation, form into a new County, any new Townships not within the limits of an Incorporated County, and may include in the new County one or more unincorporated Townships or other adjacent unorganized Territory, (defining the limits thereof) not being within an Incorporated County, and may annex the new County to any adjacent Incorporated County; or in case there is no adjacent Incorporated County, or in case the Governor in Council considers the new County, or any number of such new Counties lying adjacent to one another and not belonging to an Incorporated Union, so situated that the Inhabitants cannot conveniently be united with the inhabitants of an adjoining Incorporated County for Municipal purposes, the Governor may, by the Proclamation, erect the new County, or new adjacent Counties, into an independent County or Union of Counties for the said purposes, and the Proclamation shall name the new County or Counties.

New Counties how formed by Proclamation and annexed or united.

#### SENIORITY OF.

**36.** In every Union of Counties, the County in which the County Court House and Gaol are situate, shall be the Senior County,

Seniority of United Counties.

ties how regulated.

County, and the other County or Counties of the Union shall be the Junior County or Counties thereof.

LAWS APPLICABLE TO.

Laws applicable to union of Counties.

**37.** During the Union of Counties, all Laws applicable to Counties (except as to representation in Parliament and Registration of Titles) shall apply to the Union as if the same formed but one County.

VENUE IN.

Venue how laid in unions of Counties.

**38.** In the case of United Counties, the Venue in any Judicial proceedings shall be laid in the proper County of the Union (naming it) and describing it as one of the United Counties of , and in such case the Jury for the trial of any issue, Civil or Criminal, or the assessment of any damages, shall be summoned from the body of the United Counties.

ERECTION OF PROVISIONAL CORPORATIONS AND SEPARATION OF JUNIOR COUNTIES.

PRESIDING MEMBER—FIRST MEETING—COUNTY TOWN.

Provisional separation of United Counties by Proclamation appointing place of meeting and presiding officer.

**39.** When the Census Returns taken under an Act of Parliament, or under the authority of a By-law of the Council of any United Counties, show that the Junior County of the Union contains fifteen thousand inhabitants, or more, then, if a majority of the Reeves and Deputy Reeves of such County do, in the month of February in two successive years, pass a resolution affirming the expediency of the County being separated from the Union; and if in the month of February in the following or third year, a majority of the Reeves transmit to the Governor in Council a petition for the separation, and if the Governor deems the circumstances of the Junior County such as to call for a separate establishment of Courts and other County institutions, he may, by Proclamation setting forth those facts, constitute the Reeves and Deputy Reeves for the County a Provisional Council, and in the Proclamation appoint a time and place for the first meeting of the Council, and therein name one of its Members to preside at the meeting, and also, therein determine the place for and the name of the County Town.

Who to preside till Warden chosen.

**40.** The Member so appointed shall preside in the Council until a Provisional Warden has been elected by the Council from among the members thereof.

PROVISIONAL OFFICERS.

Appointment of Provisional Warden, &c.

**41.** Every Provisional Council shall from time to time appoint a Provisional Warden, a Provisional Treasurer, and such other Provisional Officers for the County as the Council deems necessary.



**42.** The Provisional Warden shall hold office for the Municipal year for which he is elected. His Term of office ;

**43.** The Treasurer and other Officers so appointed shall hold Office until removed by the Council. And of Treasurer, &c.

PURCHASE OF PROPERTY.

**44.** Every Provisional Council may acquire the necessary property at the County Town of the Junior County on which to erect a Court House and Gaol, and may erect a Court House and Gaol thereon, adapted to the wants of the County and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass By-laws for such purposes. Provisional Councils may acquire lands for Gaols and Court Houses.

POWERS OF THE UNION NOT TO BE INTERFERED WITH.

**45.** The powers of a Provisional Council shall not interfere with the powers of the Council of the Union, and any money raised by the Provisional Council in the Junior County shall be independent of the money raised therein by the Council of the Union. Powers of Provisional Council not to interfere with powers of the union.

DEBTS OF THE UNION.

**46.** After a Provisional Council has procured the necessary property and erected thereon the proper buildings for a Court House and Gaol, the Council may enter into an agreement with the Senior or remaining County or Counties for payment to such County or Counties of any part of the debts of the Union as may be just, and for determining the amount to be so paid and the times of payment. Agreement as to debts upon dissolution.

**47.** No Member of the Provisional Council shall vote or take any part in the Council of the Union on any question affecting such agreement or the negotiation therefor. When Provisional Councilors shall not vote.

**48.** In case the Councils do not then agree as to the amount or periods of payment, the matter shall be settled between them by Arbitration under this Act ; And the Junior County shall pay to the Senior or remaining County or Counties of the Union the amount so agreed upon or settled, and such amount shall bear interest from the day on which the Union is dissolved, and shall be provided for, like other debts, by the Council of the Junior County after being separated. Arbitrament. Payment of debts upon dissolution. Debt to bear interest.

GOVERNOR TO APPOINT JUDGES, &c.

**49.** After the sum to be paid by the Junior County to the Senior or remaining County or Counties has been paid or ascertained by agreement or arbitration, the Governor in Council shall appoint for the Junior County, a Judge, a Sheriff, one or more Terms and time of separation. Judge, &c.

more Coroners, a Clerk of the Peace, a Clerk of the County Court, a Registrar, and at least twelve Justices of the Peace, and shall provide, in the Commission or Commissions, that the appointments are to take effect on the day the Counties become disunited.

Registrar.

**50.** The Office for the Registry of Deeds shall be kept in the County Town in like manner as in other Counties.

WHEN A JUNIOR COUNTY MAY BE SEPARATED.

United Counties, when and how to be separated by Proclamation.

**51.** After such appointments are made, the Governor shall, by proclamation, separate the Junior County from the Senior or remaining County or Counties, and shall declare such separation to take effect on the first day of January next after the end of three months from the date of the Proclamation; and on that day the Courts and officers of the Union shall cease to have any Jurisdiction in the Junior County; and the property of the Corporation of the Union situate in the Junior County shall become the property of the Corporation of the Junior County, and the property situate in the remaining County or United Counties shall be the property of the Corporation of the remaining County or United Counties.

Property how divided.

VENUE.

Place of trials after dissolution of unions, to be as ordered by the Court or a Judge.

**52.** If upon the dissolution of a Union of Counties, there is pending an action, information, indictment or other Judicial proceeding in which the Venue is laid in a County of the Union, the Court in which the action, information or indictment is pending, or any Judge who has authority to make orders therein may, by consent of parties, or on hearing the parties upon affidavit, order the Venue to be changed to the new County, and all records and papers to be transmitted to the proper officers of such County, and in the case of any such indictment found at any Court of Oyer and Terminer and General Gaol Delivery, any Judge of either of the Superior Courts of Common Law, may make the order.

If no special order is made.

**53.** In case no such change be directed, all such actions, informations, indictments and other judicial proceedings shall be carried on and tried in the Senior County.

COURTS IN.

Place for holding Courts after separation.

**54.** All Courts of the Junior County required to be held at a place certain, shall be held in the County Town of the Junior County.

PERSONS IN PRISON.

Indictable offences how to be disposed of.

**55.** Any person charged with an Indictable offence who, at the time of the disuniting of a Junior from a Senior County,

County, is imprisoned on the charge in the Gaol of the Senior County, or is under Bail or Recognizance to appear for Trial at any Court in the Senior County, and against whom no indictment has been found before the disunion takes place, shall be indicted, tried and sentenced in the Senior County, unless a Judge of one of the Superior Courts of Common Law orders the proceedings to be conducted in the Junior County, in which event the prisoner or recognizances (as the case may be) shall be removed to the latter County and the proceedings shall be had therein; and when in any such case the offence is charged to have been committed in a County other than that in which such proceedings are had, the venue may be laid in the proper County describing it as formerly "one of the United Counties of, &c."

#### PERSONS ON BAIL.

**56.** Any person arrested or held to Bail under Civil Process, before the separation of a Junior from a Senior County, and liable to be imprisoned, shall be so imprisoned in the Gaol of the County in which he was arrested; and all proceedings in any Suit or Action in which any person was so arrested or held to Bail, and all proceedings after judgment founded upon the Arrest or holding to Bail, shall be carried on as if the Arrest or holding to Bail had taken place in such County as a separate County; and in case the proceedings are to be had in the Junior County, all the records and papers relative to the case shall be transmitted to the proper Officer of the Junior County.

Proceedings in civil cases under bailable process.

#### PERSONS ON THE GAOL LIMITS.

**57.** In case a debtor or other person be (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and the Union be afterwards dissolved, or one or more Counties be separated from the Union, such debtor or person may notwithstanding travel and reside in any portion of the said Counties as if no dissolution or separation had taken place, without committing a breach of any Bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits; and in case any such person after the dissolution of the Union be surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested and be imprisoned in the Gaol thereof.

Privileges of persons admitted to Gaol limits saved on dissolution.

#### WHEN PROVISIONAL COUNCILS, OFFICERS, &c., TO BECOME ABSOLUTE.

**58.** When a junior County is separated from a Union of Counties, the Head and members of the Provisional Council of the junior County, and the officers, by-laws, contracts, property, assets and liabilities of the Provisional Corporation, shall be the Head and members of the Council, and the officers, by-laws,

Officers and property, &c., continued.

by-laws, contracts, property, assets and liabilities of the new Corporation.

BY-LAWS, DEBTS AND RATES OF FORMER UNIONS OF COUNTIES  
OR TOWNSHIPS AFTER BEING DISSOLVED.

By-laws to continue in Counties and Townships.

**59.** When a junior County or Township is separated from a senior County or Township, the By-laws of the Union shall continue in force in the several Counties or Townships which composed the Union until altered or repealed by the Council or Councils of the same respectively.

Upon dissolution of Township unions, the Junior to pay a just portion of debts of the union; and disposition of property of the union.

**60.** After the dissolution of a Union of Townships, the following shall be the disposition of the property of the Union :

1. The real property of the Union situate in the Junior Township, shall become the property of the Junior Township ;

2. The real property of the Union situate in the remaining Township or Townships of the Union, shall be the property of the remaining Township or Townships ;

Joint interest in assets.

3. The two Corporations shall be jointly interested in the other assets of the Union, and the same shall be retained by the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree ;

Arrangement as to debts.

4. The one shall pay or allow to the other, in respect of the said disposition of the real and personal property of the Union, and in respect to the debts of the Union, such sum or sums of money as may be just ;

How to be determined.

5. In case the Councils of the Townships do not within three months after the first meeting of the Council of the junior Township, agree as to the disposition of the personal property of the Union, or as to the sum to be paid by the one to the other, or as to the times of payment thereof, the matter shall be settled by Arbitration under this Act ;

To bear interest.

6. The amount so agreed upon or settled shall bear interest from the day on which the Union was dissolved ; and shall be provided for by the Council of the indebted Township like other debts.

Liability of unions for debts at the time of dissolution.

**61.** In case of the separation of a County or Township from a Union of Counties or Townships, each County or Township which formed the Union shall remain subject to the debts and liabilities of the Union as if the same had been contracted or incurred after the dissolution by the respective Counties or Townships which constituted the Union.

Debentures to issue for such

**62.** After the dissolution, the Council of the senior or remaining County or Township shall issue its debentures or other

other obligations for any part of any debt contracted by the Union for which debentures or other obligations might have been but had not been issued before the dissolution; and such debentures or obligations shall recite or state the liability of the junior County or Township therefor under this Act; and the Junior County or Township shall be liable thereon as if the same had been issued by the Junior County or Township.

debts, and to bind the old and new Municipalities.

**63.** All assessments imposed by the Council of the Union for the year next before the year in which the dissolution takes effect, shall belong to the Union and shall be collected and paid over accordingly, and after the dissolution, all special rates for the payment of debts theretofore imposed by any By-law of the Union, shall continue to be levied in the junior County or Township; and the Treasurer of the junior County or Township shall pay over the amount as received to the Treasurer of the senior County or Township, and the latter shall apply the money so received in the same manner as the money raised under the same By-law in the senior County or Township.

Assessments for year preceding dissolution, who to belong to.

Special rates for debts continued to be paid over by Treasurer of the Junior County.

**64.** In case the amount so paid over to the Senior County or Township, or to any creditor of the Senior County or Township in respect of a liability of the Union, exceeds the sum which, by the agreement or award between the Councils, the junior County or Township ought to pay, the excess may be recovered against the senior or remaining County or Township as for money paid or as for money had and received, as the case may be.

If the sum paid over exceeds the just amount the excess to be refunded.

#### MUNICIPAL COUNCILS, &c., OF WHOM COMPOSED.

##### THE HEADS.

**65.** The Head of every County and Provisional Corporation shall be designated the Warden thereof, and of every City and Town the Mayor thereof, and of every Township and Incorporated Village the Reeve thereof.

Heads of Counties, &c.

##### THE MEMBERS.

##### 1.—IN CITIES.

**66.** The Council of every City shall consist of the Mayor who shall be the Head thereof, and of two Aldermen and two Councilmen for every Ward;

Cities.

##### 2.—IN TOWNS.

The Council of every Town shall consist of the Mayor who shall be the Head thereof, and of three Councillors for every Ward, and if the Town has not withdrawn from the jurisdiction of the Council of the County in which it lies, one of the Councillors of the Town shall be elected by the Council to be Reeve of

Towns.

of the Town, and if the Town had the names of five hundred resident freeholders and householders on the last Revised Assessment-Roll, the none other of the Councillors to be Deputy Reeve ;

### 3.—IN INCORPORATED VILLAGES.

Incorporated Villages.

The Council of every Incorporated Village shall consist of five Councillors, one of whom shall be Reeve, and if the Village had the names of five hundred resident freeholders and householders on the last Revised Assessment-Roll, then one other of the Councillors shall be Deputy Reeve ;

### 4.—IN TOWNSHIPS.

Townships and Wards.

The Council of every Township shall consist of five Councillors ; but when the Township is divided into Wards, then, of one Councillor for each Ward, one of which Councillors shall be Reeve, and if the Township had the names of five hundred resident freeholders and householders on the last Revised Assessment-Roll, then one other of the Councillors shall be Deputy Reeve ;

### 5.—IN COUNTIES.

Counties.

And the Council of every County shall consist of the Reeves and Deputy Reeves of the Townships and Villages within the County, and of any Towns within the County which have not withdrawn from the jurisdiction of the Council of the County ; and one of the Reeves or Deputy Reeves shall be the Warden.

County Councils.

**67.** No Reeve or Deputy Reeve shall take his seat in the County Council until he has filed with the Clerk of the County Council a Certificate under the hand and seal of the Township, Village or Town Clerk, that such Reeve or Deputy Reeve was duly elected, and made and subscribed the declarations of office and qualification, (unless exempted therefrom,) as such Reeve or Deputy Reeve ; nor in the case of a Deputy Reeve, until he has also filed with the Clerk of the County an affidavit or affirmation of the Clerk, or other person having the legal custody of the last Revised Assessment-Rolls for the Municipality which he represents, that there appear upon such Rolls the names of at least five hundred resident Freeholders and Household-ers in the Municipality.

Certificates to be filed by Reeves and Dpty. Reeves.

Trustees of Police Villages.

**68.** The Trustees of every Police Village shall be three in number, one of whom shall be the Inspecting Trustee.

### PROVISIONAL COUNCILS, WHO TO COMPOSE.

What Reeves and Deputy Reeves to be Provisional Council.

**69.** The Reeves and Deputy Reeves of the Municipalities within a Junior County for which a Provisional Council is established, shall, *ex officio*, be the members of the Provisional Council.

QUALIFICATION OF MUNICIPAL COUNCILLORS AND POLICE TRUSTEES.

**70.** The persons qualified to be elected Mayors, Members of a Council or Police Trustees, are such residents of the County, within which the Municipality or Police Village is situate, as are not disqualified under this Act, and have, at the time of the election, in their own right or in the right of their wives, as proprietors or tenants, freehold or leasehold property rated in their own names on the last Assessment-Roll of such Municipality or Police Village to at least the value following :

In Townships—Freehold to four hundred dollars or Leasehold to eight hundred dollars ; In Townships ;

In Police Villages—Freehold or Leasehold to four hundred dollars ; In Police Villages ;

In Incorporated Villages—Freehold to forty dollars per annum, or Leasehold to eighty dollars per annum ; In Incorporated Villages ;

In Towns—Freehold to Eighty dollars per annum, or Leasehold to one hundred and sixty dollars per annum ; In Towns ;

And in Cities—for Aldermen—Freehold to one hundred and sixty dollars per annum, or Leasehold to three hundred and twenty dollars per annum : and for Councilmen—Freehold to eighty dollars per annum or Leasehold to one hundred and sixty dollars per annum ; In Cities.

And so in the same proportions in all Municipalities and Police Villages in case the property is partly freehold and partly leasehold ; As to property partly freehold.

The term " Leasehold " in this section shall not include a term less than a Tenancy for a year, or from year to year. " Leasehold " defined.

And the qualification of all persons, where a qualification is required under this Act, may be of an estate either legal or equitable. 22 V. c. 40, s. 8. (1859.)

**71.** In case of a new Township erected by Proclamation for which there has been no Assessment-Roll, every person who, at the time of the first election, has such an interest in real property and to such an amount as herein before mentioned, shall be deemed to be possessed of a sufficient property qualification. In new Township not having Assessment-Roll.

**72.** In case in a Municipality there are not at least two persons qualified to be elected for each seat in the Council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. If only one person be qualified.

DISQUALIFICATIONS.

## DISQUALIFICATIONS.

Disqualifications.

**73.** No Judge of any Court of Civil Jurisdiction, no Gaoler or Keeper of a House of Correction, no Officer of any Municipality, no Bailiff of a Division Court no Sheriff's Officer, no Innkeeper or Saloonkeeper, no person receiving any allowance from the Corporation (except as Mayor, Warden, Reeve, Deputy Reeve, or Township Councillor), and no person having by himself or his partner an interest in any contract with or on behalf of the Corporation, shall be qualified to be a Member of the Council of the Corporation.

## EXEMPTIONS.

Exemptions.

**74.** All persons over sixty years of age ; all Members and Officers of the Legislative Council and of the Legislative Assembly ; all persons in the Civil Service of the Crown ; all Judges, not disqualified by the last preceding section, all Sheriffs and Coroners ; all persons in Priests' Orders, Clergymen and Ministers of the Gospel of every denomination ; all Members of the Law Society of Upper Canada, whether Barristers or Students ; all Attorneys and Solicitors in actual practice ; all Officers of Courts of Justice ; all Members of the Medical Profession, whether Physicians or Surgeons ; all Professors, Masters, Teachers and other Members of any University, College or School in Upper Canada, and all Officers and Servants thereof ; all Millers ; and all Firemen belonging to an authorized Fire Company—are exempt from being elected or appointed Councillors or to any other Corporate Office.

## ELECTORS.

Electors, qualification of in Townships, &amp;c., having an Assessment-Roll.

**75.** The Electors of every Municipality for which there is an Assessment-Roll, and the Electors of every Police Village, shall be the male freeholders thereof, and such of the householders thereof as have been resident therein for one month next before the Election, who are natural-born or naturalized subjects of Her Majesty, and of the full age of twenty-one years, and who were severally rated on the last Revised Assessment-Rolls, for real property in the Municipality or Police village, held in their own right or that of their wives as proprietors or tenants.

In Cities, Towns, and Incorporated Villages.

**76.** In Cities, Towns and Incorporated Villages, such real property, whether freehold or leasehold, or partly each, must have been so rated as of at least the annual value following :

In Incorporated Villages, twelve dollars ;

In Towns, twenty dollars ; and

In Cities, thirty dollars.

In newly erected Townships

**77.** At the first election for a newly erected Municipality for which there is no separate Assessment-Roll, every resident male



male inhabitant; though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property; and every person so claiming to vote shall name the property on which he votes, and the Returning Officer, at the request of any Candidate or voter, shall note the property in his poll book opposite the voter's name.

not having any Assessment-Rolls.

**78.** When a Municipality is divided into Wards or Electoral Divisions, no elector shall vote in more than one Ward or Electoral Division; and if entitled to vote in the Ward in which he resides, he shall not be entitled to vote in any other Ward or Electoral Division.

Wards in which electors shall vote.

**79.** In case both the owner and occupant of any real property are rated therefor, both shall be deemed rated within this Act.

When landlord and tenant both rated.

**80.** When any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated.

When joint owners rated together.

#### ELECTIONS,

##### THE HOLDING OF, IN CERTAIN PLACES PROHIBITED.

**81.** No Election of Township Councillors shall be held within any City, Town or Incorporated Village, nor shall any Election for a Municipality or any Ward thereof be held in a tavern or house of public entertainment licensed to sell spirituous liquors.

Elections for Townships not to be in Cities, Towns or Villages, and no elections shall be in Taverns.

##### FIRST ELECTIONS IN NEW OR EXTENDED MUNICIPALITIES.

**82.** 1: In case of the Incorporation of a new Township or Union of Townships; and

First elections where Corporations are newly erected or extended.

2: In case of the separation of a junior Township from a Union of Townships; and

3. In case of the erection of a Police into an Incorporated Village, or of the erection of a Village into a Town or of a Town into a City; and

4. In case of an additional tract of land being added to an Incorporated Village, Town or City, or in case of a new division into Wards of a Town or City;

5. In each of the foregoing cases, the first election under the Proclamation or By-law, by which the change was effected, shall take place on the first Monday in January next after the end of

Time of elections.

of

of three months from the date of the Proclamation, or from the passing of the By-law by which the change is made, and until such day the change shall not go into effect.

**SUBSEQUENT ELECTIONS.**

Places of elections.

**83.** Every Election shall be held in the Municipality, Electoral Division or Police Village to which the same relates, and when the Municipality has been divided into Wards, the election shall be by Wards, and every Ward election shall be held within the Ward.

To be fixed by By-law for Municipalities.

**84.** The Council of every Municipality (including a Village newly erected into a Town, and a Town newly erected into a City) shall, from time to time by By-law, appoint the place or places for holding the next ensuing Municipal Election, otherwise the Election shall be held at the place or places at which the last Election for the Municipality or Wards was held.

Also for Police Villages.

**85.** The Council by which a Police Village is established shall, by the By-law establishing the same, name the place in the Village for holding the Election of Police Trustees.

Yearly elections of Councillors and Police Trustees.

**86.** The Electors of every Municipality (except a County) shall elect annually on the first Monday in January, the Members of the Council of the Municipality, and, on the second Monday in January, the Electors of every Police Village shall annually elect the Police Trustees of the Village, and the persons so elected shall hold office until their successors are elected or appointed and sworn into office, and the new Council or Board of Police Trustees is organized.

First election in junior Township after separation.

**87.** When a junior Township of a Union has one hundred resident freeholders and householders on the last Revised Assessment-Roll, the Council of the County shall, by a By-law to be passed before the thirty-first day of October, in the same year, fix the place for holding the first annual election of Councillors in the Township, and appoint a Returning Officer for holding the same, and otherwise provide for the due holding of the election according to law.

Ward divisions in United Townships to cease on dissolution of union.

**88.** In case of the separation of a Union of Townships, the existing division into Wards, if any, shall cease as if the same had been duly abolished by By-law, and the elections of Councillors shall be by general vote until the Township or Townships are again divided into Wards under the provisions of this Act.

Where elections to be held in Townships

**89.** When there is no division of a Township into Wards, the election of Councillors shall be by general vote, and shall be held at the place or places where the last election was held,

or

or in such other place or places as may be from time to time fixed by By-law. not divided into Wards.

RETURNING OFFICERS.

**90.** The Council of every Municipality in which the election is to be by Wards or Electoral Divisions, shall from time to time by By-law appoint Returning Officers to hold the next ensuing elections. Returning Officers to be appointed by the Municipal Council.

WHEN CLERKS TO BE (EX-OFFICIO) RETURNING OFFICERS.

**91.** In the case of a Municipality in which the election is not to be by Wards or Electoral Divisions, the Clerk shall be the Returning Officer at all elections after the first. When Clerk to be *ex officio* Returning Officer.

RETURNING OFFICERS FOR THE FIRST ELECTION IN VILLAGES.

**92.** In every By-Law establishing a Police or Incorporated Village, a Returning Officer shall be appointed who is to hold the first election for such Village. For first election in Villages.

**93.** In Police Villages, after the first election, the Trustees thereof, or any two of them, shall, from time to time, by writing under their hands, appoint the Returning Officer. After first election, Police Trustees to appoint.

IF RETURNING OFFICER ABSENT.

**94.** In case, at the time appointed for holding an election, the person appointed to be Returning Officer has died, or does not attend to hold the election within an hour after the time appointed, or in case no Returning Officer has been appointed, the electors present at the place for holding the election may choose from amongst themselves a Returning Officer, and such Returning Officer shall have all the powers, and shall forthwith proceed to hold the election and perform all the other duties of a Returning Officer. The absence of the Returning Officer provided for.

THE RETURNING OFFICER TO BE A CONSERVATOR OF THE PEACE.

**95.** The Returning Officer shall, during the election, act as a Conservator of the Peace for the City or County in which the election is held; and he, or any Justice of the Peace having jurisdiction in the Municipality in which the election is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person who assaults, beats, molests or threatens any voter coming to, remaining at, or going from the election; and, when thereto required, all constables and persons present at the election, shall assist the Returning Officer or Justice of the Peace, on pain of being guilty of a misdemeanor. Returning Officers to be conservators of the peace.

## MAY SWEAR IN SPECIAL CONSTABLES.

Special Constables may be sworn in.

**96.** Every Returning Officer or Justice of the Peace may appoint and swear in any number of Special Constables to assist in the preservation of the peace and of order at the election; and any person liable to serve as Constable and required to be sworn in as a Special Constable by the Returning Officer or Justice shall, if he refuses to be sworn in or to serve, be liable to a penalty of twenty dollars, to be recovered to the use of any one who will sue therefor.

## PROCEEDINGS AT ELECTIONS.

Elections how conducted.

**97.** The proceedings at Elections shall be as follow :

Notice.

1. Every Returning Officer shall, unless otherwise provided by law, give at least ten days' previous notice of the election to be held by him, by posting the notice in at least four public places in the Municipality, Ward, Electoral Division, or Police Village ;

The Clerk to deliver copies of the Assessment-Rolls to the Returning Officer.

2. The Clerk of the Municipality shall deliver to the Returning Officer who is to preside at the Election for the same, or for every or any Ward, or Electoral Division thereof, a correct copy of so much of the last Revised Assessment-Roll for the Municipality, Ward, or Electoral Division as contains the names of all male Freeholders and Householders rated upon the Roll in respect of real property lying in the Municipality, Ward, or Electoral Division with the assessed value of the real property for which every such person is so rated ;

With his declaration verifying the same.

3. The Clerk shall deliver with such copy his solemn declaration, to the effect that the copy is a true copy of so much of the said Roll as relates to such Municipality, Ward or Electoral Division, and contains the names of all Male Freeholders and Householders rated upon the Roll in respect of real property lying in the Municipality, Ward or Electoral Division, with the assessed value of the real property for which they are so rated respectively ;

Township Clerk to deliver Assessment-Roll to Returning Officer for Police Villages.

4. The Township Clerk shall also deliver to the Returning Officer who is to preside at the Election for any Police Village in the Township, a correct copy of so much of the said Assessment-Roll as contains the names of all the male freeholders and householders in the Village, and the amount for which they are respectively assessed, together with a like solemn declaration, verifying the same, as in the case of Municipal Elections ;

Poll book to be provided.

5. The Returning Officer shall provide a poll-book ; and at every Election at which a poll is demanded, he, or his sworn poll-clerk, shall enter in such book, in separate columns, the names

names of the candidates proposed and seconded by any electors present at the Election, and shall, opposite to such columns, write the names of the electors offering to vote at the election, and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name ;

Its contents.

6. The Returning Officer shall commence every Election at ten of the clock in the forenoon ;

Hour for commencing elections.

7. The Returning Officer may close the Election in one hour after commencing the same, if within that time no more candidates are proposed than by his writ he is to return ; but in case there are more Candidates and a poll is demanded, he shall keep open the Election until four of the clock in the afternoon of the first day and then adjourn the same until ten of the clock in the forenoon of the next day, not being a Sunday, or a legal Holiday, and continue the same till four of the clock in the afternoon thereof, and no longer ; but if in the meantime he sees that all the electors intending to vote have had a fair opportunity of being polled, and if no qualified elector gives or tenders his vote between three and four o'clock of the first day, free access having been allowed to electors for the purpose, the Returning Officer may close the election at four o'clock on that day, and the Returning Officer may, in like manner, close the election before four o'clock on the second day, if for the hour next before he does so, no qualified elector gives or tenders his vote, free access having been allowed to electors for the purpose ;

Time of closing.

#### WHAT OATHS HE MAY ADMINISTER.

8. The Returning Officer may administer all oaths or affirmations necessary at the election ;

Returning Officer may administer oaths.

#### OATHS AND QUESTIONS THAT MAY BE PUT TO ELECTORS.

9. At any election, or at any public vote in respect of a By-law which requires the assent of the electors, the only oaths or affirmations to be required of any person claiming to vote, and appearing by the last Revised Assessment-Roll (if any,) to have the necessary property qualification, are, that he is of the full age of twenty-one years—and is a natural-born or naturalized subject of Her Majesty,—that he has been, if a householder, a resident within the Municipality for which the election is held, or vote taken, for one month next before the election, and that he has not before voted at the election or on the By-law (*as the case may be*) ; and that he is the person named in the last Revised Assessment-Roll : (*or, in case of a new Municipality in which there has not yet been any Assessment-Roll*) that he is a resident freeholder or householder in (*naming the property entitling him to vote at the election*) ; and that

The only oaths to be required of voters.

that he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders at this election; And such oaths shall be administered at the request of any candidate or elector; And no inquiries shall be made of any such person except with respect to the facts specified in such oaths or affirmations;

Returning Officer to declare result of the election.

10. The Returning Officer shall, at the close of the poll, add up the number of votes set down for each candidate, (except for the office of Mayor in Cities and Towns,) and shall publicly declare the same, beginning with the candidate having the greatest number, and so on with the others, and shall thereupon publicly declare elected the candidate or candidates respectively standing highest on the Poll;

When to have casting vote.

11. In case two or more candidates have an equal number of votes, the Returning Officer, whether otherwise qualified or not shall give a vote for one or more of such candidates, so as to decide the Election; and, except in such case, no Returning Officer shall vote at any Election held by him.

Poll books to be returned to the Clerk.

98. The Returning Officer shall, within three days after the close of the Election, return the poll-book to the Clerk of the Municipality from whom he received the copy of the Assessment-Roll, and also his solemn Declaration thereto annexed, that the poll-book contains a true statement of the poll, and his certificate of the persons, naming them, who have been duly elected.

Election riotously broken up, to be resumed.

99. In case, by reason of a Riot or other emergency, an Election is not commenced on the proper day or is interrupted after being commenced and before the lawful closing thereof, the Returning Officer shall hold or resume the Election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day if necessary, until the poll has been open without interruption and with free access to voters, for twelve hours in all, or thereabouts, in order that all the Electors so intending may have had a fair opportunity to vote.

If election is prevented for our days, Poll book to be returned, and a new election to be ordered.

100. But in case the Election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the necessary time, the Returning Officer shall not return any person as elected, but shall return his poll-book on the following day to the Clerk of the Municipality, certifying the cause of there not having been an Election, and a new Election shall take place; and the Head of the Municipality shall issue his warrant accordingly.

#### ELECTION OF MAYORS OF CITIES AND TOWNS.

Election of Mayors.

101. Mayors of Cities and Towns shall be chosen by the electors of such Cities and Towns at the Annual Election to be held on the first Monday in January.

**102.** The qualification of a Mayor shall be the same as that of an Alderman in Cities, and of a Councillor in Towns. Qualification of.

**103.** A meeting of the electors shall take place for the nomination of candidates for the Mayoralty, at the City or Town Hall, on the last Monday but one in the month of December before the Annual Election, at ten of the clock in the forenoon. Time and place for nominating.

**104.** The City, or Town Clerk respectively, shall preside at such meeting, or, in case of his absence, the Council shall appoint a person to preside in his place ; If the Clerk or the person so appointed does not attend, the electors present shall choose a Chairman or person to officiate from among themselves. The Clerk to preside.

**105.** Such Clerk or Chairman shall have all the powers of a Returning Officer. With powers of a Returning Officer.

**106.** If only one qualified candidate has been within one hour proposed by any elector present at such meeting, the Clerk or Chairman shall declare such Candidate duly elected Mayor. If only one Candidate proposed.

**107.** If more candidates than one are proposed, and if a poll is demanded, the Clerk or Chairman shall on the following day post up in the Office of the Clerk the names of the persons proposed, and give notice thereof to the Returning Officer for every Ward. If a Poll is demanded, the election to be by Wards.

**108.** In case of a contest in an Election for the office of Mayor, the Returning Officer for every Ward shall keep the poll open for the full time required by law for taking the votes, though there may be no contest for the other offices for which he holds the Election. Duration of Poll.

**109.** Every Returning Officer shall enter in his poll-book, in separate columns, the names of the candidates for the office of Mayor, as well as the names of the candidates for the offices of Aldermen and Councilmen, in Cities, or of Councillors, in Towns, and shall, in the column in which is entered the name of a candidate for Mayor voted for by any voter, set the number "1" opposite the voter's name. Poll books to be kept ;

**110.** Every Returning Officer shall, on the day after the close of the poll, return the poll-book to the City or Town Clerk, verified as to the election of Mayor as well as in the other particulars required by this Act. And returned to the Clerk.

**111.** The City or Town Clerk shall add up the number of votes set down for each candidate for Mayor in the respective poll-books so returned, and ascertain the aggregate number of such votes, and in case a poll has been taken and the poll books, Returning Officer to add up Poll and declare the result.

books have been returned for every Ward, the Clerk shall, at the City or Town-Hall, at noon of the day following the return of the poll-books, declare elected the candidate having the largest number of votes polled.

If no majority for any Candidate.

**112.** In case there be not a majority for any one candidate, the Clerk shall declare that two or more candidates, naming them, have an equal number of votes, or in case no return has been made for one or more Wards in consequence of no election having been held therein, or of the election having been interrupted through riot or other cause, he shall declare the want of returns for such Ward or Wards, and the cause thereof.

Mayor to take oath of office on the first day of meeting.

**113.** The Mayor elect shall make and subscribe the necessary declarations of office and qualification on the day appointed for the first meeting of the Council, and shall afterwards administer the necessary declarations to the other members of the Council.

All the Members to be sworn, &c.

**114.** No other business shall be proceeded with at the said meeting until the said declarations have been administered to all the members who present themselves to take the same.

If votes for Mayor equal.

**115.** In case two or more candidates for Mayor have an equal number of votes, the members of the Council shall take the necessary declarations before the Clerk, and shall after doing so organize themselves as a Council by electing as Mayor one of such candidates ; the Clerk presiding at the Election.

If no return for one or more Wards, a temporary Head to be elected by the Council.

**116.** In case no return be made for one or more Wards in consequence of non-election, owing to interruption by riot or other cause, the members of Council elect being at least a majority of the whole members of the Council when full, shall elect one of the Aldermen elect in Cities, or one of the Councillors elect in Towns, to be the Presiding Officer, at which election the Clerk shall preside, and such Officer shall take the necessary declarations and possess all the powers of Mayor, until a poll for such Ward or Wards has been held under a warrant in the manner provided for in the one hundred and twenty-second section of this Act.

When Poll completed, Clerk to add up votes and declare result ; when and where.

**117.** When a Poll has been duly held in each of such Wards, and the poll-books returned to the Clerk, the Clerk shall add up the number of votes for Mayor therein set down for the respective candidates, and ascertain the aggregate number of votes for Mayor contained in such last mentioned poll-books, together with the votes contained in the poll-books previously returned for the other Wards, and shall, at noon on the next day, at the City or Town-Hall, declare elected Mayor the candidate having the greatest number of votes polled, or declare that there is an equality of votes for two or more candidates, (*as the case may be.*)



**118.** In case of an equality of votes, the Council shall appoint as Mayor one of the candidates between whom the equality exists. In case of equality, the Council to decide.

**119.** The person so elected or appointed shall forthwith make the declaration in manner provided for Mayors, and assume the office of Mayor accordingly. Declaration and assumption of office.

#### DUTIES OF MAYORS.

**120.** The Mayor shall be deemed the Head of the Council, and the head and chief executive officer of the Corporation; and it shall be his duty to be vigilant and active at all times in causing the Law for the government of the City to be duly executed and put in force; to inspect the conduct of all subordinate officers in the government thereof, and as far as may be in his power, to cause all negligence, carelessness and positive violation of duty to be duly prosecuted and punished, and to communicate from time to time to the Council, all such information, and recommend all such measures as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort and ornament of the City. Mayor to be the Head of the Council; His duties.

#### ELECTION WHEN SEATS VACATED, &c.

**121.** In case a Member of Council be convicted of felony or infamous crime, or be declared a Bankrupt, or be charged in execution for debt and remains in close custody, or upon the Gaol Limits for one month, or applies for Relief as an Insolvent Debtor, or assigns his property for the benefit of creditors, or absents himself from the meetings of the Council for three months without being authorized by a resolution of the Council entered on its minutes, his seat in the Council shall thereby become vacant. Seats vacated by insolvency, absence, &c.

**122.** In any case provided for by the one hundred and sixteenth or one hundred and twenty-first sections, or in case a person elected to a Council neglects or refuses to accept office or to make the necessary declarations for office within the time required, or in case a vacancy occurs in the Council caused by death, judicial decision or otherwise, the Head of the Council for the time being, or in case of his absence or of his office being vacant, the Clerk, or in case of the like absence or vacancy in the office of the Clerk, one of the Members of the Council shall forthwith, by warrant under the signature of such Head, Clerk or Member, and under the Corporate Seal, require the Returning Officer appointed to hold the last Election for the Municipality, Ward and Electoral Division respectively, or any other person duly appointed to that office, to hold a new Election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. New elections provided for.

Term of office.

**123.** The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected or for which the office is to be filled.

Non-election of Members not to prevent organization of Council.

**124.** In case such non-election, neglect or refusal as aforesaid, occurs previous to the organization of the Council for the year, the warrant for the new Election shall be issued by the Head or a Member of the Council for the previous year, or by the Clerk in like manner as provided for by the one hundred and twenty-second section, but such neglect or refusal shall not interfere with the immediate organization of the new Council, provided a majority are present of the full number of the Council.

Time for holding and notice of new election.

**125.** The Returning Officer shall hold the new election at furthest within eight days after receiving the warrant, and shall, at least four days before the Election, post up a public notice thereof under his hand in at least four of the most public places in the Municipality, Ward or Electoral Division.

#### APPOINTMENTS IF ELECTION NEGLECTED.

Appointment if election neglected or declined.

**126.** In case at any annual or other Election the Electors, from any cause not provided for by the ninety-ninth and one hundredth sections, neglect or decline to elect the Members of Council for a Municipality on the day appointed, or to elect the requisite number of members, the other members of the Council, or if there are none, then the members for the preceding year, or the majority of them respectively, shall appoint as many qualified persons as will constitute or complete the number of members requisite; and the persons so appointed shall accept office and make the necessary declarations under the same penalty in case of refusal or neglect, as if elected.

#### CONTESTED ELECTIONS OR APPOINTMENTS.

Trial of contested elections.

**127.** In case the right of any Municipality to a Reeve or Deputy Reeve, or in case the validity of the election or appointment of a Mayor, Warden, Reeve, Deputy Reeve, Alderman, Councilman, Councillor or Police Trustee, is contested, the same may be tried in Term or Vacation by a Judge of either of the Superior Courts of Common Law, or the Senior or officiating Judge of the County Court of the County in which the election or appointment took place; and when the right of a Municipality to a Reeve or Deputy Reeve is the matter contested, any municipal elector in the County may be the Relator, and when the contest is respecting the validity of any such election or appointment as aforesaid, any candidate at the election, or any elector who gave or tendered his vote thereat, may be the Relator for the purpose.

## PROCEEDINGS FOR THE TRIAL THEREOF.

**128.** The proceedings for the trial shall be as follows :

1. If within six weeks after the election, or one month after acceptance of office by the person elected, the Relator shews by affidavit to any such Judge, reasonable grounds for supposing that the election was not legal or was not conducted according to law, or that the person declared elected thereat was not duly elected, and if the Relator enters into a recognizance before the Judge, or before a Commissioner for taking bail in the sum of two hundred dollars, with two sureties, (to be allowed as sufficient by the Judge upon affidavit of justification,) in the sum of one hundred dollars each, conditioned to prosecute the Writ with effect or to pay the party against whom the same is brought any costs which may be adjudged to him against the Relator, the Judge shall direct a Writ of Summons in the nature of a *quo warranto* to be issued to try the matters contested ; Time for limited, and security and proof required.
2. In case the Relator alleges that he himself or some other person has been duly elected, the Writ shall be to try the validity both of the election complained of and the alleged election of the Relator or other person ; Writ of *quo warranto*.  
When the Relator claims to be elected.
3. In case the grounds of objection apply equally to two or more persons elected, the Relator may proceed by one Writ against such persons ; When several are complained of.
4. Where more Writs than one are brought to try the validity of an election, or the right to a Reeve or Deputy Reeve as aforesaid, all such Writs shall be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all or a separate judgment upon each one or more of them, as he thinks fit ; All to be tried by the same Judge.
5. The Writ shall be issued by the Clerk of the process of the said Superior Courts, or by the Deputy Clerk of the Crown in the County in which the election took place, and shall be returnable before the Judge in Chambers of the Superior Courts at Toronto, or before the Judge of the County Court at a place named in the Writ, upon the eighth day after service computed, exclusively of the day of service, or upon any later day named in the Writ ; Writ, who to issue, and return day thereof.
6. The Judge, before whom the Writ is made returnable or is returned, may, if he thinks proper, order the issue of a Writ of Summons at any stage of the proceedings to make the Returning Officer a party thereto ; Returning Officer may be made a party.
7. Every Writ under this section shall be served personally, unless the party to be served keeps out of the way to avoid personal service, Service to be personal, unless

less excused by Judge. service, in which case the Judge upon being satisfied thereof by affidavit or otherwise, may make an order for such substitutional service as he thinks fit ;

The Council or an Elector may intervene.

8. The Judge, before whom the Writ is returned, may allow any person entitled to be a Relator to intervene and defend, and may grant a reasonable time for the purpose ; And any intervening party shall be liable or entitled to costs like any other party to the proceedings ;

Judge shall try summarily.

9. The Judge shall, in a summary manner, upon statement and answer without formal pleadings, hear and determine the validity of the election, or the right to a Reeve or Deputy Reeve, and may by order cause the Assessment-Rolls, Collectors' Rolls, Poll-Books, and any other records of the election, to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him and sent to be tried by Jury by Writ of Trial directed to any Court named by the Judge, or by one or more of these means, as he deems expedient ;

And remove, admit or confirm.

10. In case the Election complained of be adjudged invalid, the Judge shall forthwith, by Writ, cause the person found not to have been duly elected to be removed ; and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order a Writ to issue causing such other person to be admitted ; and in case the Judge determines that no other person was duly elected instead of the person removed, the Judge shall by the Writ cause a new Election to be held ;

If all the Members ousted, &c., writ for new election to go to the Sheriff.

11. In case the Election of all the Members of a Council be adjudged invalid, the Writ for their removal and for the Election of new Members in their place, or for the admission of others adjudged legally elected, and an Election to fill up the remaining seats in the Council, shall be directed to the Sheriff of the County in which the Election took place ; and the Sheriff shall have all the powers for causing the Election to be held which a Municipal Council has in order to supply vacancies therein ;

Defendant may disclaim.

12. Any person whose Election is complained of may, within one week after service on him of the Writ, transmit post paid, through the Post Office, directed " To the Clerk of Judge's Chambers, at Osgoode Hall, Toronto," or to " The Judge of the County Court," of the County of *(as the case may be,)* or may cause to be delivered to such Clerk or Judge, a disclaimer signed by him to the effect following :

How to proceed.

" I, A. B., upon whom a Writ of Summons in the nature of a *Quo Warranto* has been served for the purpose of contesting my right to the office of Township Councillor, *(or as the case may be)* for the Township of \_\_\_\_\_, in the County of \_\_\_\_\_ of

" of (or as the case may be), do hereby disclaim the  
 " said office, and all defence of any right I may have to the  
 " same."

Dated the            day of            , 18 .

(Signed,)            A. B.

13. Such disclaimer, or the envelope containing the same, shall moreover be endorsed on the outside thereof with the word "Disclaimer," and be registered at the Post Office where mailed ; Registry of disclaimer.

14. Every person so disclaiming shall deliver a duplicate of his Disclaimer to the Clerk of the Council, and the Clerk shall forthwith communicate the same to the Council ; Disclaimer to be delivered to Clerk.

15. No costs shall be awarded against any person disclaiming as aforesaid, unless the Judge is satisfied that such party consented to his nomination as a candidate or accepted the office, in which cases the costs shall be in the discretion of the Judge ; Costs provided for.

16. In all cases, not otherwise provided for, costs shall be in the discretion of the Judge ; When discretionary.

17. The decision of the Judge shall be final, and he shall, immediately after his Judgment, return the Writ and Judgment with all things had before him touching the same into the Court from which the Writ issued, there to remain of record as a judgment of the said Court ; and he shall, as occasion requires, enforce such judgment by a Writ in the nature of a Writ of Peremptory *Mandamus*, and by Writs of Execution for the costs awarded ; Judge to return his judgment to the Court in term ; it shall be final.

18. The Judges of the Superior Courts of Common Law, or a majority of them, may, by rules made in Term time, settle the forms of the Writs of Summons, *Certiorari*, *Mandamus* and Execution, and may regulate the practice respecting the suing out, service and execution of such Writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such Elections or appointments, and respecting the costs thereon ; and may from time to time rescind, alter or add to such rules ; But all existing Rules shall remain in force until rescinded or altered as aforesaid. The Judges to make rules, &c.

**129.** The appointment of members of Municipal Councils when required to be made under this Act shall be deemed elections within the preceding section, and in such cases the Relator may be any Member of the Council or any Elector of the Municipality or Ward for which the appointment was made. Appointments equivalent to elections.

## MEETINGS OF COUNCIL, &amp;c.

## FIRST MEETING OF MEMBERS ELECT.

First meetings  
of Councils.

**130.** The Members of every Municipal Council, (except County Councils,) and the Trustees of every Police Village, shall hold their first meeting at noon on the third Monday of the same January in which they are elected, or on some day thereafter at noon; and the Members of every County Council shall hold their first meeting at noon, or some hour thereafter, on the fourth Tuesday of the same month, or on some day thereafter.

Place in Coun-  
ties.

**131.** The members of every County Council shall hold their first meeting at the County Hall, if there is one, or otherwise at the County Court House.

ELECTION OF HEADS OF COUNCIL OTHER THAN OF CITIES  
AND TOWNS.

Elections of  
Heads of other  
Councils than  
Cities and  
Towns.

**132.** The members elect of every Council, except a City or Town Council, being at least a majority of the whole number of the Council when full, shall, at their first meeting after the yearly elections, and after making the declarations of office and qualification when required to be taken, organize themselves as a Council by electing one of themselves to be the Warden or Reeve of the Corporation, and such person shall be the Head of the Council.

Who to preside  
at.

**133.** At every such election the Clerk of the Council shall preside, and if there is no Clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member.

Who to have  
the casting vote  
in the event of  
an equality of  
votes.

**134.** In case of an equality of votes on the election of the Head of any County Council or Provisional County Council, then, of those present, the Reeve or in his absence, the Deputy Reeve, of the Municipality which has the largest number of names on its last Revised Assessment-Roll, shall have a second and casting vote, and in case of the like occurrence in any other Council, then, of those present, the member who has been assessed for the highest amount on such roll, shall have the like vote.

Election of  
Reeves and  
Deputy  
Reeves.

**135.** The members of the Council of every Town not withdrawn from the jurisdiction of the County Council, and the Council of every Incorporated Village shall, at its first meeting, elect from among its members a Reeve, and in case any such Town, or Incorporated Village or any Township had the names of five hundred resident freeholders or householders on the last Revised Assessment-Roll, the members of the Council of the Town, Village and Township, shall also at its first meeting elect from among its members a Deputy Reeve.

SUBSEQUENT

## SUBSEQUENT MEETINGS.

**136.** The subsequent meetings of the County Council, and all the meetings of every other Council, shall be held at such place, either within or without the Municipality, as the Council from time to time, by Resolution on adjourning to be entered on the minutes, or by By-law, appoints.

Place of meeting of Council in Municipalities.

**137.** The Council of the County in which any City lies, may hold its sittings, keep its public offices, and transact all the business of the Council and of its officers and servants within such City, and may purchase and hold such Real property therein as may be convenient for such purposes.

Place of in Cities.

**138.** Every Council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct.

Meetings to be open.

**139.** In case there is no By-law of a Council fixing the place of meeting, any Special Meeting of the Council shall be held at the place where the then last Meeting of the Council was held; and a special Meeting may be open or closed as in the opinion of the Council, expressed by Resolution in writing, the public interest requires.

Special may be closed.

**140.** A majority of the whole number of members required by law to constitute the Council shall form a quorum.

Quorum.

**141.** When a Council consists of only five Members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure.

In Councils of five, three must concur.

**142.** Every Council may adjourn its Meetings from time to time.

Adjournments.

## WHO TO PRESIDE IN COUNCIL.

**143.** The Head of every Council shall preside at the meetings of Council; and may at any time summon a special meeting thereof; and it shall be his duty to summon a special meeting whenever requested in writing by a majority of the Council.

The Heads to preside in Council.

**144.** In case of the death or absence of the Head of a Town Council, the Reeve, and in case of the absence or death of both of them, the Deputy Reeve, and in case of the death or absence of the Head of a Village or Township Council, the Deputy Reeve, shall preside at the meetings of Council, and may at any time summon a special meeting thereof.

When Reeve or Deputy Reeve to preside.

**145.** In the absence of the Head of the Council, and in the case of a Town, Village or Township in the absence also of the Reeve, if there be one, and also of the Deputy Reeve, if there be one, by leave of the Council, or from illness, the Council

Absence of Head provided for.

Council may, from among the members thereof eligible to be elected Head, appoint a presiding officer, who, during such absence, shall have all the powers of the Head of the Council.

Casual absence provided for.

**146.** If the person who ought to preside at any Meeting does not attend within a reasonable time after the hour appointed, the members present may appoint a Chairman from amongst themselves, and such Chairman shall have the same authority in presiding at the meeting as the absent person would have had if present.

Head to vote.

*Presumitur pro negante*, in case of ties.

**147.** The Head of the Council, or the Presiding Officer or Chairman of any meeting of any Council, may vote with the other Members on all questions, and any question on which there is an equality of votes shall be deemed to be negatived.

#### RESIGNATIONS OF HEADS OF COUNCIL.

Resignation of Heads provided for.

**148.** The Warden of a County, or the Reeve or the Deputy Reeve of a Town, Village or Township may, at any time, resign his office, and in such case, or in the case of a vacancy in any such office by death or otherwise, the Council, or its remaining members, shall, at a special meeting for the purpose, or at the first regular meeting after the vacancy occurs, elect from among themselves a qualified person to fill the office.

Vacancies how filled.

#### OF COUNCILLORS.

Members may resign.

**149.** Any Mayor or other Member of a Council may, with the consent of the majority of the members of the Council, to be entered on the minutes, resign his seat in the Council, and the vacancy shall be supplied as in the case of a natural death.

#### OFFICERS OF CORPORATIONS.

#### THE CLERK, AND DUTIES OF.

The Clerk, and his duties.

**150.** Every Council shall appoint a Clerk; and the Clerk shall truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the Council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the Council; and shall preserve and file all accounts acted upon by the Council, and also the originals or certified copies of all By-laws, and of all minutes of the proceedings of the Council, all which he shall so keep in his office, or in the place appointed by By-law of the Council.

Minutes, &c., to be open to inspection.

**151.** Any person may inspect any of the particulars aforesaid at all seasonable times; and the Clerk shall within a reasonable time furnish copies thereof to any applicant at the rate of ten cents



cents per hundred words, or at such lower rate as the Council appoints, and shall, on payment of his fee therefor, furnish, within a reasonable time to any elector of the Municipality, or to any other person interested in any By-law, Order or Resolution, or to his Attorney, a copy of such By-law, Order or Resolution, certified under his hand and under the Corporate Seal.

Copies to be furnished and charges therefor, &c.

**152.** The Clerk of every City, Town, Incorporated Village and Township, shall, on or before the first day of December in each year, transmit to the Receiver General a true Return of the number of resident rate-payers appearing on the Revised Assessment-Roll of his Municipality for the year, and shall accompany such return with an affidavit made before a Justice of the Peace verifying the same, in the following form :

Clerk to transmit a yearly return of rate-payers to the Receiver General.

“ I, A. B., Clerk of the Municipality of the City, (Town, Township or Village, as the case may be,) make oath and say, that the above or the within written, or the annexed return, contains a true statement of the number of resident rate-payers appearing on the Assessment-Roll of the said City, (Town, Township or Village,) for the year one thousand eight hundred and

(Signed) A. B.

“ Sworn before me, &c.”

**153.** And in case of default in any year so to transmit, the Clerk shall be liable to a penalty of twenty dollars, to be paid to the Receiver General for the use of the Province, to be recovered by summary proceedings in the manner provided for the recovery of penalties for infringing By-laws under this Act.

Penalty for default.

**154.** The Clerk of every Township, Village and Town shall, in each year, within one week after the first day of January, make a return to the Clerk of the County in which the Municipality is situate, of the following particulars respecting his Municipality for the year then last past, namely :

To make a yearly return to the County Clerk.

Heads of columns in Assessment-Rolls, to be varied according to the form of the Assessment-Rolls required by law.

1. Number of persons assessed.
2. Number of acres assessed.
3. Total of rentals of real property.
4. Total of yearly value other than rentals of real property.
5. Total actual value of real property.
6. Total of taxable incomes.
7. Total value of personal property.
8. Total yearly value of personal property.
9. Total amount of assessed value of real and personal property.
10. Total amount of taxes imposed by By-laws of the Municipality.

11. Total amount of taxes imposed by By-laws of the County Council.
12. Total amount of taxes imposed by By-laws of any Provisional County Council.
13. Total amount of Lunatic Asylum or other Provincial tax.
14. Total amount of all taxes as aforesaid.
15. Total amount of income collected or to be collected from assessed taxes for the use of the Municipality.
16. Total amount of income from licenses.
17. Total amount of income from public works.
18. Total amount of income from shares in incorporated Companies.
19. Total amount of income from all other sources.
20. Total amount of income from all sources.
21. Total expenditure on account of roads and bridges.
22. Total expenditure on account of other public works and property.
23. Total expenditure on account of stock held in any incorporated Company.
24. Total expenditure on account of schools and education, exclusive of School Trustees rates.
25. Total expenditure on account of the support of the poor or charitable purposes.
26. Total expenditure on account of Debentures and interest thereon.
27. Total gross expenditure on account of Administration of Justice in all its branches.
28. Amount received from Government on account of Administration of Justice.
29. Total nett expenditure on account of administration of Justice.
30. Total expenditure on account of salaries, and the expenses of Municipal Government.
31. Total expenditure on all other accounts.
32. Total expenditure of all kinds.
33. Total amount of liabilities secured by Debentures.
34. Total amount of liabilities unsecured.
35. Total liabilities of all kinds.
36. Total value of real property belonging to Municipality.
37. Total value of stock in incorporated Companies owned by Municipality.
38. Total amount of debts due to Municipality.
39. Total amount of arrears of taxes.
40. Balance in hands of Treasurer.
41. All other property owned by Municipality.
42. Total assets.

County Clerk  
to make a  
return to the  
Provincial  
Secretary.

**155.** The Clerk of every County shall, before the first day of February, in each year, prepare and transmit to the Provincial Secretary a Statement of the aforesaid particulars respecting all the Municipalities within his County, entering each Municipality in a separate line, and the particulars required opposite

opposite to it, each in a separate column, together with the sum total of all the columns for the whole County, and shall also make at the same time a Return of the same particulars respecting his County, as a separate Municipality.

**156.** The Clerk of every City, shall, before the first day of February in each year, make a return to the Provincial Secretary of the same particulars respecting his City.

And also Clerks of Cities.

**157.** The Treasurer of the County shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Clerk of the County that the Clerk of such Municipality has not made the Returns hereinbefore required; and the Receiver-General shall retain in his hands any moneys payable to any Municipality if it is certified to him by the Provincial Secretary that the Clerk of such Municipality has not made the Returns hereinbefore required; and any person so required to make any Return by a particular day who fails so to do, shall be liable to a penalty of not more than twenty dollars, to be paid to the Receiver-General for the use of the Province, to be recovered as last aforesaid.

Moneys to be retained if returns not made.

**158.** The Provincial Secretary shall, as soon as may be after the commencement of every Session, lay before both Houses of the Legislature a copy of all Returns hereinbefore required to be made.

Provincial Secretary to lay the returns before Parliament.

#### CHAMBERLAIN AND TREASURER.

**159.** Every City Council shall appoint a Chamberlain, and every other Council shall appoint a Treasurer; and every Chamberlain and Treasurer, before entering upon the duties of his office, shall give such security as the Council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands.

Treasurer to be appointed. To give security.

**160.** Every Treasurer and Chamberlain respectively shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the Laws of the Province and the lawful By-laws or resolutions of the Council direct.

To receive and take care of and disburse moneys, &c.

**161.** The Treasurer or Chamberlain of every Municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall, so long as any part of such sum, or of the interest thereon, remains unpaid by such Municipality, transmit to the Board of Audit, on or before the Fifteenth day of January in every year, a Return, certified on the oath of the Treasurer or Chamberlain before some Justice of the Peace, containing the amount of taxable property in the Municipality according to the then last Assessment-Roll or Rolls,—a true Account of all the Debts and Liabilities

To make a return yearly to the Provincial Board of Audit.

Liabilities of the Municipality for every purpose, for the then last year,—and such further information and particulars with regard to the liabilities and resources of the Municipality, as the Governor in Council may from time to time require, under a penalty, in case of neglect or refusal to transmit the Return, account, information or particulars, of one hundred dollars, to be recovered with costs as a debt due to the Crown, according to the thirty-first Section of the Consolidated Statute of Canada, chaptered sixteen: *An Act respecting the Collection and Management of the Revenue, the Auditing of Public Accounts, and the liability of Public Accountants.*

## ASSESSORS AND COLLECTORS.

Assessors and Collectors, appointments and qualification of.

**162.** The Council of every Municipality except a County shall, as soon as may be convenient after the annual election, appoint as many Assessors and Collectors for the Municipality as the Assessment Laws from time to time authorize or require, and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; but the Council shall not appoint as Assessor or Collector a member of the Council, or a person who has not the same property qualification as that required for a Councillor or Councilman of the Municipality; The same person may, in a City, Town or Township, be appointed Assessor or Collector for more than one Ward.

Assessors to designate freeholders and house-holders in their assessment-rolls.

**163.** The Assessors shall state in their Assessment-Rolls whether the persons named therein are Freeholders or Householders, or both, and shall, in separate columns for this purpose, use the initial letters F and H to signify the same respectively.

Householder defined.

**164.** Every occupant of a separate portion of a house, such portion having a distinct communication with a Public road or street by an outer door, shall be deemed a Householder within this Act.

Collector of Provisional County.

**165.** The Collectors of the several Townships in a Junior County of a Union of Counties shall *ex officio* be Collectors in such Townships for the Provisional Council, and the Collectors shall pay over to the Provisional Treasurer the money they collect under any By-law of the Provisional Council.

Moneys how to be disposed of.

**166.** The money so collected shall be deemed the money of the Union, so far as necessary to make the Collectors and their sureties responsible to the Union therefor; And in case the Corporation of the Union receives the same, such Corporation shall immediately pay the amount to the Provisional Treasurer, retaining the expenses of collection.

## AUDITORS.

Auditors.

**167.** Every Council shall, at the first meeting thereof in every year after being duly organized, appoint two Auditors, one of whom shall be such person as the Head of the Council nominates;

nominates; but no one who, at such time or during the preceding year, is or was a Member, or is or was Clerk or Treasurer of the Council, or who has or during such preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the Corporation, except as Auditor, shall be appointed an Auditor.

Disqualification for office of.

**168.** The Auditors shall examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction, for the year ending on the thirty-first day of December preceding their appointment.

Duties of.

**169.** The Auditors shall prepare an abstract of the receipts, expenditures and liabilities of the Corporation; and also a detailed statement of the said particulars in such form as the Council directs, and report in duplicate on all the accounts audited by them; and shall file the same in the office of the Clerk of the Council within one month after their appointment, and thereafter any inhabitant or rate-payer of the Municipality may inspect one of such duplicate reports, at all reasonable hours; and may, by himself or his agent, at his own expense, take a copy thereof or extracts therefrom.

To prepare abstract and detailed statement of receipts and expenditures, &c.

**170.** The Council shall, upon the report of the Auditors, finally audit and allow the accounts of the Treasurer or Chamberlain and Collectors and all accounts chargeable against the Corporation; and in case of charges not regulated by law, the Council shall allow what is reasonable.

The Council to audit finally, &c.

**171.** The Clerk shall print and publish the Auditors' abstract, and shall also publish the detailed statement in such form as the Council directs.

Clerk to publish abstracts and statements.

**172.** Every County Council shall have the regulation and auditing of all moneys to be paid out of funds in the hands of the County Treasurer.

Audit of moneys paid by Treasurer.

#### SALARIES AND CONTINUANCE IN OFFICE.

**173.** In case the remuneration of any of the officers of the Municipality has not been settled by Act of the Legislature, the Council shall settle the same, and the Council shall provide for the payment of all municipal officers, whether the remuneration is settled by Statute or by By-law of the Council.

Salaries of officers.

**174.** The Chamberlain or Treasurer may be paid a salary or percentage, and all officers appointed by a Council shall hold office until removed by the Council, and shall, in addition to the duties assigned to them in this Act, perform all other duties required of them by any other Statute, or by the By-laws of the Council having jurisdiction over such officers.

Of Chamberlain or Treasurer.

## OFFICIAL DECLARATIONS.

Declaration of  
Qualification.

**175.** Every person elected or appointed under this Act to any office requiring a qualification of property in the incumbent shall, before he takes the declaration of office, or enters on his duties, make and subscribe a solemn declaration to the effect following :

Form of.

" I, A. B., do solemnly declare, that I am a natural-born (or naturalized) subject of Her Majesty ; that I am truly and *bona fide* seized or possessed to my own use and benefit, of such an estate, (*specifying the nature of such estate, and if land, designating the same by its local description, rents or otherwise,*) as doth qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected or appointed*) according to the true intent and meaning of the "Municipal Laws of Upper Canada."

Declaration of  
office.

**176.** Every Returning Officer and Returning Officer's Clerk, every Township, Village, Town and City Councillor, every Alderman, every Justice of the Peace for a Town, and every Clerk, Assessor, Collector, Constable and other officer appointed by a Council, shall also, before entering on the duties of his office, make and subscribe a solemn declaration to the effect following :

Form of Decla-  
ration of office.

" I, A. B., do solemnly promise and declare, 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*) to which I have been elected (or appointed) in this Township, (*or as the case may be,*) and that I have not received and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office."

Denial of dis-  
qualifying in-  
terest, who to  
take.

**177.** The solemn declaration to be made by every Mayor and Alderman, and by every Township, Village, Town and City Councillor, shall also state that he has not by himself or his partner an interest in any contract with or on behalf of the Corporation.

Auditor's de-  
claration.

**178.** The solemn declaration to be made by every Auditor shall be as follows :

Form of oath.

" I, A. B., having been appointed to the office of Auditor for the Municipal Corporation of \_\_\_\_\_, do hereby promise and declare that I will faithfully perform the duties of such office according to the best of my judgment and ability ; and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (*except that of Auditor, if re-appointed*) with, by or on behalf of such Municipal Corporation, during the year preceding "my

“ my appointment, and that I have not any contract or employment (except that of Auditor, if re-appointed) for the present year.”

**179.** The Head and other members of the Council and the subordinate officers of every Municipality, shall make the declaration of office and qualification before some Court, Judge, Recorder, Police Magistrate or other Justice of the Peace having jurisdiction in the Municipality for which such Head, members or officers have been elected or appointed, or before the Clerk of the Municipality.

Heads and other members of the Council before whom to declare.

**180.** The Court, Judge or other person before whom such declarations are made, shall give the necessary Certificate of the same having been duly made and subscribed.

Certificate of.

**181.** The Head of any Council, any Alderman, Reeve or Deputy Reeve, any Justice of the Peace of a Town, and the Clerk of a Municipality, may, within the Municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to take the oath or affirmation, or make the declaration.

Head of Council and Reeves may administer oaths, &c.

**182.** The deponent, affirmant or declarant shall subscribe every such oath, affirmation or declaration, and the person administering it shall duly certify and preserve the same, and within eight days deposit the same in the office of the Clerk of the Municipality to the affairs of which it relates, on pain of being deemed guilty of a misdemeanor.

Oath or declaration to be subscribed.

**183.** Every qualified person duly elected or appointed to be a Mayor, Alderman, Councilman, Reeve, or Deputy Reeve, Councillor, Police Trustee, Assessor or Collector of or in any Municipality, who refuses such office, or does not make the declarations of office and qualification within twenty days after knowing of his election or appointment, and every person authorized to administer any such declaration, who, upon reasonable demand, refuses to administer the same, shall, on conviction thereof before two or more Justices of the Peace under and subject to the Consolidated Act of Canada, respecting the duties of Justices of the Peace out of Session in relation to summary convictions and orders, forfeit not more than eighty dollars nor less than eight dollars, at the discretion of such Justices, to the use of the Municipality, together with the costs of prosecution.

Penalty for refusing to accept office or take the oaths, &c.

#### OFFENCES.

##### 1.—EMBEZZLEMENT OF BOOKS, MONEYS.

**184.** All books, papers, accounts, documents, moneys and valuable securities respectively, by any person or officer appointed or employed by or on behalf of any Council, kept or received

Embezzlements by Municipal Officers.

by virtue of his office or employment, shall be the property of the Corporation ; and in case any such person or officer refuses or fails to deliver up or pay over the same respectively to the Corporation, or to any person authorized by the Council to demand them, he shall be deemed guilty of a fraudulent embezzlement thereof, and may be prosecuted and punished in the same manner as a servant fraudulently embezzling any chattel, money or valuable security of his master ; but nothing herein shall affect any remedy of the Corporation or of any other person against the offender or his sureties, or any other party ; nor shall the conviction of such offender be receivable in evidence in any suit, at law or in equity, against him.

2.—STEALING WRITS OF ELECTION, POLL BOOKS, &c.

Stealing or destroying, &c., certain documents, relating to Municipal Elections to be felony.

**185.** If any person steals, or unlawfully or maliciously either by violence or stealth, takes from any Deputy-Returning Officer or Poll Clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names, into or upon, or aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names into or upon any Writ of Election or any return to a Writ of Election or any Indenture, Poll Book, Certificate or Affidavit, or any other document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of the law in regard to Municipal Elections—every such offender shall be guilty of felony and shall be liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven nor less than two years, or to be imprisoned in any other place of confinement for any term less than two years, or to suffer such other punishment by fine or imprisonment or both as the Court shall award ; And it shall not in any indictment for any such offence be necessary to allege that the article in respect of which the offence has been committed, was or is the property of any person, or that the same was or is of any value. 22 V. c. 38, s. 3. (1859.)

Punishment.

Value of document need not be stated.

1.—PROVISIONS APPLICABLE TO ALL COUNCILS.

**186.** The following sections numbered from 187 to 241, both inclusive, relate to all Municipalities, namely :

Certain sections to apply to all Municipalities.

- |                              |  |                           |
|------------------------------|--|---------------------------|
| 1. Townships,                |  | 4. Cities,                |
| 2. Counties,                 |  | 5. Towns, and             |
| 3. Provisional Corporations, |  | 6. Incorporated Villages. |



## JURISDICTION OF COUNCILS.

**187.** The Jurisdiction of every Council shall be confined to the Municipality the Council represents, except where authority beyond the same is expressly given, and the powers of the Council shall be exercised by By-law when not otherwise authorized or provided for.

Local Jurisdiction of Councils.

**188.** Every Council may make Regulations not specifically provided for by this Act, and not contrary to Law, for governing the proceedings of the Council,—the conduct of its Members,—and the appointing or calling of special meetings of the Council; and generally, such other regulations as the good of the Inhabitants of the Municipality requires; and may repeal, alter and amend its By-laws, save as by this Act restricted.

General power to make local regulations—

To regulate meetings and proceedings;

To repeal or alter By-laws.

## BY-LAWS OF COUNCILS, HOW AUTHENTICATED.

**189.** Every By-law shall be under the Seal of the Corporation, and shall be signed by the Head of the Corporation, or by the person presiding at the Meeting at which the By-law has been passed, and by the Clerk of the Corporation.

How By-laws to be authenticated.

**190.** A copy of any By-law written or printed without erasure or interlineation, and under the Seal of the Corporation, and certified to be a true copy by the Clerk and by any Member of the Council, shall be deemed authentic, and be received in evidence in any Court of Justice without proof of the Seal or Signatures, unless it is specially pleaded or alleged that the Seal, or one or both of the Signatures, have been forged.

Certified copies to be evidence.

## OPPOSITION TO BY RATE-PAYERS.

**191.** In case any person rated on the Assessment-Roll of any Municipality, or of any locality therein, objects to the passing of a By-law, the passing of which is to be preceded by the application of a certain number of the rateable inhabitants of such Municipality or place, he shall, on petitioning the Council, be at liberty to attend, in person or by Counsel or Attorney, before the Council at the time at which the By-law is intended to be considered, or before a Committee of the Council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the By-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements, and that the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the By-law.

Opposition to By-laws applied for by rate-payers:

Provision for.

When By-laws shall not pass.

**192.** If the Council is satisfied upon the evidence that the application for the By-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the By-law passed, or if the Council is satisfied that the notice required by law was not duly given, the Council shall not pass the By-law.

PROCEEDINGS WHEN THE ASSENT OF ELECTORS IS REQUIRED.

If a By-law requires the assent of the electors.

**193.** In case a By-law requires the assent of the Electors of a Municipality before the final passing thereof, the following proceedings shall be taken for ascertaining such assent, except in cases otherwise provided for :

Time and place of voting shall be fixed by By-law.

1. The Council shall by the By-law fix the day, hour and place, for taking the votes of the Electors thereon at every place in the Municipality at which the elections of the Members of the Council or Councils therein are held; and shall also name a Returning Officer to take the votes at every such place, and such day shall not be less than three nor more than four weeks after the first publication of the proposed By-law as herein provided for ;

Proposed By-law to be published.

2. The Council shall, for at least one month before the final passing of the proposed By-law, publish a copy thereof in some newspaper published weekly or oftener in the Municipality, or if there is no such newspaper, in some newspaper in the nearest place in which a newspaper is published, and also put up a copy of the By-law at four or more of the most public places in the Municipality ;

Notice to be given.

3. Appended to each copy so published and posted, shall be a notice signed by the Clerk of the Council, stating that such copy is a true copy of a proposed By-law which will be taken into consideration by the Council after one month from the first publication in the newspaper, stating the date of the first publication, and naming the hour, day and place or places fixed for taking the votes of the Electors ;

Poll.

4. At such day and hour a Poll shall be taken and all proceedings thereat and for the purpose thereof shall be conducted in the same manner as nearly as may be, as at a Municipal Election ;

Verified Poll Book to be returned.

5. Every Returning Officer shall, on the day after the closing of the Poll, return his Poll-Book verified to the Clerk of the Local Municipality in which the Poll was taken, and in case of a By-law of a County Council, the Clerk of the Local Municipalities shall forthwith return to the Clerk of the County Council the Poll-Book so delivered to him ;

6. The Clerk of the Council which proposed the By-law shall add up the number of votes for and against the same, and shall certify to the Council under his hand whether the majority have approved or disapproved of the By-law; and shall keep the same with the Poll-Book among the Records of his Office.

Clerk to sum up and declare result.

WHEN REQUIRING THE ASSENT OF THE GOVERNOR IN COUNCIL.

**194.** The facts required by this Act to be recited in any By-law which requires the approval of the Governor in Council, shall, before receiving such approval, be verified, by solemn declaration, by the Head of the Council, and by the Chamberlain or Treasurer and Clerk thereof, and by such other persons and on such other evidence as to the Governor in Council satisfactorily proves the facts so recited; or in case of the death or absence of any such Municipal officer, upon the declaration of any other Member of the Council whose declaration the Governor in Council will accept.

When the assent of the Governor is required to By-laws.

WHEN AND HOW QUASHED.

**195.** In case a resident of a Municipality, or any other person interested in a By-law, Order or Resolution of the Council thereof, applies to either of the Superior Courts of Common Law, and produces to the Court a copy of the By-law, Order or Resolution, certified under the hand of the Clerk and under the Corporate Seal, and shews, by affidavit, that the same was received from the Clerk, and that the applicant is resident or interested as aforesaid, the Court, after at least eight days' service on the Corporation of a Rule to shew cause in this behalf, may quash the By-law, Order or Resolution in whole or in part for illegality, and according to the result of the application, award costs for or against the Corporation.

By-laws, how to proceed in order to quash.

WHEN CONFIRMED BY PROMULGATION.

**196.** In case a By-law by which a rate is imposed has been specially promulgated in the manner hereinafter specified, no application to quash the By-law shall be entertained after six months have elapsed since the promulgation.

Time after which By-law cannot be quashed, if properly promulgated.

**197.** Every special promulgation of a By-law within the meaning of this Act shall consist in the publication, through the Public Press, of a true copy of the By-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by Law for applications to the Courts to quash the same or any part thereof.

What shall be such promulgation.

**198.** In the case of a By-law by which a Rate is imposed, the promulgation shall be either by such publication of a copy of the By-law with such notice as aforesaid, or in lieu thereof by such

And if the By-laws imposes any rate.

such publication of a notice setting forth the amount of the rate and giving the substance only of the other parts of the By-law with a similar notice of the time so limited for applications to quash as aforesaid; and the publication referred to in the preceding two sections, shall be in each public newspaper published weekly or oftener within the Municipality; or if there be no such newspaper, then in at least two public newspapers published weekly or oftener nearest to the Municipality, and the publication shall for the purpose aforesaid be continued in at least three consecutive numbers of the paper.

Notice to be given.

**199.** The notice to be appended to every copy of a By-law, for the purpose aforesaid, shall be to the effect following:

Form of such notice.

“NOTICE.—The above is a true copy of a By-law passed by the Municipal Council of the Township of A, in the County of B, one of the United Counties of B, C and D, (or as the case may be) on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and (where the approval of the Governor in Council is by law required to give effect to such By-law) approved by His Excellency the Governor general in Council, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_; and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty’s Superior Courts of Common Law at Toronto, within six Calendar months at the farthest after the special promulgation thereof by the publication of this notice in three consecutive numbers of the following newspapers, viz: (*here name the newspapers in which the publication is to be made*), or he will be too late to be heard in that behalf.

G. H.

Township Clerk.”

Notice setting forth the rate.

**200.** The notice setting forth the amount of the rate, and giving the substance only of the other parts of the By-law, for the purpose aforesaid, shall be to the effect following:

Form of such notice.

“Township A, in the County of B, one of the United Counties of B, C and D, in Upper Canada, to wit:

Notice is hereby given, that a By-law, intituled, (*set out the title*), and numbered (*give the number by which the By-law is designated*), was on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, passed by the Municipal Council of the Township of A, in the County of B, one of the United Counties of B, C and D, in Upper Canada, for the purpose of (*here set out in substance the object of the By-law*, as “raising the necessary funds to meet the general public expenses of the Township of \_\_\_\_\_ for the year 18\_\_\_\_,” or “for the purpose of raising \_\_\_\_\_ and \_\_\_\_\_

and contracting for a loan of \_\_\_\_\_ dollars, for making and macadamizing a Road from \_\_\_\_\_ to \_\_\_\_\_ " (or otherwise, as the case may be) and, (where the approval of the Governor in Council is by law required to give effect to such By-law,) approved by His Excellency the Governor General in Council, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_;) and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, within six Calendar months, at the farthest, after the special promulgation thereof, by the publication of this notice in three consecutive numbers of the following newspapers, viz: (here name the newspapers in which the publication is to be made), or: he will be too late to be heard in that behalf.

G. H.

Township Clerk."

**201.** In case no application to quash any By-law so specially promulgated be made within the time limited for that purpose, the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same ordains, prescribes or directs any thing within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the By-law itself, or in the time or manner of passing the same, be a valid By-law.

If not moved against, within the time limited, to be valid.

IF QUASHED, THE CORPORATION ONLY TO BE LIABLE.

**202.** In case a By-law, Order or Resolution be illegal in whole or in part, and in case any thing has been done under it which, by reason of such illegality, gives any person a right of action, no such action shall be brought until one month has elapsed after the By-law, Order or Resolution has been quashed or repealed, nor until one month's notice in writing of the intention to bring such action has been given to the Corporation; and every such action shall be brought against the Corporation alone, and not against any person acting under the By-law, Order or Resolution.

Liability of Municipality for acts done under a By-law afterwards quashed.

TENDER OF AMENDS BY.

**203.** In case the Corporation tenders amends to the Plaintiff or his Attorney, if such tender be pleaded and (if traversed) proved, and if no more than the amount tendered is recovered, the Plaintiff shall have no costs, but costs shall be taxed to the Defendant, and set off against the verdict, and the balance due to either party shall be recovered as in ordinary cases.

Tender of amends.

OFFENCES

## OFFENCES AGAINST BY-LAWS.

Offences  
against By-  
laws.

**204.** In case any Officer of a Municipal Corporation neglects or refuses to carry into effect a By-law for paying a debt, and so neglects or refuses under colour of a By-law illegally attempting to repeal such first mentioned By-law, or to alter the same so as to diminish the amount to be levied under it, such Officer shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the Court whose duty it may be to pass sentence upon him.

Jurisdiction to  
try.

Summary pro-  
ceedings.

**205.** In case an offence be committed against a By-law of a Council, for the prosecution of which offence no other provision is made, any Justice of the Peace, having jurisdiction in the locality where the offender resides, or where the offence was committed, whether the Justice is a member of the Council or not, may try and determine any prosecution for the offence.

Evidence.

Penalty and  
costs;

How levied.

**206.** The Justice or other authority before whom a prosecution is had for an offence against a Municipal By-law, may convict the offender on the oath or affirmation of any credible witness, and shall award the penalty or punishment imposed by the By-law with the costs of prosecution, and may, by warrant under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, cause any pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender.

Commitment  
in default of  
distress.

**207.** In case of there being no distress found, out of which the penalty can be levied, the Justice may commit the offender to the Common Gaol, House of Correction or nearest Lock-up-House, for the term specified in the By-law.

Fines how ap-  
plied.

**208.** When the pecuniary penalty has been levied, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Corporation, unless the prosecution is brought in the name of the Corporation, and in that case the whole of the pecuniary penalty shall be paid to the Corporation.

Jurisdiction of  
Mayors and  
Police Magis-  
trates over pe-  
nal offences.

**209.** The Police Magistrate, or when there is no Police Magistrate, the Mayor of a Town or City, shall have jurisdiction in addition to his other powers, to try and determine all prosecutions for offences against the By-laws of the Town or City, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office.

## DEBENTURES, &amp;c., HOW TO BE MADE.

Debentures,  
bonds, &c.,

**210.** All Debentures and other specialties duly authorized to be executed on behalf of a Municipal Corporation shall, unless

unless otherwise specially authorized or provided, be sealed with the Seal of the Corporation and be signed by the Head thereof, or by some other person authorized by By-law to sign the same, otherwise the same shall not be valid.

how to be executed.

#### TRANSFERABLE BY DELIVERY, &c.

**211.** Any Debenture heretofore issued, or issued after this Act takes effect, under the formalities required by law, by any Municipal or Provisional Municipal Corporation, payable to bearer or to any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such debenture in the holder, and enable him to maintain an action thereupon in his own name.

Debentures transferable by delivery if payable to bearer.

**212.** Any Debenture issued as aforesaid, and made payable to any person or order, shall, (after the endorsement thereof in blank, by such person,) be transferable by delivery from the time of the endorsement, and the transfer shall vest the property thereof in the holder, and enable him to maintain an action thereupon in his own name.

Or, if endorsed in blank, when payable to order.

**213.** In a suit or action upon any such Debenture, it shall not be necessary for the Plaintiff to set forth in the declaration or other pleading, or to prove the mode by which he became the holder of the Debenture, or to set forth or to prove the notices, by-laws or other proceedings under and by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the Plaintiff as the holder of the Debenture, (alleging the indorsation in blank, if any,) and shortly to state its legal effect and purport, and to make proof accordingly.

In pleading sufficient to describe plaintiff as the holder.

**214.** Any such Debenture, issued as aforesaid, shall be valid and recoverable to the full amount notwithstanding its negotiation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum.

Full amount recoverable though negotiated at interest exceeding 6 per cent. or below par.

#### RESTRICTIONS UPON COUNCILS.

**215.** No Council shall act as bankers, or issue any Bond, Bill, Note, Debenture or other undertaking, of any kind or in any form, in the nature of a Bank Bill or Note, or intended to form a circulating medium, or to supply the place of specie, or to pass as money; nor, unless specially authorized so to do, shall any Council make or give any Bond, Bill, Note, Debenture or other undertaking, for the payment of a less amount than one hundred dollars; and any Bond, Bill, Note, Debenture or other undertaking issued in contravention of this Section, shall be void.

Restrictions upon Councils as to Banking, issuing bills, bonds, &c.

**216.** In case any person issues or makes, or assists in issuing or making, or knowingly utters or tenders in payment

To issue Bank notes, &c., contrary to this or

Act, declared a misdemeanor.

or exchange, any Bond, Bill, Note, Debenture or undertaking, of any kind or in any form, in the Nature of a Bank Bill or Note, intended to form a circulating medium, or to supply the place of specie, or to pass as money, contrary to this Act, such person shall be guilty of a misdemeanor.

Granting Monopolies prohibited.

**217.** No Council shall have power to give any person an exclusive right of exercising within the Municipality any trade or calling, or to impose a special tax on any person exercising the same, or to require a license to be taken for exercising the same unless authorized or required by Statute so to do ; but the Council may direct a fee, not exceeding one dollar, to be paid to the proper Officer for a certificate of compliance with any regulations in regard to such trade or calling.

Except as to any ferry.

**218.** But nothing in this Act contained shall prevent a Council from granting exclusive privileges in any ferry which may be vested in the Corporation represented by such Council.

Contracts by Members with the Corporation void in Law if void in Equity.

**219.** In case a member of the Council of any Municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale, in which the Corporation is a party interested, and which is on that account void in equity, the same contract, purchase or sale shall also be held void in any action at law thereon against the Corporation.

#### COSTS OF MANDAMUS.

Costs of Mandamus.

**220.** Upon any application for a Writ of Mandamus for or against a Municipal Corporation, the Courts may, in their discretion, grant or refuse costs.

#### EXECUTIONS AGAINST CORPORATIONS.

Writs of execution against Municipalities.

**221.** Any Writ of Execution against a Municipal Corporation may be endorsed with a direction to the Sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following :

Sheriff to deliver statement to Treasurer.

1. The Sheriff shall deliver a copy of the Writ and indorsement to the Chamberlain or Treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the Sheriff's fees, and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service ;

If not paid, a rate to be struck.

2. In case the amount with interest thereon from the day mentioned in the statement, be not paid to the Sheriff within one month after the service, the Sheriff shall examine the Assessment-Rolls of the Corporation, and shall, in like manner  
as



as rates are struck for general Municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees and the Collector's percentage, up to the time when such rate will probably be available ;

3. The Sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the Collector or respective Collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept after reciting the Writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector, or Collectors within their respective jurisdictions, to levy such rate at the time and in the manner by law required in respect of the general annual rates ;

Sheriff's precept to levy.

4. In case at the time for levying the annual rates next after the receipt of such precept, the Collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed, " Execution rate in A. B., vs. The Township, (or as the case may be, adding a similar column for each execution if more than one,) and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are by law required to make the returns of the general annual rate, return to the Sheriff the precept with the amount levied thereon, after deducting their percentage ;

Who to collect the rate.

5. The Sheriff shall, after satisfying the Execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the Chamberlain or Treasurer, for the general purposes of the Corporation

Surplus.

6. The Clerk, Assessors and Collectors of the Corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the Sheriff to carry into effect, the provisions of this Act, with respect to such executions, be deemed to be Officers of the Court out of which the Writ issued, and as such shall be amenable to the Court, and may be proceeded against by attachment or otherwise, to compel them to perform the duties hereby imposed upon them.

Clerk, Assessors and Collectors to be Officers of the Court from which Writ issues.

#### DEBTS AND RATES.

##### YEARLY RATES FOR DEBTS.

222. The Council of every Township and the Council of every County and of every Provisional Corporation, and of every City, and of every Town, and of every Incorporated Village respectively, shall assess and levy on the whole rateable property

Yearly rates to be levied, sufficient to pay all debts.

property

property within its jurisdiction a sufficient sum in each year to pay all valid debts of the Corporation, whether of principal or interest, falling due within the year.

BY-LAWS TO CREATE DEBTS, &c.

By-laws for creating debt.

**223.** Every such Council may, under the formalities required by law, pass By-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the rateable property of the Municipality, for any purpose within the jurisdiction of the Council; but no such By-Law shall be valid which is not in accordance with the following restrictions and provisions:

Terms of.

When to take effect.

1. The By-law, if not for creating a debt for the purchase of public works, shall name a day in the financial year in which the same is passed, when the By-law shall take effect;

When debt to be redeemed.

2. If not contracted for gas or water works, or for the purchase of public works, according to the Statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-Law takes effect; and if the debt is contracted for gas or water works, the same shall in like manner be paid in thirty years at furthest, from the day on which the By-law takes effect;

If for Gas works, &c.

To provide a yearly rate.

3. The By-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest;

Sufficient in amount.

4. Such special rate shall be sufficient, according to the amount of rateable property appearing by the last Revised Assessment-Rolls, to discharge the debt and interest when respectively payable;

Irrespective of future increase of rateable property.

5. The amount of rateable property shall be ascertained irrespective of any future increase of the rateable property of the Municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, shares or interest in the work, upon which the money to be so raised or any part thereof is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof;

Recitals in:— amount and object of debt;

The yearly rate for the debt.

The value of the rateable property.

6. The By-law shall recite: (1.) The amount of the debt which such new By-law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2.) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; (3.) The amount of the whole rateable property of the Municipality according to the last Revised Assessment-Rolls; and, (4.) The annual

annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal, of the new debt, according to this Act.

The yearly rate for Sinking Fund and interest.

**224.** Every By-law for raising upon the credit of the Municipality any money not required for its ordinary expenditure, and not payable within the same municipal year, shall, before the final passing thereof, receive the assent of the Electors of the Municipality in the manner provided for in the 193rd section of this Act; Except that in Counties (other than Cities) the Council of such County or Counties may raise by By-Law or By-Laws, without submitting the same for the assent of the Electors of such County or Counties, for contracting debts or loans, any sum or sums, over and above the sums required for its ordinary expenditure, not exceeding in any one year twenty thousand dollars.

To be assented to by the rate-payers.

Exception as to Counties other than Cities.

**225.** Provided that no such By-law of a County Council for contracting any such debt or loan for an amount, over and above the sums required for its ordinary expenditure, not exceeding in any one year twenty thousand dollars, shall be valid, unless the same is passed at a meeting of the Council especially called for the purpose of considering the same, and held not less than three months after a copy of such By-law at length as the same is ultimately passed, together with a notice of the day appointed for considering the same, has been published in some newspaper issued weekly or oftener within the County, or if there be no such public newspaper, then in a public newspaper published nearest to the County; which said notice may be to the effect following:

Course of proceeding by County Councils.

#### FORM OF NOTICE.

The above is a true copy of a proposed By-law to be taken into consideration by the Municipality of the County (or United Counties) of \_\_\_\_\_ at \_\_\_\_\_, in the said County (or United Counties) on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_; at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid.

Form.

G. H.

Clerk.

#### PURCHASE OF PUBLIC WORKS.

**226.** 1. Any Council may contract a Debt to Her Majesty, in the purchase of any of the Public Roads, Harbours, Bridges, Buildings or other Public Works in Upper Canada; and may execute such Bonds, Deeds, Covenants and other Securities to Her Majesty, as the Council may deem fit, for the payment of the price of any such Public Work already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred

Municipal Councils may purchase Public Works, and contract debts without imposing a yearly rate as provided in the three last sections.

transferred to such Municipal Corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all necessary By-laws for any of the purposes aforesaid; And all such By-laws, Debts, Bonds, Deeds, Covenants and other Securities shall be valid although no Special or other Rate per annum has been settled or imposed to be levied in each year, as provided by the three last preceding sections of this Act;

Rates may be imposed for the payment of debts contracted with the Crown for such Works.

2. But any Council may in any By-law to be passed for the creation of any such Debt, or for the executing any such Bonds, Deeds, Covenants or other Securities as aforesaid, to Her Majesty, or in any other By-law to be passed by the Council, settle and impose a Special Rate per annum, of such amount as the Council may deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed rateable property within the Municipality, for the payment and discharge of such Debts, Bonds, Deeds, Covenants or other Securities, or some part thereof; and the By-law shall be valid, although the Rate settled or imposed thereby be less than is required by the said sections last mentioned; and the said sections shall, so far as applicable, apply and extend to every such By-law, and the moneys raised or to be raised thereby, as fully in every respect as such provisions would extend or apply to any By-law enacted by any Council for the creation of any Debt, as provided in the said sections, or to the moneys raised or to be raised thereby.

Purchase of claims due to Government.

3. The Council of any Municipal Corporation purchasing any claim under the Act respecting the sale and purchase of claims due to Government for moneys advanced to Public Works, may raise by assessment the sum necessary to pay the consideration agreed upon. 13, 14 V. c. 71, s. 1.

#### HOW ACCOUNTS OF DEBTS AND RATES TO BE KEPT.

Two special accounts to be kept; 1, of the special rates; 2, of the Sinking Fund.

**227.** The Council of every County, Provisional Corporation, Township, City, Town and Incorporated Village, shall keep in its books two separate Accounts, one for the Special Rate, and one for the Sinking Fund, of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted; and shall keep the said Accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof.

When surplus to be carried to the Sinking Fund Account.

**228.** If, after paying the interest of a debt and appropriating the necessary sum to the Sinking Fund of such debt for any financial year, there be a surplus at the credit of the Special Rate Account of such debt, such surplus shall so remain, and may be applied, if necessary, towards the next year's

year's interest ; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the Sinking Fund Account of such debt.

#### HOW SURPLUS TO BE INVESTED.

**229.** Every such Council shall, from time to time, invest in Government securities or otherwise, as the Governor in Council may direct, such part of the produce of the special rate levied in respect of any debt and at the credit of the Sinking Fund Account, or of the Special Rate Account thereof as cannot be immediately applied towards paying the debt by reason of no part thereof being yet payable ; and the Council shall apply all interest or dividends received upon such investments to the same purpose as this Act directs the amount levied by the Special Rate to be applied, but the Governor in Council may by order direct such part of the produce of the Special Rate at the credit of the Sinking Fund Account, or of the Special Rate Account as aforesaid, instead of being so invested as aforesaid, to be from time to time as the same accrues, applied to the payment or redemption (at such value, not exceeding par, as the said Council can agree for,) of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, to be selected as provided in such order, and the Municipal Council shall thereupon apply and continue to apply the said part of the produce of the Special Rate at the credit of the Sinking Fund or Special Rate Accounts as directed by such order.

How surplus to be disposed of.

Investment how to be made.

Application of moneys with consent of Governor in Council.

#### APPROPRIATION OF SURPLUS.

**230.** Every such Council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the Treasury or any money raised by additional rate ; and any money so appropriated shall be carried to the credit of the Sinking Fund of the debt.

Council may apply other funds towards such debts.

#### WHEN BY-LAWS CREATING DEBTS REPEALABLE.

**231.** When part only of a sum of money provided for by a By-law has been raised, the Council may repeal the By-law as to any part of the residue and as to a proportionate part of the Special Rate imposed therefor, provided the repealing By-law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not affect any rates due, or penalties incurred before that day, and provided the By-law is first approved by the Governor in Council ;

When part only of a debt has been incurred, the By-law may be repealed *pro tanto*.

**232.** After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the By-law under which

By-laws not repealable and

appropriations  
not revocable  
till debt paid.

which the debt was contracted, or any By-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the Council shall not alter a By-law providing any such rate so as to diminish the amount to be levied under the By-law, except in the cases herein authorized, and shall not apply to any other purpose any money in the Corporation Treasury which, not having been previously otherwise appropriated by any By-law or Resolution, has been directed to be applied to such payment.

WHEN SPECIAL RATE MAY BE REDUCED.

When the rate  
imposed by By-  
law may be re-  
duced by By-  
law.

**233.** In case in any particular year, one or more of the following sources of revenue, namely: 1. The sum raised by the special rate imposed for the payment of a debt, and collected for any particular year; and 2. The sum on hand from previous years; and 3. Any sum derived for such particular year from the surplus income of any work, or of any share or interest therein applicable to the Sinking Fund of the debt; and 4. Any sum derived from the temporary investment of the Sinking Fund of the debt, or of any part of it; and carried to the credit of the Special Rate and Sinking Fund accounts respectively amount to more than the annual sum required to be raised as a special rate to pay the interest, and the instalment of the debt for the particular year, and leave a surplus to the credit of such accounts or either of them, then the Council may pass a By-law reducing the total amount to be levied under the original By-law for the following year to a sum not less than the difference between such last mentioned surplus and the annual sum which the original By-law named and required to be raised as a special rate.

Recitals requi-  
site in such  
By-law.

**234.** But the By-law shall not be valid—unless it recites:

1. The amount of the special rate imposed by the original By-law;
2. The balance of such rate for the particular year or on hand from former years;
3. The surplus income of the work, share or interest therein received for such year; and
4. The amount derived for such year from any temporary investment of the Sinking Fund—

Reduced rate to  
be named.

Nor unless the By-law names the reduced amount in the dollar to be levied under the original By-law—

To be approved  
of by the Gov-  
ernor.

Nor unless the By-law be afterwards approved by the Governor in Council.

## ANTICIPATORY APPROPRIATIONS.

**235.** In case any Council desires to make an Anticipatory Appropriation for the next ensuing year in lieu of the special rate for such year, in respect of any debt, the Council may do so, by By-law, in the manner and subject to the provisions and restrictions following :

Anticipatory appropriations may be made.

1. The Council may carry to the credit of the Sinking Fund Account of the debt, as much as necessary for the purpose aforesaid ;

What Fund may be so appropriated.

(a.) Of any money at the credit of the Special Rate Account of the debt, beyond the interest on such debt for the year following that in which the Anticipatory Appropriation is made ;

(b.) And of any money raised for the purpose aforesaid by additional rate or otherwise ;

(c.) And of any money derived from any temporary investment of the Sinking Fund ;

(d.) And of any surplus money derived from any corporation work or any share or interest therein ;

(e.) And of any unappropriated money in the Treasury ;

Such moneys respectively not having been otherwise appropriated ;

2. The By-law making the appropriations shall distinguish the several sources of the amount and the portions thereof to be respectively applied for the interest, and for the Sinking Fund Appropriation of the debt for such next ensuing year ;

The sources to be distinguished.

3. In case the money so retained at the credit of the Special Rate Account, and so appropriated to the Sinking Fund Account from all or any of the sources above mentioned, are sufficient to meet the Sinking Fund Appropriation and interest for the next ensuing year, the Council may then pass a By-Law directing that the original rate for such next ensuing year be not levied.

When sufficient, the yearly rate may be suspended for the future year.

**236.** The By-law shall not be valid unless it recites :

1. The original amount of the debt, and in brief and general terms, the object for which the debt was created ;

The By-law to recite the original debt.

2. The amount, if any, already paid of the debt ;

The amount paid.

3. The annual amount of the Sinking Fund Appropriation required in respect of such debt ;

The amount of Sinking Fund yearly.

The amount in hand.

4. The total amount, then on hand, of the Sinking Fund Appropriations, in respect of the debt, distinguishing the amount thereof in cash in the treasury from the amount temporarily invested ;

The amount required for next year's interest.

5. The amount required to meet the interest of the debt, for the year next after the making of such Anticipatory Appropriation ; and

And that it is reserved.

6. That the Council has retained at the credit of the Special Rate Account of the debt, a sum sufficient to meet the next years' interest (naming the amount of it), and that the Council has carried to the credit of the Sinking Fund Account a sum sufficient to meet the Sinking Fund Appropriation (naming the amount of it) for such year ; and

By-law to be approved by Governor.

7. No such By-law shall be valid unless approved by the Governor in Council.

After the dissolution of a Union, the Senior Municipality may relieve the Junior by an anticipatory appropriation.

**237.** After the dissolution of any Municipal Union, the Senior Municipality may make an Anticipatory Appropriation for the relief of the Junior Municipality, in respect of any debt secured by By-law in the same manner as the Senior Municipality might do on its own behalf.

#### REPORT OF DEBTS TO BE MADE YEARLY.

Every Council to make a yearly report of the debts to the Governor, &c.

**238.** Every Council shall, on or before the thirty-first day of January in each year, transmit to the Governor General, through the Provincial Secretary, an account of the several debts of the Corporation, as they stood on the thirty-first day of December preceding, specifying in regard to every debt of which a balance remained due at that day :

1. The original amount of the debt ;
2. The date when it was contracted ;
3. The days fixed for its payment ;
4. The interest to be paid therefor ;
5. The rate provided for the redemption of the debt and interest ;

6. The proceeds of such rate for the year ending on such thirty-first day of December ;

7. The portion (if any) redeemed of the debt during such year ;

8. The amount of interest (if any) unpaid on such last mentioned day ; and

9. The balance still due of the principal of the debt.



**239.** The form of the account may from time to time be prescribed by the Governor in Council.

The Governor may prescribe a form of account.

#### COMMISSIONS OF INQUIRY RESPECTING MUNICIPAL FINANCES.

**240.** In case one third of the members of any Council petition for a Commission to issue under the Great Seal, to inquire into the financial affairs of the Corporation and things connected therewith, and if sufficient cause be shewn, the Governor in Council may issue a Commission accordingly, and the Commissioner or the Commissioners, or such one or more of them as the Commission empowers to act, shall have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases.

When a commission of inquiry may issue.

**241.** The expense to be allowed for executing the Commission shall be determined and certified by the Minister of Finance or his Deputy, and shall become thenceforth a debt due to the Commissioner or Commissioners by the Corporation, and shall be payable within three months after demand thereof made by the Commissioner, or by any one of the Commissioners, at the office of the Treasurer of the Corporation.

Expenses of such Commissions provided for.

#### 2.—PROVISIONS APPLICABLE TO ALL MUNICIPALITIES EXCEPT PROVISIONAL CORPORATIONS.

**242.** The following Section applies to all Municipalities, Provisional Corporations not included, namely :

Sections applicable to all, except Provisional Councils.

- |   |  |  |
|---|--|--|
| <ol style="list-style-type: none"> <li>1. Counties,</li> <li>2. Townships,</li> <li>3. Cities,</li> </ol> |  | <ol style="list-style-type: none"> <li>4. Towns, and</li> <li>5. Incorporated Villages.</li> </ol> |
|---|--|--|

**243.** The Council of every County, Township, City, Town and Incorporated Village may respectively pass By-laws :

Council may make By-laws;

#### OBTAINING PROPERTY.

1. For obtaining such real and personal property as may be required for the use of the Corporation, and for erecting, improving and maintaining a Hall and any other houses and buildings required by and being upon the land of the Corporation, and for disposing of such property when no longer required ;

For obtaining property, real and persona., &c.

#### APPOINTING CERTAIN OFFICERS.

2. For appointing such,—

To appoint officers ;

- |  |  |   |
|--|--|---|
| <ol style="list-style-type: none"> <li>(1.) Pound-keepers ;</li> <li>(2.) Fence-Viewers ;</li> </ol> |  | <ol style="list-style-type: none"> <li>(3.) Overseers of Highways ;</li> <li>(4.) Road Surveyors ;</li> </ol> |
|--|--|---|

(5.) And other officers as are necessary in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature for the removal of such officers.

To fix fees and securities; 3. For regulating the remuneration, fees, charges and duties of such officers, and the securities to be given for the performance of such duties;

#### AIDING AGRICULTURAL AND OTHER SOCIETIES.

For aiding Agricultural Societies;

4. For granting money or land in aid of the Agricultural Association of Upper Canada or of any duly organized Agricultural or Horticultural Society in Upper Canada, or of the Board of Arts and Manufactures for Upper Canada, or of any incorporated Mechanics' Institute within the Municipality;

#### CENSUS.

Local census.

5. For taking a Census of the inhabitants, or of the resident Male freeholders and householders of the Municipality;

#### FINES AND PENALTIES.

Fines and penalties for neglect of duty.

6. For inflicting reasonable fines and penalties not exceeding Fifty Dollars exclusive of costs,—

(a.) Upon any person for the non-performance of his duties who has been elected or appointed to any Office in the Corporation, and who has accepted such Office and taken the oaths, and afterwards neglects the duties thereof; and

(b.) For breach of any of the By-laws of the Corporation; and

Penalties by distress.

7. For collecting such penalties by distress and sale of the goods and chattels of the offender;

Imprisonment when allowed, and time of.

8. For inflicting reasonable punishment, by imprisonment with or without hard labour either in a Lock-up-house in some Town or Village in the Township, or in the County Gaol or House of Correction for any period not exceeding Twenty-one days, for breach of any of the By-laws of the Council in case of non-payment of the Fine inflicted for any such breach, and of there being no distress found out of which such fine can be levied.

#### 3.—PROVISIONS APPLICABLE TO TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.

What sections shall so apply.

**244.** The following Sections numbered from two hundred and forty-five to two hundred and sixty-four shall apply to the following Municipalities, namely:

- |               |  |                           |
|---------------|--|---------------------------|
| 1. Townships, |  | 3. Towns, and             |
| 2. Cities,    |  | 4. Incorporated Villages. |

And Sections two hundred and fifty-four to two hundred and fifty-eight, both included, apply to all such places as are therein referred to.

## PUBLIC HEALTH.

**245.** The Members of every Township, City, Town and Incorporated Village Council shall be Health Officers within their respective Municipalities, under the Consolidated Statute for Upper Canada, respecting *the Public Health*, and under any Act passed after this Act takes effect for the like purpose ; but any such Council may by By-law delegate the powers of its members as such Health Officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the Council thinks best.

Members of Council to be Health Officers.

**246.** The Council of every Township, City, Town and Incorporated Village may respectively pass By-laws :

Council may make By-laws :

## SHOP AND TAVERN LICENSES.

1. For granting Tavern Licenses (that is licenses for the retail of spirituous, fermented or other manufactured liquors to be drunk in the Inn, Ale-house, Beer-house or other house, or place of public entertainment in which the same is sold), and for granting shop licenses, (that is licenses for the retail of such liquors in Shops, Stores or places other than Inns, Ale-houses, Beer-houses or places of public entertainment ;
2. For declaring the terms and conditions required to be complied with, by an applicant for a Tavern license, and the security to be given by him for observing the same ;
3. For declaring the security to be given by an applicant for a Shop or Tavern License, for observing the By-laws of the Municipality ;
4. For limiting the number of Tavern and Shop licenses respectively ;
5. For regulating the houses or places licensed, the time the licenses are to be in force, not exceeding one year, and the sums to be paid therefor respectively.

For retailing intoxicating liquors.

Terms on which license may be granted.

Security to be given.

Number may be limited.

Regulation of public houses.

## PROHIBITED SALE OF SPIRITUOUS LIQUORS.

6. For prohibiting the sale by retail of spirituous, fermented or other manufactured liquors in any Inn or other House of public entertainment ; and for prohibiting the sale thereof in Shops and places other than houses of public entertainment ; Provided the By-law, before the final passing thereof, has been duly approved by the Electors of the Municipality in the manner provided by this Act ;

Sale of liquors in shops or taverns may be prohibited.

The sums to be paid for licenses.

Sum to include the Imperial and Provincial duty.

Sum not to exceed \$100.

Unless approved by public vote, &c.

Intent of last sect. as regards the Provincial duty declared.

No license required to sell in the original packages.

Tavern keepers may sell to be consumed out of the house.

Tavern keepers to exhibit

**247.** The sum to be paid for a Tavern license shall include as well the duty payable under the Imperial Statute passed, in the fourteenth year of the Reign of King George the Third, intituled, *An Act to establish a fund towards defraying the charges of the administration of Justice and the support of the Civil Government within the Province of Quebec*, as the duty payable to the Province under any Act of the Parliament of this Province, and shall not be less than Twenty-five dollars, and every license so granted as aforesaid shall be held a license for the purpose of the said Imperial and Provincial Acts, and except the sum payable to the Province, the sum paid for the License shall be applied to the use of the Corporation; But no By-law by which a greater sum than one hundred dollars per annum is intended to be exacted for any Shop or Tavern License, or for leave to exercise any other calling, or to do any other thing for which a License may be required, shall have force or effect, unless the By-law before the final passing thereof has been duly approved by the electors of the Municipality in the manner provided by this Act; and the By-law shall not be varied or repealed unless the By-law for that purpose has been duly approved in like manner by the Electors of the Municipality. 22 V. c. 76, s. 14.

**248.** It was and is the intent and meaning of the last preceding section,—that the Provincial duty payable on Tavern Licenses, under the fourteenth section of the Act passed in the first Session of the twenty-second year of Her Majesty's Reign, intituled, *An Act to amend the law relative to Duties of Customs and of Excise, and to impose new duties, and a duty on Tavern Keepers*, or under the Consolidated Statutes of Canada consolidating the same, should and shall be paid over by the Municipal Officer receiving the same to the Receiver General, (after deducting four per cent. for his trouble in collecting it)—in the manner provided by the said Acts, and subject to all the enactments thereof,—but that the duty under the Imperial Act cited in the said last preceding section, and any further sum payable for such Licenses over and above the said Provincial duty, should be applied to the use of the Corporation. 22 V. c. 37, s. 1. (1859.)

**249.** No Tavern or Shop license shall be necessary for selling any liquors in the original packages in which the same have been received from the importer or manufacturer; Provided such packages contain respectively not less than five gallons, or one dozen bottles.

**250.** Any person having a Tavern license may, without any additional license, sell liquors by retail to be consumed out of his house, in the same quantities as if to be consumed in the house.

**251.** Every person who keeps a Tavern or other house or place of public entertainment, and has a Tavern License, shall

shall exhibit over the door of such Tavern, House or place, in large letters, the words "Licensed to sell Wine, Beer and other Spirituous or Fermented Liquors," under a penalty in default of so doing of one dollar, recoverable with costs before any Justice of the Peace upon the oath of one credible witness; one half of which penalty shall go to the Informer and the other half to the Municipality.

notice of being licensed.

**252.** No licensed Shop-keeper, or other person having a Shop License, shall allow any Liquors sold by him and for the sale of which a license is required, to be consumed within his Shop, or within the building of which such Shop is a part, either by the purchaser thereof or by any other person not usually resident within such building.

Shop licenses not to authorize sale of liquors to be consumed in the house.

**253.** All prosecutions for penalties incurred by persons vending Wine, Rum, Brandy or other Spirituous Liquors, Beer, Ale, Cider or other fermented or manufactured Liquors without License, shall be recoverable with costs before any two or more Justices of the Peace having jurisdiction in the Municipality in which the offence is committed upon the oath of one credible witness, one half of which penalty shall go to the informer and the other half to the Municipality.

Penalties recoverable before two Justices of the Peace.

**254.** In all places where, by the laws of Upper Canada, intoxicating liquors are or may be allowed to be sold by wholesale or retail, no sale or other disposal of the said liquors shall take place therein or on the premises thereof, or out of or from the same, to any person or persons whomsoever, from or after the hour of seven of the clock on Saturday night till the hour of eight of the clock on Monday morning thereafter, and during any further time on the said days and any hours on other days during which by any By-law of the Municipality wherein such place or places may be situated, the same or the bar-room or bar-rooms thereof ought to be kept closed, save and except to travellers lodging at, or ordinary boarders lodging at the place or places where such liquor is sold, and save and except in cases where a requisition, for medicinal purposes, signed by a licensed medical practitioner or by a justice of the peace, is produced by the vendee or his agent, nor shall any such liquors be permitted or allowed to be drunk in any such places, except as aforesaid, during the time prohibited by this section for the sale of the same. 22 V. c. 6, s. 1. (1859.)

Intoxicating liquors not to be sold in Taverns, &c. at certain times.

Exception.

Nor shall such liquor be drunk on the premises during the same.

**255.** For the first offence under the last preceding section, a penalty of not less than twenty dollars, with costs, shall, in case of conviction, be recoverable from, and leviable against the goods and chattels of the person or persons who are the proprietors in occupancy, or tenants or agents in occupancy, of said place or places, and who are found by himself or herself or themselves or his, her or their servants or agents, to have contravened the

Penalty.

First offence.

the enactment in the last section hereof, or any part thereof;—for the second offence, a penalty against all such of not less than forty dollars, with costs,—for a third offence, a penalty against all such of not less than one hundred dollars, with costs, and for a fourth or any after offence, a penalty against all such of not less than three months' imprisonment with hard labor, in the common gaol of the County wherein such place and places may be, the number of said offences to be ascertained by the production of a certificate from the convicting Justice, or by other satisfactory evidence to the Justice before whom the information or complaint may be made; and convictions for several offences may be made under this and the last preceding section of this Act although such offences may have been committed in the same day; But the increased penalties hereinbefore imposed shall only be recoverable in the case of offences committed on different days. 22 V. c. 6, s. 2, (1859.)

Second offence.

Third offence.

Fourth offence.

Proof of former offence.

Proviso.

Who may prosecute.

Limitation of suits.

Procedure.

Application of penalties.

Interpretation.

**256.** Any person or persons may be the informant or informants, complainant or complainants, in prosecuting under the two last preceding sections of this Act; all proceedings shall be begun within twenty days from the date of the offence, all informations, complaints or other necessary proceedings may be brought and heard before any one or more Justices of the Peace of the County where the offence or offences were committed or done, and the mode of procedure in, and the forms appended to, the Consolidated Statute of Canada respecting the duties of Justices of the Peace out of Sessions in relation to summary convictions and orders, may be followed as regards the cases and proceedings under the said sections of this Act. 22 V. c. 6, s. 3, (1859.)

**257.** The penalties in money, mentioned in the two hundred and fifty-fifth Section, or any portion of them which may be recovered, shall be paid to the convicting Justice or other acting Justice in the case, and by him paid equally, one half to the informant or complainant, and the other half to the Treasurer of the Municipality where the place or places referred to are situated. 22 V. c. 6, s. 4, (1859.)

**258.** The word "Liquors" in the two hundred and fifty-fourth Section mentioned, shall be understood to mean and comprehend all spirituous and malt liquors, and all combinations of liquors or drinks which are intoxicating. 22 V. c. 6, s. 5, (1859.)

#### INSPECTORS OF LICENSES.

**259.** The Council of every Township, City, Town and Incorporated Village, may respectively pass By-laws :

Appointment of Inspectors of Shop and Tavern Licenses.

1. For appointing annually one or more fit and proper persons, possessing the same property qualification as that required for the Councillors of the Municipality, to be Inspectors of Shop and

and Tavern Licenses, who shall hold office during the current year, and any vacancy occurring during the year shall be filled by the Council, for the remainder of such year ;

Term of office..

2. For fixing and defining the duties, powers and privileges of the Inspectors so appointed ; the remuneration they shall receive ; and the security to be given by them for the efficient discharge of the duties of their office ; such By-laws not being contrary to law.

Duties and remuneration of Security.

**260.** Any Inspector of Licenses may, in his discretion (but subject to any By-law of the Municipality,) endorse on any license permission to the person holding the license, to sell the liquors mentioned in his License at any place out of his house, or to remove from the house licensed to another house to be described in the indorsement and situate within the same Municipality, and such permission shall authorize the holder thereof to sell such Liquors in the House mentioned in the endorsement during the unexpired portion of the term for which the License was granted, and upon the same terms and conditions ; And any Bond or security which such holder may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized.

Inspectors may endorse licenses to authorize sale of liquors elsewhere than in the house.

**261.** Every Council of a Township, City, Town or Incorporated Village may also pass By-laws :

#### BILLIARD TABLES.

1. For licensing, regulating and governing all persons who, for hire or gain directly or indirectly, keep, or have in their possession, or on their premises, any Billiard Table, or who keep or have a Billiard Table in a house or place of public entertainment or resort, whether such Billiard Table is used or not, and for fixing the sum to be paid for a License so to have or keep such Billiard Table, and the time such License shall be in force ;

Billiard Tables to be licensed.

#### VICTUALLING HOUSES, &c.

2. For limiting the number of and regulating Victualling Houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for the reception, refreshment or entertainment of the public ; and

Victualling houses, number and regulation of.

3. For licensing the same when no other provision exists therefor, and for fixing the rates of such Licenses not exceeding Twenty dollars.

License and fee for same.

#### LICENSES HOW LONG TO CONTINUE.

**262.** In case any By-law respecting Licenses is repealed, altered or amended, no person shall be required to take out a new license or to pay any additional sum upon his license during the time for which the same has been granted to him.

Licenses when not required to be renewed.

## LICENSE FEES.

License fees to belong to Municipality.

**263.** All sums of money levied for licenses over and above the sum payable to the Province, by way of duty, shall belong to the Corporation of the Municipality in which they are levied.

## DISORDERLY INNS.

How keepers of disorderly Inns to be proceeded against.

**264.** The Mayor or Police Magistrate of a Town or City, with any one Justice of the Peace having Jurisdiction therein, or the Reeve of a Township or Village with any one Justice of the Peace having Jurisdiction in the Township or Village, upon complaint made on oath to them, or one of them respectively, of riotous or disorderly conduct in any Inn, Tavern, Ale or Beer house situate within their jurisdiction, may summon the keeper of the Inn, Tavern, Ale or Beer House, to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having a riotous or disorderly house, and annul his license, or suspend the same for not more than sixty days, with or without costs, as in their discretion may seem just.

## LAND MARKS AND BOUNDARIES.

Land marks and monuments to mark boundaries.

12 V. c. 35.

**265.** In case the Council of any Township, City, Town or Incorporated Village adopts a resolution on the application of one half of the resident landholders to be affected thereby, that it is expedient to place durable monuments at the front or rear of any concession or range or part thereof in the municipality, or at the front and rear angles of the lots therein, the Council may apply to the Governor in the manner provided for in the sixth to the tenth sections of the Consolidated Statute of Upper Canada respecting the survey of lands, praying him to cause a survey of such concession or range, or such part thereof, to be made and such monuments to be placed under the authority of the Commissioner of Crown Lands, and the person or persons making the survey shall accordingly plant stone or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein, (as the case may be,) and the limits of each lot so ascertained and marked, shall be the true limits thereof; and the costs of the survey shall be defrayed in the manner prescribed by the said Statute.

Certain Councils may pass By-laws, for—

**266.** The Council of every Township, City, Town or Incorporated Village may also pass By-laws :

## PROVISION FOR ESTABLISHING BOUNDARIES.

Ascertaining and marking boundaries of Townships.

1. For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the Municipality, according to law, in case the same



same has not been done ; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same ;

#### SCHOOLS.

2. For obtaining such real property as may be required for the erection of Common School Houses thereon and for other Common School purposes, and for the disposal thereof when no longer required ; and for providing for the establishment and support of Common Schools according to law ; Acquiring land for schools.

#### CEMETERIES.

3. For accepting or purchasing land for public cemeteries, as well within as without the Municipality, and for laying out, improving and managing the same ; but no land shall be accepted or purchased for such purpose except by a By-law declaring in express terms that the land is appropriated for a public cemetery and for no other purpose ; and thereupon such land, although without the Municipality, shall become part thereof, and shall cease to be part of the Municipality to which it formerly belonged ; and such By-law shall not be repealed ; For establishing cemeteries.

4. For selling or leasing portions of such land for the purpose of interment, in family vaults or otherwise, and for declaring in the conveyance the terms on which such portions shall be held ; For selling portions thereof on limited terms.

#### CRUELTY TO ANIMALS.

5. For preventing Cruelty to animals ; and for preventing the destruction of birds, the By-laws for these purposes not being inconsistent with any Statute in that behalf ; Preventing cruelty to animals.

#### DOGS.

6. For imposing a tax on the owners, possessors or harbourers of dogs ; Tax on dogs.

7. For killing dogs running at large contrary to the By-laws ; Killing dogs.

#### FENCES.

8. For settling the height and description of lawful fences ; Height of fences.

#### DIVISION FENCES.

9. For regulating the height, extent and description of lawful division fences ; and for determining how the cost thereof shall be apportioned ; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act ; Of division fences.  
but

but until such By-laws be made, the Act respecting line fences and water courses, shall continue applicable to the Municipality ;

## WEEDS.

Destruction of weeds.

10. For preventing the growth of weeds detrimental to good husbandry ;

## EXHIBITIONS, SHOWS, &amp;C.

Licensing Public Shows.

11. For preventing or regulating and licensing exhibitions of Wax Work, Menageries, Circus riding and other such like shows usually exhibited by showmen, and for requiring the payment of License fees for authorizing the same, not exceeding one hundred dollars for every such License, and for imposing fines upon persons infringing such By-Laws, and for levying the same by distress and sale of the goods and chattels of such showman or belonging to or used in such Exhibition whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month ;

## GRAVES.

Protecting graves.

12. For preventing the violation of cemeteries, graves, tombs tombstones or vaults where the dead are interred ;

## INJURIES TO PRIVATE PROPERTY AND NOTICES.

Ornamental trees.

13. For preventing the injuring or destroying of trees planted or preserved for shade or ornament ;

Signs.

14. For preventing the pulling down or defacing of sign-boards, and of printed or written notices ;

## GAS AND WATER.

Authorizing Gas and Water Companies to lay down pipes, &c.

15. For authorizing any Corporate Gas or Water Company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, subject to such regulations as the Council sees fit ; and

## STOCK IN.

Taking Stock in Gas and Water Companies.

16. For acquiring stock in, or lending money to, any such Company ; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by, the Company ; Provided the By-law is consented to by the Electors, as hereinbefore provided.

Head of Corporation to be a Director.

**267.** The Head of any Corporation holding Stock in any such Company to the amount of ten thousand dollars shall be *ex officio* a Director of the Company in addition to the other Directors thereof, and shall also be entitled to vote on such Stock at any Election of Directors.

## 4.—PROVISIONS APPLICABLE TO TOWNSHIPS AND COUNTIES.

**268.** The following Section applies to Townships and Counties :

**269.** The Council of every Township and County may pass By-laws for paying the Members of the Council for their attendance in Council, at a rate not exceeding one dollar and fifty cents per diem. Remunerating Councillors limited.

## 5.—PROVISIONS APPLICABLE TO TOWNSHIPS ONLY.

**270.** The following Sections numbered two hundred and seventy-one to two hundred and seventy-nine apply to Townships only :

## TOWNSHIP WARDS.

**271.** In case a majority of the qualified electors of a Township on the last Revised Assessment Roll do, by petition in writing signed by them, apply to the Council of the Township to divide the Township into Wards, if not already so divided, or to abolish or alter, in manner specified in the petition, any existing division into Wards, the Council shall, within one month thereafter, pass a By-law to give effect to the petition, and shall in the By-law recite the petition, and also the present section of this Act, and shall declare that the By-law is passed in compliance with the prayer of the petition ; And the By-law shall take effect on the first day of December next after one month from the date of its first publication in some newspaper published in the County or Union of Counties in which the Township is situated, or by printed handbills posted in at least twenty public places in the Township. 22 V. c. 38, s. 1. (1859.) Duty of the Township Council on receiving a petition from a majority of the rate-payers touching its division into Wards.

**272.** In case the petition is for a division into Wards (and does not specify the manner of the division,) the Council shall so arrange the Wards that they may be as compact, and contain as nearly an equal number of electors, as may be consistent with the convenience of the inhabitants ; the number of wards being five in all cases. 22 V. c. 38, s. 2. (1859.) If the petition does not define the Ward.

**273.** The Council of any Township may from time to time, without any such Petition, pass By-laws to divide the Township into Wards, or, in case of a Township already divided into Wards, to alter or abolish such division ; And in case any such By-law, whether petitioned for or not, is passed with the concurrent votes of at least four members, it shall take effect on the first day of December next after one month from its first publication in some newspaper published in the County or Union of Counties in which the Township is situate, or by printed hand-bills posted in at least twenty public places in the Township. To pass a By-law. What it shall recite.

When the By-law shall take effect.

**274.** In case the By-law, when not petitioned for as herein-before provided, is passed with the concurrent votes of only three members, it shall take effect on the first day of December next, after it has been approved by a majority of the Electors of the Township who vote thereon, at a special vote to be taken for that purpose under the following regulations :

Publication of By-law.

1. The Reeve of the Township shall, within ten days after the passing of the By-law, cause the same to be published for one month in some newspaper within the County or Union of Counties within which the Township is situate, or by posting printed copies thereof in hand-bill form in at least twenty public places in the Township, and shall also at the same time and in connection therewith, and in like manner, publish a notice of the time when, and place or places where the By-law will be submitted to a vote of the Electors of the Township ;

And notice of its submission to electors.

Vote of electors thereon.

2. Such vote shall not be taken in less than one month after the first publication of the By-law, nor shall it be at a later period than the next annual Municipal Election, and if not taken at the annual Municipal Election, it shall be taken in like manner and at the place or places where the last annual Municipal Election was held, and by the Returning Officer or Officers who conducted such last annual Election ; and in case of the death or incapacity of any such Returning Officer, another shall be appointed for that purpose by the Reeve ;

Copies of By-law to Returning Officers.

3. The Reeve of the Township shall cause a certified copy of the By-law to be delivered to the Returning Officer of the Township, or of each Ward or Electoral Division thereof, (as the case may be) before the time appointed for taking such vote ;

When the By-law is for division into Wards.

4. Where the By-law is for a division into Wards, or for an alteration of an existing division, the Returning Officer shall, at the commencement of the time appointed for taking the vote and during its continuance, cause fair copies of the By-law to be kept for public inspection in four conspicuous places about the place where the poll is held ;

Form of Poll books.

5. The Returning Officer shall insert appropriate columns in the Poll-Books, headed :

- “ For the division into Wards,” and
- “ Against the division into Wards ;” or
- “ For the alteration of the division into Wards,” and
- “ Against the alteration of the division into Wards ;” or
- “ For the abolishing of Wards,” and
- “ Against the abolishing of Wards ;”

And shall, in such columns, while the Poll for the Election of Councillors is open, receive and record the Votes of Electors tendered for and against the By-law ;

6. The Returning Officer or Returning Officers shall, within three days after such vote has been taken, return the Poll-Books properly certified to the Reeve of the Township, who shall within one week thereafter examine the returns of the votes for and against the By-law, and give public notice of the result.

Certified Poll books to be returned to the Reeve.

#### ELECTORAL DIVISIONS.

**275.** Whenever a Township is not divided into Wards the Council may from time to time pass By-laws for dividing the Township into two or more convenient electoral divisions, for establishing polling places therein, and for appointing Returning Officers therefor, and may from time to time repeal or vary the same.

Electoral Divisions in townships not divided into Wards.

#### POOR.

**276.** Every Township Council may also make By-laws for raising money by a rate to be assessed equally on the whole rateable property of the Township, for the support of the poor resident in the Township.

By-laws for the relief of the poor, when and how they may be passed.

#### OBSTRUCTIONS TO STREAMS AND WATERCOURSES.

**277.** Every Township Council may also make By-laws for preventing the obstruction of streams, creeks and water-courses by trees, brushwood, timber or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise, and for levying the amount of such expense in the same manner as taxes are levied, and for imposing penalties on parties causing such obstructions.

By-laws for preventing obstruction of Streams, &c.

#### DRAINAGE IN TOWNSHIPS.

**278.** In case a majority in number of the resident owners of the property in any part of a Township do petition the Council for the draining of the property (describing it), the Council may procure an examination to be made by a competent Engineer of the property proposed to be drained, and may procure plans and estimates to be made of the work by the Engineer ;

Drainage.

Plans and estimates.

**279.** If the Council be of opinion that the draining of the locality described would greatly benefit the Township, the Council may pass a By-law :

By-law.

1. For providing for the draining of the locality ;

Its provisions.

2. For assessing and collecting from the proprietors of the several lands immediately benefited by the draining, so much of the cost thereof, and of procuring the examination, plans and estimates to be made, and of all other expenses incident to the work, as may not exceed the benefit which the lands respectively derive from such draining, and in proportion, as

Assessment for expenses.

nearly as may be, to the benefit to each of the proprietors therefrom;

Time of paying.

3. For regulating the time or times and manner in which the assessment shall be paid ;

Ascertaining property benefited.

4. For ascertaining and determining, through the Engineer, what real property will be immediately benefited by the drain ing, and the proportions in which the assessment should be made on the various portions of the lands so benefited, and subject in every case to an appeal to the Court of Revision and the County Court Judge, in the same manner and on the same terms, as nearly as may be, as in the case of an ordinary assessment ;

Publication of By-law.

5. But the By-law shall not be valid, unless, before the final passing thereof, the same has been published once or oftener in every week, for three months, in some newspaper published in the Township, or if no newspaper be published therein, then in some newspaper published in the nearest Municipality in which a newspaper is published.

#### 6.—PROVISIONS APPLICABLE TO COUNTIES, CITIES AND TOWNS.

Extent of sections 281, 282.

**280.** The following sections numbered 281 and 282 apply to the following Municipalities :

1. Counties,
2. Cities,
3. Towns.

#### INSPECTORS OF WEIGHTS AND MEASURES.

**281.** The Council of every County, City and Town, may pass By-laws :

Inspectors of weights and measures : their powers.

1. For appointing Inspectors to regulate weights and measures, according to the lawful standard ;
2. For visiting all places wherein weights and measures, steel-yards, or weighing machines of any description, are used ;
3. For seizing and destroying such as are not according to the standard ;
4. For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steel-yards, or other weighing machines.

#### PUBLIC MORALS.

By-laws for other purposes.

**282.** The Council of every County, City and Town may also pass By-laws :

1. For enforcing the due observance of the Sabbath according to law ;
2. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant without the consent of a parent, master or legal protector ;
3. For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places ;
4. For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency in streets, highways or public places ;
5. For suppressing tippling houses and houses of ill-fame ;
6. For preventing or regulating horse racing ;
7. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement ;
8. For suppressing gambling houses, and for seizing and destroying faro-banks, rouge et noir, roulette tables, and other devices for gambling found therein ;
9. For restraining and punishing vagrants, mendicants and persons found drunk or disorderly in any street, highway or public place ;
10. For preventing indecent public exposure of the person and other indecent exhibitions ;
11. For preventing or regulating the bathing or washing the person in any public water near a public highway.

7.—PROVISIONS APPLICABLE TO COUNTIES, CITIES AND SEPARATED TOWNS.

**283.** The following sections numbered from 284 to 286 to Extent of section 284 to 286. apply to the following Municipalities :

1. Counties,
2. Cities, and
3. Towns separated from Counties.

**284.** The Council of every County, City, and Town separated from the County for Municipal purposes, may respectively pass By-laws for regulating— By-laws for the following purposes :

## ENGINEERS—INSPECTORS.

Engineers, and 1. For appointing in addition to other officers, one or more Engineers, and also one or more Inspectors of the House of Industry, also one or more Surgeons of the Gaol and other institutions under the charge of the Municipality, and for the removal of such officers ;

## AUCTIONEERS.

Auctioneers. 2. For licensing, regulating and governing Auctioneers and other persons selling or putting up for sale goods, wares, merchandize or effects by public auction ; and for fixing the sum to be paid for every such License, and the time it shall be in force ;

## HAWKERS AND PEDLARS.

Hawkers and Pedlars. 3. For licensing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become householders or permanent residents in the County or City, or who go from place to place or to other men's houses, on foot, or with any animal bearing or drawing any goods, wares or merchandize for sale, or in or with any boat, vessel, or other craft or otherwise, carrying goods, wares or merchandize for sale, and for fixing the sum to be paid for a license for exercising such calling within the County or City, and the time the license shall be in force ; and for providing the Township Clerks with licenses in this and the previous section mentioned, for sale to parties applying for the same in the Township under such regulations as may be prescribed in such By-Law ; but no duty shall be imposed for hawking or pedling any goods, wares or merchandize, the growth, produce or manufacture of this Province, not being liquors mentioned in the 246th section of this Act ;

## FERRIES.

Ferries. 4. For regulating Ferries between any two places in the Municipality ; and establishing the rates of ferriage to be taken thereon ; but no such By-law as to Ferries shall have effect until assented to by the Governor in Council.

Where there is no By-law. **285.** Until the Council of the County or City pass a By-law regulating such Ferries, and in the cases of ferries not between two places in the same Municipality, the Governor by Order in Council may from time to time regulate such ferries respectively and establish the rates to be taken thereon, in accordance with the Statutes in force relating to Ferries.

By-laws may be made by Cities and Counties, for— **286.** The Council of every County, City, and Town separated, may pass By-laws for the following purposes :



## LANDS FOR GRAMMAR SCHOOLS.

1. For obtaining in such part of the County, or of any City or Town separated within the County, as the wants of the people may most require, the real property requisite for erecting County Grammar School Houses thereon, and for other Grammar School purposes, and for preserving, improving and repairing such School Houses, and for disposing of such property when no longer required ;

Purchase of lands for Grammar Schools.

## AIDING GRAMMAR SCHOOLS.

2. For making provision in aid of such Grammar Schools as may be deemed expedient ;

Aiding such school.

## PUPILS COMPETING FOR UNIVERSITY PRIZES.

3. For making a permanent provision for defraying the expense of the attendance at the University of Toronto, and at the Upper Canada College and Royal Grammar School there, of such of the Pupils of the Public Grammar Schools of the County as are unable to incur the expense but are desirous of, and, in the opinion of the respective Masters of such Grammar Schools, possess competent attainments for, competing for any Scholarship, Exhibition or other similar Prize, offered by such University or College ;

Grammar School pupils competing for University prizes.

4. For making similar provision for the attendance at any County Grammar School, for like purposes, of Pupils of the Common Schools of the County ;

Attendance at Grammar Schools.

## ENDOWING FELLOWSHIPS.

5. For endowing such Fellowships, Scholarships or Exhibitions, and other similar Prizes, in the University of Toronto, and in the Upper Canada College and Royal Grammar School there, for competition among the Pupils of the Public Grammar Schools of the County, as the Council deems expedient for the encouragement of learning amongst the youth thereof.

Endowing Fellowships.

## 8.—PROVISIONS APPLICABLE TO COUNTIES ONLY.

**287.** The following sections numbered from 288 to 292 apply to Counties only :

Extent of sections 288 to 292.

## SEPARATE IMPROVEMENTS BY UNITED COUNTIES.

**288.** The Councils of United Counties may make appropriations and raise funds, to enable either County separately to carry on such improvements as may be required by the inhabitants thereof.

One of United Counties may make improvements with union funds.

**289.** Whenever any such measure is brought under the notice of the Council of any United Counties, none but the Reeves

Reeves of the County inter-

Reeves

ested only to  
vote for.

Reeves and Deputy Reeves of the County to be affected by the measure shall vote; except in case of an equality of votes for or against the measure, when the Warden, whether a Reeve or Deputy Reeve of any portion of the County to be affected by the measure or not, shall have the casting vote.

Provisions of  
this Act for re-  
payment to  
apply.

**290.** In all other respects, all the provisions of this Act, giving such privileges and making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to be raised by direct taxation, shall be adhered to.

Treasurer to  
pay over mo-  
neys, without  
deduction.

**291.** The Treasurer of the United Counties shall pay over all sums so raised and paid into his hands by the several Collectors, without any deduction for percentage.

In such cases  
the property of  
the County in-  
terested is alone  
to be assessed.

**292.** The property to be assessed for the purposes contemplated in the four last preceding sections of this Act, shall be the same as the property assessed for any other County purpose, except that any sum to be raised for the purposes of one County only, or for the payment of any debt contracted for the purposes of one County only, shall be assessed and levied solely upon property assessed in that County, and not upon property in any other County united with it.

9.—PROVISIONS APPLICABLE TO CITIES, TOWNS AND  
INCORPORATED VILLAGES.

Extent of sec-  
tion 294.

**293.** The following section applies to the following Municipalities :

1. Cities,
2. Towns, and
3. Incorporated Villages.

By-laws may  
be made—

**294.** The Council of every City, Town and Incorporated Village may respectively pass By-laws for the following purposes :

HARBOURS, DOCKS, &c.

For the cleanli-  
ness of streets,  
&c.

1. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water ;

For removal of  
door steps, &c.

2. For directing the removal of door steps, porches, railings or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water or the banks or shores thereof, at the expense of the proprietor or occupant of the property connected with which such projections are found ;

3. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof ; Wharves, docks, &c.

4. For regulating Harbours, for preventing the filling up or encumbering thereof ; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers and docks therein and also floating elevators derricks, cranes and other machinery suitable for loading, discharging or repairing Vessels ; for regulating the vessels, crafts, and rafts, arriving in any Harbour ; and for imposing and collecting such reasonable Harbour dues thereon as may serve to keep the Harbour in good order, and to pay a Harbour Master ; For regulating harbours, &c.

#### WATER.

5. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water ; and for making reasonable charges for the use thereof ; and for preventing the wasting and fouling of public water ; For supplying water, &c.

#### MARKETS.

6. For establishing markets ; Markets.

7. For regulating all markets established and to be established ; the places however already established as markets in such Municipality, shall continue to be markets, and shall retain all the privileges thereof until otherwise directed by competent authority ; and all market reservations or appropriations heretofore made in any such Municipality, shall continue to be vested in the Corporation thereof ; For regulating markets. Old markets continued.

8. For preventing or regulating the sale by retail in the public streets, of any meat, vegetables, fruit or beverages ; Regulating vending in streets.

9. For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed in the open air ; Vending in open air.

10. For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw, fodder, wood, and lumber ; Sale of Butcher's meat.

11. For preventing the forestalling, regrating or monopoly of market grains, meats, fish, fruits, roots and vegetables ; Preventing forestalling.

12. For preventing and regulating the purchase of such things by hucksters or runners living within the Municipality, or within one mile from the outer limits thereof ; Regulating Hucksters.

13. For regulating the mode of measuring or weighing, (as the case may be) of lime, shingles, laths, cordwood, and coal and other fuel ; Weighing, &c.

- Penalties for light weight. 14. For imposing penalties for light weight or short count or short measurement in any thing marketed ;
- Regulating vehicles used in market vending. 15. For regulating all vehicles, vessels and other things in which any thing is exposed for sale or marketed in any street or public place, and for imposing a reasonable duty thereon and establishing the mode in which it shall be paid ;
- Assize of bread. 16. For regulating the assize of bread, and preventing the use of deleterious materials in making bread ; and for providing for the seizure and forfeiture of bread made contrary to the By-law ;
- Tainted provisions. 17. For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food ;
- Rent of market stalls. 18. For selling, after six hours' notice, butchers' meat distrained for rent of market-stalls ;
- NUISANCES.
- Bathing. 19. For preventing or regulating the bathing or washing the person in any public water in or near the Municipality ;
- Abatement of nuisances. 20. For preventing and abating public nuisances ;
- Privy vaults. 21. For preventing or regulating the construction of privy vaults ;
- Vacant lots. 22. For causing vacant lots to be properly enclosed ;
- Slaughter Houses. 23. For preventing or regulating the erection or continuance of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances ;
- Tumultuous noises. 24. For preventing the ringing of bells, blowing of horns, shouting and other unusual noises, in streets and public places ;
- Firing guns, &c. 25. For preventing or regulating the firing of guns or other fire arms ; and the firing or setting off of fire balls, squibs, crackers or fire works, and for preventing charivaries and other like disturbances of the peace ;
- Furious driving. 26. For preventing immoderate riding or driving in highways or streets ; for preventing the leading, riding or driving of horses or cattle upon side-walks or other places not proper therefor ;
- Importuning travellers. 27. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding-house, or for regulating persons so employed ;

## PUBLIC HEALTH.

28. For providing for the health of the Municipality and Public health.  
against the spreading of contagious or infectious diseases ;

## INTERMENTS.

29. For regulating the interment of the dead, and for pre- Interments.  
venting the same taking place within the Municipality ;

30. For directing the keeping and returning of bills of Bills of morta-  
mortality ; and for imposing penalties on persons guilty of lity.  
default in doing so ;

## LICENSES.

31. For regulating and licensing the owners of livery stables Licensing cabs,-  
and of horses, cabs, carriages, omnibuses and other vehicles &c.  
used for hire ; for establishing the rates of fare to be taken by  
the owners or drivers ; and for enforcing payment thereof ;

## GUNPOWDER.

32. For regulating the keeping and transporting of gun- Gunpowder,  
powder and other combustible or dangerous materials ; for re- care of.  
gulating, and providing for the support by fees, of magazines  
for storing gunpowder belonging to private parties ; for com-  
pelling persons to store therein ; for acquiring land, as well  
within as without the Municipality, for the purpose of erecting  
powder magazines, and for selling and conveying such land  
when no longer required therefor ;

## FIRES.

33. For appointing Fire Wardens, Fire Engineers and Fire- Fire Compa-  
men, and promoting, establishing and regulating fire-compa- nies, &c.  
nies, hook-and-ladder companies, and property-saving compa-  
nies ;

34. For providing medals or rewards for persons who dis- Medals and re-  
tinguish themselves at fires ; and for granting pecuniary aid or wards to, &c.  
otherwise assisting the widows and orphans of persons who  
are killed by accidents at such fires ;

35. For preventing or regulating the use of fire or lights in Fires in stables,  
stables, cabinet makers' shops, carpenters' shops, and com- &c.  
bustible places ;

36. For preventing or regulating the carrying on of manu- Dangerous ma-  
factories or trades dangerous in causing or promoting fire ; nufactories ;

37. For preventing, and for removing, or regulating the con- Stoves, chim-  
struction of any chimney, flue, fire place, stove, oven, boiler or neys, &c.  
other

other apparatus or thing which may be dangerous in causing or promoting fire ;

Size and cleaning chimnies, &c.

38. For regulating the construction of chimnies as to dimensions and otherwise ; and for enforcing the proper cleaning of the same ;

Ashes.

39. For regulating the mode of removal and safe keeping of ashes ;

Party walls.

40. For regulating and enforcing the erection of party walls ;

Ladders to houses.

41. For compelling the owners and occupants of houses to have scuttles in the roofs thereof, and stairs or ladders leading to the same ;

Buildings and yards, condition of.

42. For causing buildings and yards, to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident ;

Fire buckets.

43. For requiring the inhabitants to provide so many fire buckets in such manner and time as may be prescribed ; and for regulating the examination of them ; and the use of them at fires ;

Inspection of premises.

44. For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same ;

Suppression of fires.

45. For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire ;

Enforcing assistance at fires.

46. For regulating the conduct, and enforcing the assistance, of the inhabitants present at fires ; and for the preservation of property at fires.

#### 10.—PROVISIONS APPLICABLE TO CITIES AND TOWNS.

Extent of sections 296 to 298.

**295.** The following sections, numbered from 296 to 298, apply to the following Municipalities :

1. Cities.

2. Towns.

#### CORONERS.

Appointment of.

**296.** One or more Coroners shall be appointed for every incorporated City and Town.

## INTELLIGENCE OFFICES.

**297.** The Council of every City and Town may respectively pass By-laws :

1. For Licensing suitable persons to keep Intelligence Offices for registering the names and residences of and giving information to, or procuring servants for, employers in want of domestics or labourers, and for registering the names and residences of and giving information to, or procuring employment for, domestics, servants and other labourers desiring employment, and for fixing the fees to be received by the keepers of such offices ; Licensing Intelligence offices.
2. For the regulation of such Intelligence Offices ; Regulation of.
3. For limiting the duration of or revoking any such license ; Duration of license.
4. For prohibiting the opening or keeping any such Intelligence Office within the Municipality without License ; Prohibition of without license.
5. For fixing the fee to be paid for such License, not exceeding one dollar for one year , Fees for.

## WOODEN BUILDINGS.

6. For regulating the crection of buildings and preventing the erection of wooden buildings and wooden fences in specified parts of the City or Town ; Wooden buildings.

## POLICE.

7. For establishing, regulating and maintaining a police ; A police. but subject to the other provisions of this Act on that head ;

## INDUSTRIAL FARM—EXHIBITION.

8. For acquiring any estate in landed property within or without the City or Town for an industrial farm, or for a public park, garden or walk, or for a place for exhibitions, and for the disposal thereof when no longer required for the purpose ; and for accepting and taking charge of landed property, within or without the City or Town dedicated for a public park, garden or walk for the use of the Inhabitants of the City or Town ; Industrial farm.

9. For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for exhibition, as the Council deems necessary ; Buildings thereon.

10. For the management of the farm, park, garden, walk or place for exhibitions and buildings ; Managing the same.

## CHARITY.

## CHARITY.

Almshouses.

11. For establishing and regulating within the City or Town, or on the Industrial farm or ground held for public exhibitions, one or more Almshouses or houses of refuge for the relief of the destitute, and for granting out of door relief to the resident poor, and also for aiding charitable institutions within the City or Town ;

## SNOW, ICE AND DIRT.

Removing snow, &amp;c.

12. For compelling persons to remove the snow, ice and dirt from the roofs of the premises owned or occupied by them, and also to remove the same from the sidewalks, street or alley in front of such premises, and for removing the same at the expense of the owner or occupant in case of his default ;

## NUMBERING HOUSES AND LOTS.

Numbering houses, &amp;c.

13. For numbering the houses and lots along the streets of the Municipality, and for affixing the numbers to the houses, buildings or other erections along the streets, and for charging the owner or occupant of each house or lot with the expense incident to the numbering of the same ;

Record of streets and numbers.

14. For keeping (and every such Council is hereby required to make and keep) a record of the streets and numbers of the houses and lots numbered thereon respectively, and entering thereon, and every such Council is hereby required to enter thereon, a division of the streets with boundaries and distances for public inspection ;

## DRAINAGE.

Levels of cellars.

15. For ascertaining and compelling owners, tenants and occupants to furnish the Council with the levels of the cellars heretofore dug or constructed or which may hereafter be dug or constructed along the streets of the Municipality, such levels to be with reference to a line fixed by the By-laws ;

Deposit of plan of buildings.

16. For compelling to be deposited with an officer, to be named in the By-law, before commencing the erection of any building, a ground or block plan of such building with the levels of the cellars and basements thereof with reference to a line fixed by the By-law ;

Cellars, privies, &amp;c.

17. For regulating the construction of cellars, sinks, water-closets, privies and privy-vaults, and the manner of draining the same ;

Filling up certain places.

18. For compelling or regulating the filling up, draining, clearing, altering, relaying and repairing of any grounds, yards, vacant lots, cellars, private drains, sinks, cesspools and privies ;



privies; and for assessing the owners or occupiers of such grounds or yards, or of the real estate on which the cellars, private drains, sinks, cesspools and privies are situate, with the cost thereof if done by the Council on their default;

19. For making any other regulations for sewerage or drainage that may be deemed necessary for sanitary purposes;

20. For charging all persons who own or occupy property which is drained into a common sewer or which by any By-law of the Council is required to be drained into such sewer with a reasonable rent for the use of the same; and for regulating the time or times and manner in which the same is to be paid.

298. The Council of a City or Town may also pass By-laws—

1. For appointing any person to be the Corporation Surveyor, and the Board of Examiners of Provincial Land Surveyors for Upper Canada shall examine such person, and if he is found competent, shall grant to him, without the usual service, his certificate as a Deputy Provincial Surveyor, and his acts as such shall, in the Town or City, while he holds the office of Surveyor thereto, have the same effect as those of any other Deputy Provincial Surveyor;

#### GAS AND WATER.

2. For lighting the Municipality, and for this purpose performing any work, and placing any fixtures that are necessary on private property;

3. For laying down Gas or Water pipes in any street and opening streets for the purpose; and for taking up or repairing such pipes, and for using every power and privilege given to any Gas or Water Company incorporated in the Municipality as if the same were specially given by this Act, subject however to the provisions herein contained as to the erection of Gas or Water Works and levying rates therefor;

4. For constructing Gas and Water Works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within such time as shall not exceed thirty years, nor be less than five years;

5. But no By-law under the last sub-section shall be passed, Firstly, until estimates of the intended expenditure have been published for one month, and notice of the time appointed for taking a Poll of the Electors on the proposed By-law has been published for two months, and a copy of the proposed By-law at length as the same may be ultimately passed, and a notice of the

Proceedings in taking public vote.

the day appointed for finally considering the same in Council, have been published for three months, in some newspaper in the Municipality ; or, if no newspaper is published therein, then in some newspaper in the County in which the Municipality is situate ;

Poll to be held, and majority must be in favour.

Nor, Secondly, until at a Poll, held in the same manner and at the same places, and continued for the same time as at elections for Councillors, a majority of the Electors, voting at the Poll, vote in favor of the By-law ;

By-law to be passed only at a special meeting, &c.

Nor, Thirdly, unless the By-law is thereafter passed at the special meeting mentioned in the published notice ;

If the By-law is rejected.

6. If the proposed By-law is rejected at such Poll, no other By-law for the same purpose shall be submitted to the electors during the current year ;

If there is a Gas or Water Company for the Municipality.

7. In case there be any Gas or Water Company incorporated for the Municipality, the Council shall not levy any Gas or Water rate until such Council has by By-law fixed a price to offer for the Works or Stock of the Company ; nor until thirty days have elapsed after notice of such price has been communicated to the Company without the Company's having accepted the same, or having, under the provisions of this Act as to Arbitrators, named and given notice of an Arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the Company ;

Inspection of Gas metres.

8. The Council of a City or Town may also pass By-laws,— For providing for the inspection of Gas-metres ;

Commissioners for erection of Gas or Water Works.

9. For providing for the appointment of three Commissioners for entering into contracts for the construction of Gas and Water-works,—for superintending the construction of the same,—for managing the works when completed,—and for providing for the Election of the said Commissioners by the Electors from time to time and at such periods, and for such terms as the Council may appoint by the By-law authorizing the Election.

#### 11.—PROVISIONS APPLICABLE TO CITIES ONLY.

City Councils may make By-laws for certain purposes.

**299.** The Council of every City may pass By-laws for the following purposes :

Ascertaining the property to be benefited by a local improvement.

1. For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property immediately benefited thereby ; and of ascertaining and determining the

the proportions in which the assessment is to be made on the various portions of the real estate so benefited; subject in every case to an appeal to the County Court Judge, in the same manner and on the same terms, as nearly as may be, as an appeal from the Court of Revision in the case of an ordinary assessment;

2. For assessing and levying upon the real property to be immediately benefited by the making, enlarging or prolonging of any common sewer, or the opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking of any street, lane, or alley, public way or place, or of any sidewalk therein, on the petition of at least two-thirds in number and one-half in value of such real property of the owners of such real property, a special rate, sufficient to include a sinking fund, for the repayment of Debentures which such Councils are hereby authorized to issue in such cases respectively on the security of such rates respectively, to provide funds for such improvements, and for so assessing and levying the same,--

Assessing such property for such improvement—and in what manner.

(1.) By an annual rate in the dollar on the real property so benefited, according to the assessed value thereof, including the improvements thereon;

(2.) Or by an annual rate in the dollar on the real property so benefited, according to the value thereof, exclusive of the improvements thereon;

(3.) Or by an annual rate of so much per foot, equally, according to the frontage of the real property so benefited, without reference to the comparative value of the different portions thereof;

(4.) Or by an annual rate on each portion of the real property so benefited, in proportion, as nearly as may be, to the benefit derived by such portion;

(5.) Or partly by each of these methods, or partly by each of any two or three of them;

3. For regulating the time or times and manner in which the assessments to be levied under this section are to be paid, and for arranging the terms on which parties assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums;

Regulating time of payment, &c.

4. For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected.

If Funds furnished by parties.

**300.** No such local improvement as aforesaid shall be undertaken by the Council of any City, except under a By-law passed in

Under what conditions such improvements

in

may be undertaken.

As to sewers.

What conditions shall be requisite to the validity of the By-laws.

in pursuance of the fourth sub-section of the preceding section, otherwise than on the petition of two-thirds in number and one half in value of real property to be directly benefited thereby, of the owners of such real property,—the number of such owners, and the value of such real property having been first ascertained and finally determined in the manner and by the means provided by By-law in that behalf; and if the contemplated improvement be the construction of a common sewer having a sectional area of more than four feet, one-third of the cost thereof shall also first be provided for by the Council of the City, by By-law for borrowing money, which every such Council is hereby authorized to pass for such purpose, or otherwise. 22 V. c. 40, s. 2, (1859.)

**301.** It shall not be essential to the validity of any By-law passed in virtue of the two hundred and ninety-ninth section of this Act, that it be in accordance with the restrictions and provisions contained in the two hundred and twenty-third section of this Act; but no such By-law shall be valid which is not in accordance with the following restrictions and provisions:

1. The By-law shall name a day in the financial year in which the same is passed when it shall take effect;

2. The whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-law takes effect;

3. The By-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year on the real property described therein and rateable thereunder for paying the debt and interest;

4. Such special rate shall be sufficient, according to the value of such real property, as ascertained and finally determined in virtue of this Act, to discharge the debt and interest when respectively payable, irrespective of any future increase in the value of such real property, and also irrespective of any income from the temporary investment of the sinking fund, or of any part thereof;

5. The By-law shall recite:

(1.) The amount of the debt which such By-law is intended to create, and, in some brief and general terms, the object for which it is to be created;

(2.) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the By-law;

(3.) The value of the whole of the real property rateable under the By-law as ascertained and finally determined as aforesaid ;

(4.) The annual special rate in the dollar or per foot frontage, or otherwise, as the case may be, for paying the interest and creating an equal yearly sinking fund for paying the principal of the debt, according to the foregoing provisions of this Act ;

(5.) That the debt is created on the security of the special rate settled by the By-law, and on that security only. 22 V. c. 40, s. 3, (1859.)

**302.** Every Debenture issued under the sections of this Act numbered two hundred and ninety-nine to three hundred and four shall bear on its face the words "Local Improvement Debenture," and shall contain a reference, by date and number, to the By-law under which it is issued, and also a statement of its being issued in virtue of this Act. 22 V. c. 40, s. 4, (1859.)

Debentures under section 299 to be specially distinguished.

**303.** The two hundred and twenty-fourth section of this Act shall not apply to any By-law passed in virtue of the four last preceding sections of this Act. 22 V. c. 40, s. 5, (1859.)

Section 224 not to apply.

**304.** Nothing contained in the sections of this Act, numbered two hundred and ninety-nine to three hundred and three shall be construed to apply to any work of ordinary repair or maintenance; and every common sewer made, enlarged, or prolonged, and street, lane, alley, public way and place, and sidewalk therein, once made, opened, widened, prolonged, altered, macadamized, paved or planked under the said sections of this Act, shall thereafter be kept in a good and sufficient state of repair at the expense of the City generally. 22 V. c. 40, s. 6, (1859.)

Act not to apply to certain works.

#### 12.—PROVISIONS APPLICABLE TO POLICE VILLAGES ONLY.

**305.** The following sections numbered from three hundred and six to three hundred and twelve apply to Police Villages only.

Extent of sections 306 to 312.

#### INSPECTING TRUSTEE.

**306.** The Trustees of every Police Village, or any two of such Trustees shall, by a writing under their hands to be filed with the Clerk of the Township, or one of the Townships in which the Village is situate, appoint one of their number to be Inspecting Trustee.

Appointment of Inspecting Trustees.

**307.** In case of any vacancy in the office of a Police Trustee by death or otherwise, the remaining Trustee or Trustees shall, by writing to be filed with such Clerk as aforesaid, appoint a Trustee or Trustees to supply the vacancy.

Vacancies.

## NEGLECT OF DUTY BY TRUSTEES.

Penalty for  
breach of duty.

**308.** Any Police Trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the village offering to adduce proof of an offence against the regulations of Police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on him by this Act, shall incur a penalty of five dollars.

Limitation of  
prosecutions  
for.

**309.** The penalties prescribed by the preceding section, or by that for the establishment of regulations of Police, shall be sued for within ten days after the offence has been committed or has ceased, and not subsequently.

## TRUSTEES TO SUE FOR PENALTIES.

Who to sue for  
penalties.

And before  
whom.

Conviction and  
levy of penalty.

**310.** The inspecting Trustee or, in his absence, or when he is the party complained of, one of the other Trustees, shall sue for all penalties incurred under the Regulations of Police herein established, before a Justice of the Peace having jurisdiction in the village and residing therein, or within five miles thereof; or if there be none such, then before any Justice of the Peace having jurisdiction in the village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, and shall cause the penalty to be levied by distress and sale of the goods of the offender, and to be paid over to the path-master or path-masters of the division or divisions to which the village belongs, or to such of the said path-masters as the Trustees may direct; and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the village, under the direction of the Trustees.

## PUBLIC HEALTH.

Trustees to be  
Health Officers.

**311.** The Trustees of every Police Village shall be Health Officers within the Police Village, under the Consolidated Statutes of Upper Canada, respecting the Public Health, and under any other Act that may be passed for the like purpose.

## POLICE REGULATIONS.

Regulations,

**312.** The Trustees of every Police village shall execute and enforce therein the regulations following:

## FIRE.

Fires, Ladders,  
&c.

1. Every proprietor of a house more than one story high, shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of one

one dollar for every omission; and a further penalty of two dollars for every week such omission continues;

2. Every householder shall provide himself with two buckets Fire buckets. fit for carrying water in case of accident by fire, under a penalty of one dollar for each bucket deficient;

3. No person shall build any oven or furnace unless it ad- Furnaces, &c. joins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, under a penalty not exceeding two dollars for non-compliance;

4. No person shall pass a stove-pipe through a wooden Stove pipes, &c. or lathed partition or floor, unless there is a space of four inches between the pipe and the wood work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood work, under a penalty of two dollars;

5. No person shall enter a mill, barn, outhouse or stable, with Lights in sta- bles, &c. a lighted candle or lamp unless well enclosed in a lantern, nor with a lighted pipe or cigar, or with fire not properly secured, under a penalty of one dollar;

6. No person shall light or have a fire in a wooden house or outhouse unless such fire is in a brick or stone chimney, or in a Chimnies. stove of iron or other metal, properly secured, under a penalty of one dollar;

7. No person shall carry fire or cause fire to be carried into Securing fire carried through streets, &c. or through any Street, Lane, Yard, Garden or other Place, without having such fire confined in some copper, iron or tin vessel, under a penalty of one dollar for the first offence, and of two dollars for every subsequent offence;

8. No person shall light a fire in a street, lane or public Fires in streets, place, under a penalty of one dollar;

9. No person shall place Hay, Straw or Fodder, or cause the Hay, straw, &c. same to be placed, in a dwelling house, under a penalty of one dollar for the first offence, and of five dollars for every week the Hay, Straw or Fodder is suffered to remain there;

10. No person, except a manufacturer of pot or pearl ashes, Ashes, &c. shall keep or deposit ashes or cinders, in any wooden vessel, box or thing not lined or doubled with sheet-iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, under a penalty of one dollar;

11. No person shall place or deposit any quick or unslaked Lime. lime in contact with any wood of a house, outhouse or other building,

building, under a penalty of one dollar, and a further penalty of two dollars a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, so as to prevent any danger of fire ;

Charcoal furnaces.

12. No person shall erect a furnace for making charcoal of wood, under a penalty of five dollars ;

#### GUNPOWDER.

Gunpowder.

13. No person shall keep or have Gunpowder for sale except in boxes of copper, tin or lead, under a penalty of five dollars for the first offence, and ten dollars for every subsequent offence ;

Gunpowder.

14. No person shall sell Gunpowder, or permit Gunpowder to be sold, in his house, storehouse or shop, outhouse or other building, at night, under a penalty of ten dollars for the first offence, and of twenty dollars for every subsequent offence ;

#### NUISANCES.

Certain nuisances prohibited.

15. No person shall throw or cause to be thrown any filth, or rubbish into a street, lane or public place, under a penalty of one dollar, and a further penalty of two dollars for every week he neglects to remove the same after being notified to do so by the Inspecting Trustee, or some other person authorized by him.

#### ROADS, BRIDGES, DRAINS, WATERCOURSES.

#### WHAT CONSTITUTE HIGHWAYS.

What shall constitute highways.

**313.** All allowances for roads made by the Crown Surveyors in any Town, Township or place already laid out, or hereafter laid out ; and also all roads laid out by virtue of any Act of the Parliament of Upper Canada, or any roads whereon the public money has been expended for opening the same, or whereon the Statute Labour hath been usually performed, or any roads passing through the Indian Lands, shall be deemed common and public highways, unless where such roads have been already altered, or may hereafter be altered according to Law.

#### HIGHWAYS VESTED IN THE CROWN.

Highway, &c., vested in the Crown.

**314.** Unless otherwise provided for, the soil and freehold of every highway or road altered, amended or laid out, according to Law, shall be vested in Her Majesty, Her Heirs and Successors.

#### JURISDICTION OF MUNICIPALITIES.

Jurisdiction of Municipal Council.

**315.** Subject to the exceptions and provisions hereinafter contained, every Municipal Council shall have jurisdiction over the



the original allowances for Roads, Highways and Bridges within the Municipality.

JURISDICTION RESTRICTED.

PROVINCIAL ROADS UNDER BOARD OF WORKS.

**316.** No Council shall interfere with any Public Road or Bridge vested as a Provincial Work in Her Majesty or in any Public Department or Board, and the Governor shall by order in Council have the same powers as to such Road and Bridge as are by this Act conferred on Municipal Councils with respect to other Roads and Bridges; but the Governor may by Proclamation declare any Public Road or Bridge under the control of the Commissioners of Public Works, to be no longer under their control, and in that case after a day named in the Proclamation the Road or Bridge shall cease to be under the control of the Commissioners, and no tolls shall thereafter be levied thereon by them, and the Road or Bridge shall thenceforth be controlled and kept in repair by the Council of the Municipality.

Roads under Board of Works not to be interfered with.

ROADS ON ORDNANCE LANDS.

**317.** No Council shall pass any By-law (1) for stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State in whom the Ordnance Estates are vested under the Statute of this Province, passed in the nineteenth year of Her Majesty's Reign chapter forty-five, or the Consolidated Statutes of Canada, chapter twenty-four, respecting the Ordnance and Admiralty lands transferred to the Province, (2) or for opening any such communication through land held by the Secretary of State for Her Majesty's Ordnance, or (3) interfering with any bridge, wharf, dock, quay or other work constructed by Her Majesty's Ordnance, or the Secretary of State, or (4) interfering with any land reserved for Military purposes or with the integrity of the public defences, without a written consent signed by the Principal Officer of Her Majesty's Ordnance acting in Canada under the authority of such Secretary of State, certified under the hand of the Commander of the Forces in Canada to be such Principal Officer and to be acting under such authority, and a By-law for any of the purposes aforesaid shall be void unless it recites such consent, authority and certificate.

Nor with Ordnance roads, lands, &c.

Unless sanctioned by the Chief Engineer Officer, &c.

WHAT ROADS NOT TO BE CLOSED.

**318.** No Council shall close up any public road or highway, whether an original allowance, or a road opened by the Quarter Sessions, or any Municipal Council or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, but all such roads shall remain open for the use of the person who requires the same.

Council not to close roads required by individuals.

## NOT TO ENCROACH UPON HOUSES, &amp;c.

Nor to encroach upon houses, &c.

**319.** No Council shall authorize an encroachment on any dwelling house, barn, stable, out-house, orchard, garden, yard or pleasure ground, without the written consent of the owner.

## WIDTH OF ROADS.

Width of roads.

**320.** No Council shall lay out any road or lane more than ninety nor less than thirty feet in width; but any road, when altered, may be of the same width as formerly.

## NOTICE TO BE GIVEN OF BY-LAWS INTENDED TO AFFECT PUBLIC ROADS.

What notice to be given of By-laws intended to affect public roads.

**321.** No Council shall pass a By-law, for stopping up, altering, widening, diverting or selling any original allowance for road, or for establishing, opening, stopping up, altering, widening, diverting or selling any other public highway, road, street or lane :

Publication.

1. Until written or printed notices of the intended By-law have been posted up one month previously in six of the most public places in the immediate neighbourhood of such original allowance for road, or other highway, road, street, or lane ;

The same.

2. And published weekly for at least four successive weeks in some newspaper (if any there be) published in the Municipality ; or if there be no such newspaper, then in a newspaper published in some neighbouring Municipality ;

Parties to be heard.

3. Nor until the Council has heard, in person or by Counsel or Attorney, any one whose land might be prejudicially affected thereby, and who petitions to be so heard ;

Clerk to give the notice.

4. And the Clerk shall give such notices, at the request of the applicant for the By-law, upon payment of the reasonable expenses attendant on such notices.

## IN DISPUTES RESPECTING ROADS—WHO MAY SWEAR WITNESSES, &amp;c.

Power to administer oath in disputes respecting boundaries.

**322.** In case of disputes in any Municipality concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a Municipal Council, the Head of the Council may administer an oath or affirmation to any party or witness examined upon the matters in dispute.

## COMPENSATION FOR LANDS TAKEN.

Owners of lands taken, to

**323.** Every Council shall make to the owners of real property entered upon, taken or used by the Corporation in the exercised of

of its powers in respect to roads, streets and other public communications, or to drains and common sewers, due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration under this Act.

be compensated.

#### TITLES TO LAND OF INFANTS, &C., HOW ACQUIRED.

**324.** In the case of real property which a Council has authority under this Act, to enter upon, take or use without the owner's consent, Corporations, Tenants in tail or for life, Guardians, Committees and Trustees, shall, on behalf of themselves, their Successors and Heirs respectively, and on behalf of those they represent whether infants, issue unborn, lunatic, idiots, married women or others, have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the Council any such real property, or in agreeing as to the amount of damages arising from the exercise by the Council of any power in respect thereof; In case there is no such person who can so act in respect to such real property, or in case any person interested in respect to any such real property, is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the County in which such property is situate, may, on the application of the Council, appoint a person to act in respect to the same for all or any of the said purposes.

Title to lands taken.

If there be no party who can convey.

**325.** In case any party acting as aforesaid has not the absolute estate in the property, the Council shall pay to him the interest only at six per centum per annum on the amount to be paid in respect of such property, and shall retain the principal to be paid to the party entitled to it whenever he claims the same, and executes a valid acquittance therefor, unless the Court of Chancery, or other Court having equitable jurisdiction in such cases, do in the mean time direct the Council to pay the same to any person or into Court; and the Council shall not be bound to see to the application of any interest so paid or of any sum paid under the direction of such Court.

Where a party has a life interest only.

Sum awarded how to be applied.

**326.** All sums agreed upon or awarded in respect of such real property, shall be subject to the limitations and charges to which the property was subject.

Charges on the purchase money.

#### JOINT JURISDICTION OVER ROADS.

##### COUNTIES, CITIES AND TOWNS.

**327.** In case a road or bridge lies wholly or partly between a County, Town or City and an adjoining County, Town or City,

Joint jurisdiction over certain roads.

City, the Councils of the Municipalities between which the road or bridge lies, shall have joint jurisdiction over the same, although the road or bridge may so deviate as in some places to be wholly or in part within one County, Town or City. See s. 325.

Both Councils must concur in By-laws respecting them.

**328.** No By-law of the Council of any one of such Municipalities, with respect to any such last mentioned road or bridge, shall have any force until a By-law has been passed in similar terms as nearly as may be by the other of the Councils, having joint jurisdiction in the premises.

Arbitration if they do not concur.

**329.** In case the other Council, for six months after notice of the By-law, omits to pass a By-law in similar terms, the duties and liabilities of each Municipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act.

POWERS OF TOWNSHIP, TOWN AND INCORPORATED VILLAGE  
COUNCILS RESPECTING ROADS, BRIDGES AND WORKS.

By-laws respecting Statute Labour.

**330.** The Council of every Township, Town and Incorporated Village may pass By-laws :

STATUTE LABOUR.

Voluntary commutation.

1. For empowering any person, (resident or non-resident) liable to statute labour within the Municipality, to compound for such labour, for any term not exceeding five years, at any sum, not exceeding one dollar, for each day's labour ;

Compulsory commutation.

2. For providing that a sum of money, not exceeding one dollar for each day's labour, may or shall be paid in commutation of such statute labour ;

Fixing number of days' labour.

3. For increasing or reducing the number of day's labour, to which the persons rated on the Assessment-Roll or otherwise shall be liable, in proportion to the statute labour to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable ;

Enforcing Statute Labour.

4. For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law ;

Regulating the application of Labour and commutation money.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended ;

POWERS OF ALL COUNCILS RESPECTING ROADS, BRIDGES AND  
WORKS.

GENERAL POWERS.

**331.** The Council of every Township, County, City, Town and Incorporated Village may pass By-laws :

1. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers, water courses, roads, streets, squares, alleys, lanes, bridges or other public communications, within the jurisdiction of the Council, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained ;

Opening roads, &c.

TOLLS.

2. For raising money by toll on any bridge, road or other work, to defray the expense of making or repairing the same ;

To raise money by toll.

FAST DRIVING ON BRIDGES.

3. For regulating the Driving and Riding on public Bridges ;

To regulate driving on bridges.

PITS AND PRECIPICES.

4. For making regulations as to pits, precipices and deep waters and other places dangerous to travellers ;

To make regulations as to pits, &c.

ROAD ALLOWANCES.

5. For preserving or selling timber-trees, stone, sand, or gravel, on any allowance or appropriation for a public road ;

For preservation of trees, stone, &c.

6. For selling the original road allowance to the parties next adjoining whose lands the same is situated, when a public road has been opened in lieu of the original road allowance and for the site or line of which compensation has been paid, and for selling in like manner to the owners of any adjoining land, any road legally stopped up or altered by the Council ; and in case such parties respectively refuse to become the purchasers at such price as the Council thinks reasonable, then for the sale thereof to any other person for the same or a greater price ;

When the Council may stop up or sell a road allowance.

PERMITTING ROAD AND BRIDGE COMPANIES TO PASS, &c.

7. For regulating the manner of granting to Road or Bridge Companies permission to commence or proceed with Roads or Bridges, within its jurisdiction, and for regulating the manner of ascertaining and declaring the completion of the work so as to entitle such companies to levy tolls thereon, and for regulating the

Granting privileges to road or bridge Companies.

the manner of making the examinations necessary for the proper exercise of these powers by the Council ;

#### TAKING STOCK IN.

Taking stock in, or making loans to such Companies.

8. For taking stock in, or lending money to, any such incorporated Road or Bridge Company, under and subject to the respective Statutes in that behalf ;

#### TOLLS ON, MAY BE GRANTED.

Granting right to take tolls, when.

To exact tolls, when.

9. For granting to any person, in consideration or in part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by By-law to be levied on the work for a period of not more than twenty-one years after the work has been completed and after such completion has been declared by a By-law of the Council authorizing tolls to be collected ; And the grantee of such tolls shall, during the period of his right thereto, maintain the road or bridge in repair.

#### OLD ROAD ALLOWANCES.

When a road is substituted for an original allowance.

**332.** In case any one in possession of a Concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto, in lieu of the road so laid out, and the Council of the Municipality upon the report in writing, of its Surveyor, or of a Deputy Provincial Land Surveyor, that such new or travelled road is sufficient for the purposes of a public highway, may convey the said original allowance for road in fee simple to the person or persons upon whose land the new road runs, and when any such original road allowance is, in the opinion of the Council, useless to the public, and lies between lands owned by different parties, the Municipal Council may, subject to the conditions aforesaid, sell and convey a part thereof to each of such parties as may seem just and reasonable ; And in case compensation was not paid for the new road, and the person through whose lands the same passes does not own the land adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance when sold, shall be paid to the person who at the time of the sale owns the land through which the new road passes.

Conveying of former road allowance.

#### POSSESSION OF ROAD ALLOWANCES.

Original allowances for roads

**333.** In case a person be in possession of any part of a Government allowance for road laid out adjoining his lot and enclosed

enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or in case a person be in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall be deemed legally possessed thereof as against any private person, until a By-law has been passed for opening such allowance for road by the Council having jurisdiction over the same.

when to be deemed legally possessed till a By-law is passed for opening them.

NOTICE OF BY-LAWS FOR OPENING SUCH ALLOWANCES.

**334.** But no such By-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the Council, that an application will be made for opening such allowance.

By-law for opening, &c., roads, &c., to require notice.

AIDING COUNTIES IN MAKING ROADS AND BRIDGES.

**335.** The Municipal Council of every Township, City, Town and Incorporated Village may pass By-laws :

1. For granting to the County or United Counties in which such Municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such Municipality ;

Aiding Counties in making roads and bridges.

2. For entering into and performing any arrangement with any other Council in the same County or United Counties for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the Council.

Joint works with other Municipalities.

HIGHWAYS IN CITIES, TOWNSHIPS, TOWNS AND INCORPORATED VILLAGES.

**336.** Every public road, street bridge or other highway, in a City, Township, Town or Incorporated Village, shall be vested in the Municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway, reserved, and except any concession or other road within the City, Township or Town or Incorporated Village, taken and held possession of by an individual in lieu of a street, road or highway, laid out by him without compensation therefor.

Streets in Cities, Towns and Incorporated Villages how far vested in Municipalities.

**337.** Every such road, street, bridge and highway shall be kept in repair by the corporation, and the default of the Corporation so to keep in repair, shall be a misdemeanor punishable by fine in the discretion of the Court, and the Corporation shall be further civilly responsible for all damages sustained by any person by reason of such default, but the action must be brought within three months after the damages have been sustained ; And this section shall not apply to any road, street, bridge or highway laid out without the consent of the Corporation by By-law, until established and assumed by By-law.

To be kept in repair by the Corporation, on pain of damages.

## LOCAL IMPROVEMENTS OF STREETS.

**338.** Subject to the exception as to Cities contained at the end of the first sub-section, the Council of every City, Town and Incorporated Village may also pass By-laws for the following purposes :

Local rates for pavements.

1. For assessing and collecting from the proprietors of real property, immediately benefited by making or repairing any Pavement in any public way or place near to such property, such sums as may be necessary for so making or repairing the same ; but this sub-section shall not apply to Cities. 22 V. c. 40, s. 7. (1859.)

Watering and sweeping streets.

2. For raising, upon the petition of at least two thirds of the freeholders and householders resident in any street, square, alley or lane, representing in value one half of the rateable property therein, such sums as may be necessary for Sweeping, Watering or Lighting the street, square, alley or lane, by means of a special rate on the rateable property therein ; but the Council may charge the general corporate funds with the expenditure incurred in such Making or Repairing, or in such Sweeping, Watering or Lighting as aforesaid ;

Preventing obstructions in streets.

3. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any road, street, square, alley, lane, bridge or other communication ;

Removal of door steps.

4. For directing the removal of door steps, porches, railing or other erections, or obstructions projecting into or over any road, or other public communication, at the expense of the proprietor or occupant of the property connected with which such projections are found ;

For marking the boundaries of and naming streets.

5. For surveying, settling and marking the boundary lines of all Streets, Roads and other public communications, and for giving names thereto and affixing such names at the corners thereof on either public or private property.

## EXCLUSIVE JURISDICTION OVER ROADS.

## COUNTIES.

## WHAT ROADS.

Exclusive jurisdiction over certain roads by Counties.

**339.** The County Council shall have exclusive jurisdiction over all Roads and Bridges lying within any Township of the County and which the Council by By-law assumes as a County Road or Bridge, until the By-law has been repealed by the Council, and over all Bridges across streams separating two Townships



Townships in the County ; and over every Road or Bridge dividing different Townships, although such Road or Bridge may so deviate as in some places to lie, wholly or in part, within one Township.

ROADS ASSUMED TO BE MACADAMIZED.

**340.** When a County Council assumes by By-law any Road or Bridge within a Township as a County Road or Bridge, the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause the Road to be planked, gravelled or macadamized, or the Bridge to be built in a good and substantial manner.

Roads assumed to be macadamized, &c.

CERTAIN POWERS OF JUSTICES IN SESSIONS TRANSFERRED.

**341.** All powers, duties and liabilities which at any time before the first day of January, one thousand eight hundred and fifty, belonged to the Magistrates in Quarter Sessions, with respect to any particular Road or Bridge in a County, and not conferred or imposed upon any other Municipal Corporation, shall belong to the Council of the County, or, in case the Road or Bridge lies in two or more Counties, to the Councils of such Counties, and the neglect or disobedience of any regulations or directions made by such Council or Councils, shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations or directions of the Magistrates would have subjected them to.

Certain powers of Justices in Sessions transferred.

GENERAL POWERS OF COUNTIES RESPECTING HIGHWAYS.

**342.** The Council of every County shall have power to pass By-laws for the following purposes :

1. For stopping up, or stopping up and sale, of any original allowance for road or parts thereof within the County, which is subject to the sole jurisdiction and control of the Council, and not being within the limits of any Village, Town or City within or adjoining the County ; but the By-law for this purpose shall be subject to the three hundred and twentieth-first section of this Act ;

Sale of original allowance, &c., for roads in certain cases.

2. For preventing immoderate riding or driving of horses or other cattle on the highways, whether Township or County highways ;

Preventing furious driving.

3. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers, water courses, roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more Townships, or between two or more Townships of the County, or between the County, and any adjoining County or City, or on the bounds of any Town or

Roads within or between several Municipalities.

Incorporated

Incorporated Village within the boundaries of the County, as the interests of the inhabitants of the County in the opinion of the Council require to be so opened, made, preserved and improved, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions hereinbefore contained ;

#### TREES OBSTRUCTING HIGHWAYS.

May direct the trees to be cleared on each side of highways.

4. For directing that, on each or either side of a highway passing through a wood, the trees, (unless they form part of an orchard or a shrubbery, or have been planted expressly for ornament or shelter,) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the Proprietor within a time appointed by the By-law, or, on his default, by the County Surveyor or other Officer in whose division the land lies ; and, in the latter case, for authorizing the trees to be used by the Overseer or other Officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect ;

May grant aid to Counties in making roads, &c.

#### LOCAL RATES FOR SPECIAL IMPROVEMENTS.

Local rates for special improvements.

5. For levying by Assessment on all the rateable property within any particular parts of two Townships to be described by metes and bounds in the By-law, in addition to all other Rates, a sum sufficient to defray the expense of making, repairing or improving any Road, Bridge, or other public work, lying between such parts of such two Townships, and by which the inhabitants of such parts will be more especially benefited ;

Proceedings to obtain a By-law for.

6. But no such By-law, as referred to in the last preceding sub-section, shall be passed, except—1. Upon a petition signed by at least one half of the Electors within those parts of such Townships which are to be affected by the By-law ; 2. Nor unless a printed notice of the petition, with the names of the signers thereto, describing the limits within which the By-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the Township and at the places for holding the sittings of the Council of each Township, whether it be within such parts or not, and also by inserting the same weekly for at least four weeks in some newspaper, if any there be published in the County, or if there is no such newspaper, then in a newspaper published in some adjoining County ;

#### AIDING TOWNSHIPS, &c., IN MAKING ROADS AND BRIDGES.

For aiding in making roads and bridges.

7. For granting to any Town, Township, or Incorporated Village in the County, aid, by loan or otherwise, towards opening or making any new Road or Bridge in the Town, Township or Village,

Village, in cases where the Council deems the County at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the Council in at once assuming the same as a County work ;

8. For requiring that the whole or any part of any County road shall be opened, improved and maintained by any local Municipality within the County. Making, &c., any County road.

#### TOWNSHIPS.

**343.** The Council of every Township may pass By-laws :

#### AIDING COUNTIES IN MAKING ROADS.

1. For granting to any adjoining County aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the Township and any other Municipality, and for granting like aid to the County in which the Township lies in respect of any highway, road, street, bridge or communication within the Township assumed by the County as a County work, or agreed to be so assumed on condition of such grant ; Aiding County in making roads.

#### ORIGINAL ROAD ALLOWANCES.

2. For the stopping up and sale of any original allowance for road or any part thereof within the Municipality, and for fixing and declaring therein the terms upon which the same may be sold and conveyed ; but no such By-law shall have any force (1) unless passed in accordance with the three hundred and twenty-first section of this Act, nor (2) until confirmed by a By-law of the Council of the County in which the Township is situated at an Ordinary Session of the County Council, held not sooner than three months, nor later than one year next after the passing thereof ; Stopping up and sale of original road allowance.

#### TREES OBSTRUCTING HIGHWAYS.

3. For directing that, on each or either side of a highway passing through a wood, the trees (unless they form part of an orchard or a shrubbery, or have been planted expressly for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the By-law, or, on his default, by the Overseer of Highways, or other Officer in whose division the land lies ; and, in the latter case, for authorizing the trees to be used by the Overseer or other Officer for any purpose connected with the improvement of the highways land bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect. Ordering trees to be cut down on each side of a road.

WHEN ROADS IN VILLAGES OR HAMLETS MAY BE SOLD BY  
TOWNSHIP COUNCILS.

When roads in  
Police Villages  
may be sold by  
Township  
Councils.

**344.** In case the Trustees of any Police Village, or fifteen of the inhabitant householders of any other unincorporated village or hamlet consisting of not less than twenty dwelling houses standing within an area of two hundred acres, petition the Council of the Township in which the village or hamlet is situate, and in case the petition of such unincorporated village or hamlet not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the village or hamlet has been duly deposited in his office according to the registry laws, the Council may pass a By-law to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the village or hamlet, as the same shall be laid down on the plan, but subject to all the restrictions contained in this Act with reference to the sale of original allowances.

When Village  
is partly in each  
of two town-  
ships.

**345.** The last section shall apply to a village or hamlet situate in two Townships whether such Townships are in the same or in different Counties, and in such case the Council of each of the Townships shall have the powers hereby conferred, as to any original allowance for road lying within that part of the village or hamlet which, according to the registered plan, is situate within such Township.

RAILWAYS.

Municipal  
Councils may  
make By-laws:

**346.** The Council of every Township, County, City, Town and Incorporated Village may pass By-laws :

TAKING STOCK IN OR AIDING RAILWAY COMPANIES.

For taking  
stock in Rail-  
ways or guar-  
anteeing de-  
bentures ;

1. For subscribing for any number of shares in the Capital Stock of or for lending to or guaranteeing the payment of any sum of money borrowed by an incorporated Railway Company to which the eighteenth Section of the Statute fourteenth and fifteenth Victoria, Chapter fifty-one,—(the Railway Clauses Consolidation Act) or the Sections of the Consolidated Statutes of Canada respecting Railways numbered seventy-five to seventy-eight has been or may be made applicable by any special Act ;

For guarant-  
eeing the pay-  
ment of debent-  
ures, &c.

2. For endorsing or guaranteeing the payment of any Debenture to be issued by the Company for the money by them borrowed, and for assessing and levying from time to time upon the whole rateable property of the Municipality, a sufficient sum to discharge the debt or engagement so contracted ;

For issuing de-  
bentures.

3. For issuing, for the like purpose, Debentures payable at such times and for such sums respectively not less than twenty dollars, and bearing or not bearing interest as the Municipal Council may think meet ;

4. For directing the manner and form of signing or endorsing any Debenture so issued, endorsed or guaranteed and of countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned, respectively; But no Municipal Corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid unless the By-law before the final passing thereof has received the assent of the Electors of the Municipality in manner provided by this Act.

To be confirmed by Public vote.

**347.** Any Debenture for any of the purposes in the preceding section mentioned, signed or endorsed and countersigned as directed by the By-law, shall be valid and binding on the Corporation without the corporate Seal thereto, or the observance of any other form with regard to the Debenture than such as may be directed in the By-law.

Debentures when valid without the corporate seal.

**348.** In case any Municipal Council subscribes for and holds stock in any such Company to the amount of twenty thousand dollars or upwards, the Head of the Council shall be *ex officio* one of the Directors of the Company in addition to the number of Directors authorized by the Special Act, and shall have the same rights, powers and duties as the other Directors of the Company.

Head when to be a Director.

**349.** The Council of every Township may pass By-laws, for authorizing any Railway Company, in case such authority is necessary, to make a branch Railway on property of the Corporation, or on highways, under such conditions as the Council sees fit, and subject to the restrictions contained in the Railway Clauses Consolidation Act, and any other Acts affecting such Railway.

By-laws authorizing Branch Railways.

PROVISIONS APPLICABLE TO THE MUNICIPALITIES OF, OR IN, OR ADJACENT TO THE COUNTIES OF WELLINGTON AND BRUCE ONLY.

**350.** Whereas that section of the Peninsula of Western Canada lying north-westerly from the Town of Guelph, and embracing the greater part of the Counties of Wellington and Bruce, as well as portions of the Counties of Grey, Perth and Huron, being destitute of proper facilities for communicating with the produce markets of the Province; And whereas the Reeves of the Municipalities of Fergus, Puslinch, Normanby, Brant, Elora, Minto, Pilkington, Saugeen, Arthur, Nichol, Kinloss, Howick, Greenock, Culross and Kincardine, and many others, by their petitions prayed that those Municipal Corporations desiring a means of communication might be enabled to aid in the establishment of the same, and might be empowered to distribute any liability which they might deem advisable to incur thereby, over the various sections of

Preamble.

each Municipality incurring such liability, in an equitable proportion to the benefits which they might derive from the improvements, or so far as practicable so to do; And inasmuch as the construction of Railways and of other roads has been found to enhance to the largest amount the value of property within easy access of these lines of traffic, and it is believed that the various degrees of additional value given to property within the influence of these works may be taken as a fair standard by which to measure the different degrees of benefit received from their establishment; And whereas it has been deemed expedient to empower the various Municipalities aforesaid to aid in the promotion of their own prosperity in accordance with the equitable principle expressed in the prayers of the petitioners: Therefore—

On a petition of three-fourths of the rate-payers, certain municipalities may guarantee a bonus, by rate on the improved value of property, to Companies affording means of internal communication.

On and after the Fourth day of May, one thousand eight hundred and fifty-nine, and so soon as at least three-fourths of the rate-payers in any Municipality, being *bonâ fide* owners of at least three-fourths in value of the real property in such Municipality, have by a requisition (agreeable to form A (page 628) setting forth in general terms the character of the improvement they desire, and the rate per cent. for assessment purposes they are willing to bear,) require their Municipal Council or Councils, to incur any such liability as by this Section they are empowered to incur, the County Council of Wellington, the Provisional County Council (or in process of time the County Council) of Bruce, and any lesser Municipal Corporations either in or adjacent to these Counties, may guarantee to give a yearly bonus to any Company or Companies, party or parties who undertake to build and complete a Railway, or a gravel or other improved road or roads through or along or across any of the Municipalities aforesaid; but such guarantee shall be limited as herein-after pointed out. 22 V. c. 39, s. 1. (1859.)

Proviso.

To what amount such bonus shall be limited.

**351.** Any bonus guaranteed to be given under the last preceding section of this Act shall be the aggregate proceeds of a rate to be prescribed by the rate-payers' requisition aforesaid, levied (except in the case provided for by the three hundred and fifty-fourth section) on the future increase of the assessed value of real property in such Municipalities or sections of Municipalities as aforesaid, which rate is not to exceed one per cent. annually on the increase of the assessed value, and which increase is to be taken to mean the difference between the assessed value of real property in the year during which any such guarantee may be given, and the assessed value in each year after the contemplated improvements are in operation or in use. 22 V. c. 39, s. 2. (1859.)

When such communication is opened, rates to be le-

**352.** Each Municipal Corporation giving such guarantee as they are by the two last preceding sections of this Act empowered to give, shall annually so soon as the gravel roads or railways

railways or both, have been made and are in use, assess and levy upon the rateable real property within the limits prescribed by the guarantee, situate within fifteen miles of the railway or of such part of it as may be in operation, or within five miles of any gravel road or roads which shall be made and fit for use, such rate or rates as may be determined upon as aforesaid, not exceeding one per cent. per annum on (except in the case provided for by the three hundred and fifty-fourth section,) the increase as aforesaid; but the rate or rates shall not be levied on any property situate more than five miles from any gravel road, nor more than fifteen miles from any Railroad or such part of it or them as may be then in operation, whether or not the said property be within the Municipality or section of the Municipality which has concurred in giving the guarantee. 22 V. c. 39, s. 3. (1859.)

vied according to the guarantee.

**353.** So soon as it is necessary to levy any special rate on the increase of the assessed value of any of the Municipalities which may under authority of the three hundred and fiftieth to the three hundred and fifty-sixth sections of this Act undertake to aid in carrying out internal improvements, it shall be the duty of the Clerk of the Municipality to procure a plan verified by some Provincial Land Surveyor, showing the exact position of the improvements then in use, and also the relative position thereto of all taxable real property situate within the limits prescribed as aforesaid; And he shall from this plan and from the Assessment Roll for the current year, make out a special Collector's Roll, or make an addition to the ordinary Collector's Roll, having opposite the names of all taxable persons and property within the specified distance of the improvements, the information mentioned in the Form B (page 629); and the various amounts calculated on the increase, at the special rate determined by the rate-payers' requisition and the guarantee, and set down in the last column, according to Form B, shall be collected in addition to all other local rates and taxes in the manner provided by the Assessment Laws of Upper Canada, all the provisions of which, not inconsistent with the sections of this Act, numbered 350 to 356, shall be so applied as to carry out the true intent and meaning thereof. 22 V. c. 39, s. 4, (1859.)

How the special rate for paying such bonus shall be assessed and levied.

**354.** Should the total assessed value of real property within the limits prescribed as aforesaid in any Municipality aiding under the authority of the sections of this Act numbered 350 to 356 in the construction of such works, be found on their completion to have increased less than fifty per cent. over the total assessed value within the same limits at the time the guarantee was entered into, then, and in that case one half the rate determined as aforesaid by the Rate-payers' requisition, shall be calculated on the whole assessed value of real property within the limits aforesaid and levied accordingly; and such half rate on the whole assessed value within the limits aforesaid, shall continue to be assessed and levied until the total assessed value

Provision if the increase in value be less than 50 per cent.

But if it afterwards amounts to 50 per cent. or upwards.

within the limits referred to exceeds the original total assessed value by fifty per cent. thereof; But whenever the total assessed value of real property in a Municipality within the limits aforesaid, exceeds by fifty per cent. or upwards the original assessed value within the same limits, then the whole rate shall be assessed on the increase only, as described in the previous section. 22 V. c. 39, s. 5, (1859.)

Gravel roads to be kept in repair—Municipal Corporation may enter into certain arrangements with the Company.

**355.** All gravel roads constructed by any Company, under the guarantee of an annual bonus from a Municipality as aforesaid, shall be kept in reasonably good repair and shall be free from toll or other charges within the limits of the Municipality, so long as the bonus continues to be paid; and it shall be competent to the Municipal Corporation, to bargain and agree with the Company, either for a reduction of the bonus or the rates aforesaid, or their suspension at a fixed period, for the transfer of the roads to the management of the Municipalities, or for their continuance free of toll and kept in repair by the Company, under a modified bonus; But the rate to be levied shall not in any case exceed the maximum rate consented to by the rate-payers. 22 V. c. 39, s. 6, (1859.)

Guarantee to be binding on the Municipality, &c.

**356.** After a guarantee of a bonus has been given under authority of the sections of this Act, numbered 350 to 355, with the consent of the rate-payers obtained as aforesaid, and action taken towards the commencement of the improvements contemplated, it shall be valid and binding upon the Municipality; and when the works are sufficiently advanced towards completion, then the rates shall be levied as therein described, and the proceeds without deduction paid over as the first annual bonus to the parties who may make the improvements in good faith. 22 V. c. 39, s. 7, (1859.)

**357.** The following are the Forms A and B referred to in sections 350 and 353, respectively.

FORM A, REFERRED TO IN SECTION 350.

*Rate-Payers' Requisition.*

County of                    } We, the undersigned rate-payers of the Town-  
                                   } to wit:                        } ship of                        , in the County of  
 being desirous of having established, (*here describe in general terms the character of the improvements desired.*) and approving of the general provisions and equitable principle of assessment embodied in the Sections of the Consolidated Statute of Upper Canada, respecting Municipal Institutions, Cap. 541 numbered 350 to 356; a copy of which is hereunto attached—hereby authorize and request our Municipal Council to guarantee an annual bonus to any Company or Companies, who shall undertake to construct and carry out the improvements above referred to, agreeably to the provisions, conditions and limitations of the Sections aforesaid of the Act aforesaid; and we do further authorize and consent that a maximum rate of                    per cent. on the increase, as explained in the three hundred and fifty-



fifty-first section of the Act aforesaid, subject to any reduction that the Council may determine, shall or may be levied annually on real property in this section of the for the purpose of paying the said bonus.

Signature of <i>bonâ fide</i> Owner.	Concession.	Lot.	Witness to signature.

FORM B. REFERRED TO IN SECTION 353.

Additional columns to Collector's Roll for Special Assessment.

1	2	3	4	5
No. of miles from Railway or Gravel Road.	Original assessed value (being that of the year during which the Guarantee is given.)	Corrected assessed value for the current year.	Increase in value, being the difference between the amounts in the two next preceding columns.	Amount to be collected ( <i>this is to be calculated at the rate fixed by the Rate-payers' Requisition and the Guarantee on the sums set down in the next preceding column.</i> )

ARBITRATIONS.

**358.** In all cases of arbitration directed by this Act, the proceedings shall be as follows:

- Each party shall appoint one arbitrator and give notice thereof in writing to the other party; and when the other party is a Corporation, the notice shall be given to the Head of the Corporation; Mode of appointing Arbitrators and conducting arbitrations.
- The two arbitrators appointed by or for the parties shall choose a third arbitrator; Third Arbitrator.
- In case of an arbitration between Townships or between Counties, or between a County and a City, or between a County and Town, if for one month after having received such notice the party notified omits appointing an arbitrator; and if for ten days after the second arbitrator has been appointed, Provision in case of neglect to appoint.

appointed, the two arbitrators omit to appoint a third arbitrator, then, in case the arbitration is between Townships, the Warden of the County within which the Townships are situate; or in case the arbitration is between Counties, or, between a County and a City or a Town, the Governor in Council may appoint an arbitrator for the party or arbitrators in default;

In case of exercise of powers as to roads, drains, &c.

4. In case of an arbitration between a Municipal Corporation and the owners of property to be entered upon, taken or used in the exercise of the powers of the Corporation in regard to roads, streets or other communications, or to drains and sewers, if, after the passing of the By-law, any person interested in the property appoints and gives due notice to the Head of the Council of his appointment of an arbitrator to determine the compensation to which such person is entitled, the Head of the Council shall, within three days, appoint a second arbitrator and give notice thereof to the other party, and shall express clearly in the notice what powers the Council intend to exercise with respect to the property (describing it);

If the owner of property fails to name an Arbitrator.

5. If within one month after service on the owner or owners of the property, of a copy of any By-law certified to be a true copy under the hand of the Clerk of the Council, the owner or owners omit naming an arbitrator and giving notice thereof as aforesaid, the Council, or the Head if authorized by By-law, may name an arbitrator on behalf of the Council and give notice thereof to the owner or owners of the property, and the latter shall, within seven days thereafter, name an arbitrator on his or their behalf;

Time for appointing third arbitrator and for award.

6. In either of the cases provided for by the two preceding clauses, the two arbitrators shall within seven days appoint a third arbitrator, and their award shall be made within one month after the appointment;

County Judge to appoint in certain cases.

7. If any such owner or occupier neglects naming an arbitrator within seven days after receiving notice to do so, or if the two arbitrators do not within seven days from the appointment of the lastly named of the two arbitrators, agree on a third arbitrator within seven days after the lastly named arbitrator's appointment, or if an arbitrator refuses or neglects to act, the Judge or the officiating Judge of the County Court, on the application of either party, shall nominate as an Arbitrator a fit person resident without the limits of the Municipality in which the property in question is situate, and such Arbitrator shall forthwith proceed to hear and determine the matters referred to him;

Appointments how to be made.

8. The appointment of all Arbitrators shall be in writing under the hands of the appointors, or in case of a Corporation, under the Corporate Seal and authenticated in like manner as a By-law;

9. The Arbitrators on behalf of a Municipal Corporation or Provisional Corporation, shall be appointed by the Council thereof, or by the Head thereof if authorized by a By-law of the Council ;

Head to appoint for Corporation.

10. In case there are several persons having distinct interests in property in respect of which the Corporation is desirous of exercising the powers referred to in the above fourth sub-section under a By-law in that behalf passed, whether such persons are all interested in the same piece of property or some or one in a part thereof, and some or one in another part thereof, and in case the By-law or any subsequent By-law provides that the claims of all should in the opinion of the Council be disposed of by one award, such persons shall have one month instead of seven days to agree upon and give notice of an arbitrator jointly appointed in their behalf before the County Court Judge shall have power to name an arbitrator for them ;

Where many parties are interested in the same property.

11. Every arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or in case of those who by law affirm, make and subscribe the following affirmation) before any Justice of the Peace :

Arbitrators to be sworn.

“ I, (A. B.), do swear, (or affirm) that I will well and truly Form.  
 “ try the matters referred to me by the parties, and a true and  
 “ impartial award make in the premises according to the  
 “ evidence. So help me God.”

Which Oath or Affirmation shall be filed with the papers of the reference ;

12. In case the award relates to property to be entered upon, taken or used as mentioned in the said fourth sub-section, and in case the By-law did not authorize or profess to authorize any entry or use to be made of the property before an award had been made except for the purpose of survey, or in case the By-law did give or profess to give such authority but the arbitrators find that such authority had not been acted upon, the award shall not be binding on the Corporation unless it is adopted by By-law within six weeks after the making of the award ; and if the same is not so adopted, the original By-law shall be deemed to be repealed, and the property shall stand as if no such By-law had been made, and the Corporation shall pay the costs of the arbitration ;

Award to be binding in certain cases, must be adopted by By-law within a certain time.

13. In the case of any award under this Act which does not require adoption by the Council, or in case of any award to which a Municipal Corporation is a party and which is to be made in pursuance of a submission containing an agreement that the present sub-section of this Act should apply thereto, the arbitrator or arbitrators shall take, and immediately after the making

Notes of the evidence adduced to be taken and filed in certain cases.

making of the award shall file with the Clerk of the Council for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof, and in case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto ;

Award to be made by at least two Arbitrators, and subject to Superior Courts.

Powers of the Courts in such matters.

14. Every award made under this Act shall be in writing under the hands of all or two of the arbitrators, and shall be subject to the jurisdiction of any of the Superior Courts of Law or Equity as if made on a submission by a Bond containing an agreement for making the submission a rule or order of such Court ; And in the cases provided for by the last preceding subsection, the Court shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award, or remit the matters referred or any of them from time to time to the consideration and determination of the same arbitrators, or to any other person or persons whom the Court may appoint as prescribed in the "Common Law Procedure Act," and fix the time within which such further or new award shall be made, or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to the Court to require.

#### POUNDS AND POUND-KEEPERS.

By-laws as to pounds and cruelty to animals.

**359.** The Council of every Township, City, Town and Incorporated Village, may respectively pass By-laws (not being inconsistent with the Consolidated Statute of Canada relating to Cruelty to Animals :)

#### PROVIDING POUNDS.

Pounds to be provided.

1. For providing sufficient yards and inclosures for the safe keeping of such animals as it may be the duty of the Pound Keeper to impound ;

#### ANIMALS RUNNING AT LARGE.

Animals running at large.

2. For restraining or regulating the running at large of any animals ; and providing for impounding them ; and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law ;

Appraising damages done by.

3. For appraising the damages to be paid by the owners of animals impounded for trespassing contrary to the laws of Upper Canada or of the Municipality ;

4. For determining the compensation to be allowed for services rendered, in carrying out the provisions of this Act with respect to animals impounded or distrained and detained in the possession of the distrainer.

Compensation for impounding animals.

#### GENERAL PROVISIONS.

**360.** Until varied or other provisions are made by Act of Parliament, or by By-Laws of the Municipality, the following regulations shall be in force :

Regulations for the government of Pound Keepers.

1. The owner of any animal not permitted to run at large by the regulations of the Municipality, shall be liable for any damage done by such animal, although the fence enclosing the premises was not of the height required by such regulations ;  
1 V. c. 21, s. 35, *at the end.*

Liability for damage done.

2. If not previously replevied, the Pound Keeper shall impound any horse, bull, ox, cow, sheep, goat, pig, or other cattle, or any poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same ;

What animals to be impounded.

3. When the common Pound of the Municipality or place wherein a distress has been made is not secure, the Pound Keeper may confine the animal in any inclosed place within the limits of the Pound Keeper's division within which the distress was made ;

When the common pound is not safe.

4. The person distraining and impounding the animal shall, at the time or within twenty-four hours thereafter, deliver to the Pound Keeper duplicate statements in writing of his demands against the owner for damages (if any), not exceeding twenty dollars, done by such animal ; And shall at the same time give his written agreement under seal (with a surety if required by the Pound Keeper) in the form following, or in words to the same effect :

Statement of demand to be made to Pound Keeper by impounder.

I, (*or we, as the case may be*), do hereby agree that I, (*or we*) will pay to the owner of the (*describing the animal*) by me (*A. B.*) this day impounded, all costs to which the said owner may be put in case the distress by me the said *A. B.* proves to be illegal, or in case the claim for damages now put in by me the said *A. B.* fails to be established ;

Form of agreement with Pound Keeper.

5. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same be distrained by a resident of the Township for straying within his premises, such person, instead of delivering the animal to a Pound Keeper, may retain the animal in his own possession, provided he makes no claim for damage done by the animal, and duly gives the notices hereinafter in that case required of him ;

If the animal be of a certain kind.

If the owner  
be known.

6. If the owner be known to him, he shall forthwith give to the owner notice in writing of having taken up the animal ;

If unknown,  
notice to  
Township  
Clerk.

7. If the owner be unknown to the person taking up and retaining possession of the animal, such person shall, within forty-eight hours, deliver to the Township Clerk a notice in writing of having taken up the animal, and containing a description of the color, age and natural and artificial marks of the animal, as near as may be ;

Duty of Clerk  
thereon.

8. The Township Clerk, on receiving this notice, shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post the notice he receives, or a copy thereof, in some conspicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner ;

If the animals  
are worth \$10  
or over.

9. If the animal or any number of animals taken up at the same time, be of the value of ten dollars or more, the distrainer shall cause a copy of the notice to be published in a Newspaper in the County, if one is published therein, and if not, then in a Newspaper published in an adjoining County, and to be continued therein once a week for three successive weeks ;

Notice of sale.

When sale may  
be made.

10. In case an animal be impounded, notices for the sale thereof shall be given by the Pound Keeper or person who impounded the animal within forty-eight hours afterwards, but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same ;

If animal is  
not impounded,  
but detained.

11. In case the animal be not impounded but is retained in the possession of the party distraining the same, if the animal is a pig, goat or sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or other cattle, the notices shall not be given for two months after the animal is taken up ;

Notice of sale  
unless redeemed.

12. The notices of sale may be written or printed and shall be affixed and continued for three clear successive days, in three public places in the Municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the Pound Keeper, and also of the fence-viewers (if any) ; and the expenses of the animal's keeping ;

13. Every Pound Keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common Pound or in any open or close Pound, or in any inclosed place, shall daily furnish the animal with good and sufficient food, water, and shelter, during the whole time that such animal continues impounded or confined ;

Keeper to feed impounded cattle.

14. Every such person who furnishes the animal with food, water, and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises ;

And may recover the value.

15. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any Justice of the Peace within whose jurisdiction the animal has been impounded, in like manner as fines, penalties or forfeitures for the breach of any By-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace ; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of Pound Keepers' fees and charges that may be established by the By-laws of the Municipality ;

In what manner such value may be recovered.

16. The Pound Keeper, or person entitled so to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereafter mentioned ;

Other mode of enforcing.

17. In case it be by affidavit proved before one of the Justices aforesaid, to his satisfaction, that all the proper notices have been duly affixed and published in the manner and for the respective times above prescribed, then if the owner or some one for him does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound Keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any Pound-keeper but retained the same in his own possession, then, any Pound-keeper of the Township, may publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages (if any) and fees and charges, shall apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable not exceeding twenty dollars, to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound Keeper shall pay such surplus to the Treasurer or Chamberlain of and for the use of the Municipality ;

Sale how effected, &c., and purchase money, how applied.

Disputes re-  
garding such  
demand how  
determined.

18. If the owner within forty-eight hours after the delivery of such statements, as provided in the third sub-section of this clause, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fence-viewers of the Municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the Pound Keeper ;

Fence-viewers  
to view and ap-  
praise damage.

19. Such fence-viewers or any two of them shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the Statutes or By-laws in that behalf at the time of the trespass ; and if it was, a lawful fence then they shall appraise the damages committed, and, within twenty-four hours after having made the view, shall deliver to the Pound Keeper a written statement signed by at least two of them of their appraisal, and of their lawful fees and charges ;

Penalty for ne-  
glect of duty by  
viewers.

20. Any fence-viewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of two dollars, to be recovered for the use of the Municipality, by summary proceeding before a Justice of the Peace upon the complaint of the party aggrieved, or the Treasurer or Chamberlain of the Municipality ;

Proceedings  
where viewers  
decide against  
the legality of a  
fence.

21. If the fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the Pound Keeper, who shall, upon payment of all lawful fees and charges, deliver the animal to the owner, if claimed before the sale thereof, but if not claimed, or if such fees and charges be not paid, the Pound Keeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices ;

Liability of  
Pound Keeper  
refusing to feed  
animal im-  
pounded.

22. In case any Pound Keeper or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide and supply the animal with good and sufficient food, water, and shelter as aforesaid, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than one dollar nor more than four dollars.

Recovery and  
enforcement of  
penalties.

23. Every fine and penalty, imposed by this Act, may be recovered and enforced, with costs, by summary conviction, under the summary convictions Act, before any Justice of the Peace of the County, or of the Municipality, in which the offence was committed ; and, in default of payment, the offender may be committed to the Common Gaol, House of Correction, or Lock-up-House of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting  
and

Imprisonment  
in default of  
payment.



and committing Justice, not exceeding fourteen days, unless the fine and penalty, and costs, including the costs of committal, be sooner paid ;

24. Upon the hearing of any information or complaint exhibited or made under this Act, any person (including the person) giving or making the information or complaint, shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty on the conviction of the offender ;

Who may be a witness.

25. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner : one moiety to the City, Town, Village or Township, in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice may seem proper.

Application of penalties.

#### ADMINISTRATION OF JUSTICE AND MATTERS OF POLICE.

##### CITIES TO BE COUNTIES, &c.

**361.** Every City and Town separated, shall be a County of itself for Municipal purposes, and for such judicial purposes as are herein specially provided for in the case of all Cities, but for no other.

In what respect Cities to be Counties.

##### JUSTICES OF THE PEACE.

**362.** The Head of every Council, the Aldermen of a City, the Justices of the Peace and the Reeve of every Town, and the Deputy Reeve of every Township, Town and Incorporated Village, shall *ex officio* be Justices of the Peace for the whole County or union of Counties in which their respective Municipalities lie, and shall not be disqualified by being an Attorney, Solicitor or Coroner.

Heads of Councils, Mayors and Reeves to be Justices of the Peace.

**363.** Justices of the Peace for any town, shall have the same property qualification and take the same oaths as other Justices of the Peace, but no Warden, Mayor, Recorder, Police Magistrate, Alderman, Reeve or Deputy Reeve, after taking the oaths or making the declarations as such, shall require to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace.

Qualification and oaths of Councillors as Justice of the Peace when dispensed with.

**364.** When a Town has been erected into a City and the Council of the City duly organized, every Commission of the Peace theretofore issued for the Town, shall cease.

When Towns become Cities, former Commissions of Peace to cease.

**365.** Justices of the Peace for a County in which a City lies shall as such have no jurisdiction over offences committed in the City, and the warrants of County Justices shall require

County Justices to have no jurisdiction in Cities, but

Quarter Sessions may be held therein.

require to be endorsed before being executed in a City in the same manner as required by law when to be executed in a separate County; But the general and adjourned Quarter Sessions of the Peace for the County may be held and the jurisdiction thereof exercised within the City.

Governor may appoint Justices of the Peace for Towns.

**366.** Nothing herein contained shall limit the power of the Governor to appoint under the Great Seal of the Province any number of Justices of the Peace for a Town, or shall interfere with the Jurisdiction of Justices of the Peace for the County in which a Town is situate over offences committed in the Town, except only so far as respects offences against the By-laws of the Town and penalties for refusal to accept office or to make the declaration of office in the Town as to which Jurisdiction shall be exercised exclusively by the Police Magistrate or Mayor or Justices of the Peace for the Town.

Jurisdiction of County Justices in Towns.

Mayor may call out Possé.

**367.** The Mayor of any City or Town may call out the Possé to enforce the law within his Municipality should exigencies require it, but only under the same circumstances in which the Sheriff of a County may now by law do so.

Powers of Heads of Councils to administer oaths.

**368.** The Head of every Council, or in his absence the Chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the Council.

#### POLICE OFFICE.

Public Offices in Cities and Towns.

**369.** The Council of every Town and City shall establish therein a Police Office, and the Police Magistrate, or in his absence, or where there is no Police Magistrate, the Mayor of the Town or City, shall attend at such Police Office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace; and any Justice of the Peace having Jurisdiction in a Town may, at the request of the Mayor thereof, act in his stead at the Police Office; But, except in cases of urgent necessity, no attendance is required on Sunday, Christmas Day, or Good Friday, or any day appointed by Proclamation for a Public Fast or Thanksgiving.

#### RECORDER'S COURTS AND POLICE MAGISTRATES.

##### RECORDER'S COURT.

Recorder's Court in Cities.

Jurisdiction of.

**370.** There shall be in every City a Court of Record to be called the Recorder's Court of the City; and therein the Recorder alone, or assisted by one or more of the Aldermen, shall preside; or in the absence of the Recorder, or when there is no Recorder, the Mayor, (and in his absence, one of the Aldermen elected by themselves) assisted by one or more Aldermen, shall preside; and the Court shall, as to crimes and offences committed

committed in the City and as to matters of civil concern therein, have the same Jurisdiction and powers and use the like process and proceedings as Courts of Quarter Sessions of the Peace in Counties.

#### RECORDERS AND POLICE MAGISTRATES.

**371.** The Recorder shall be a Barrister of Upper Canada, of not less than five years' standing. Recorder, qualification of.

**372.** Every Recorder shall receive a salary of not less than one thousand dollars, and his salary shall be defrayed from and out of the fee Fund from which the salaries of County Judges are defrayed. Salary of Recorder.

**373.** Every Police Magistrate shall receive a salary of not less than four hundred dollars per annum, to be fixed by and to be paid quarterly by the Council. Salary of Police Magistrate.

**374.** A Recorder or a Police Magistrate shall not in the first instance be appointed for any Municipality, until the Council thereof communicates to the Governor its opinion that such an Officer is required. When Recorder or Police Magistrate to be appointed.

**375.** Every Recorder and Police Magistrate shall be appointed by the Crown, and shall hold office during the pleasure of the Crown; and shall *ex officio* be a Justice of the Peace for the City or Town for which he holds Office as well as for the County in which the City or Town is situate. To be appointed by the Crown.

#### THE CLERK.

**376.** The Clerk of the Council of every City or Town, or such other person as the Council of the City or Town may appoint for that purpose, shall be the Clerk of the Police Office thereof, and perform the same duties and receive the same emoluments as Clerks of Justices of the Peace, and the City Clerk, or such other person as the Council of the City may appoint for that purpose, shall also be Clerk of the Recorder's Court, and shall perform the same duties and receive the same emoluments as Clerks of the Peace; and in case the said Clerk or other person is paid by a fixed salary, the said emoluments shall be paid by him to the municipality, and form part of its funds. Clerk of Recorder's Court and Police Office.

#### SESSIONS OF RECORDER'S COURT.

**377.** The Recorder's Court shall hold four Sessions in every year, and such Sessions shall commence on the second Monday in January, and on the first Monday in the months of April, July and November. Sessions of Recorder's Court.

Jurors.

**378.** The panels of Grand Jurors shall consist of twenty-four persons, and the panels of the Petit Jurors of not less than thirty-six nor more than sixty persons; and all such persons shall be residents of the City, selected to serve as Jurors under the Laws relating to Jurors.

High Bailiff to  
summon.

**379.** The High Bailiff of a City, not made a separate County for all purposes, shall ballot for and summon the Jurors under a Precept signed by the Recorder, or by the Mayor, or the Alderman elected to act in the Recorder's place, in the manner appointed by the Laws relating to Jurors.

Costs of persons  
acquitted  
of misdemeanor.

**380.** On the acquittal of any person tried for misdemeanor in a Recorder's Court the presiding Officer shall, if the Court is satisfied that there was reasonable and probable cause for the prosecution, order the costs thereof to be taxed by the Clerk and to be paid out of the City Funds.

## EXPENSES OF RECORDER'S COURT.

Expenses of  
criminal Justice in Recorder's Court  
how paid.

**381.** The expenses of the administration of justice in criminal cases in the Recorder's Court, shall be defrayed out of the Consolidated Revenue Fund, in like manner and to the like extent as the expenses attending the administration of justice in criminal cases in the several Courts of Quarter Sessions in Upper Canada.

INVESTIGATIONS BY RECORDER UNDER RESOLUTION OF CITY  
COUNCIL.Investigation  
by Recorder of  
charges of malfeasance.

**382.** In case the Council of any City at any time pass a resolution requesting the Recorder of the City to investigate any matter to be mentioned in the resolution and relating to a supposed malfeasance, breach of trust or other misconduct on the part of any member of the Council or Officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of the Member, Officer or other person, to the City, or in case the Council of any City sees fit to cause inquiry to be made into or concerning any matter connected with the good Government of the City, or the conduct of any part of the public business thereof, and if the Council at any time passes a resolution requesting the Recorder of the City to make the inquiry, the Recorder shall inquire into the same, and shall for that purpose have all the powers of Commissioners under the Consolidated Statute of Canada, respecting inquiries concerning Public Matters and official Notices, And the Recorder shall, with all convenient speed, report to the Council the result of the inquiry and the evidence taken thereon.

To have powers  
under Consolidated  
Statutes of Canada,  
Cap. 13.

## CITY DIVISION COURT.

**383.** The Governor may, by Letters Patent under the Great Seal, appoint the Recorder to preside over and hold the Division Court of that Division of the County which includes the City; and in such case, as long as the Letters Patent remain unrevoked, the Recorder shall have the powers and privileges and perform the duties otherwise belonging to the County Court Judge as Judge of the Division Court, and during such period the authority and duties of the County Judge or Judge of such Division Court shall cease, except as in this Act provided.

Division Court to be held by Recorder.

**384.** The Governor in Council shall fix an annual salary to be paid to the Recorder for performing such duties, regard being had in fixing the same to the population resident within the Jurisdiction of such Division Court, the amount accruing from the Court to the fee fund, the amount of the salary of the Recorder as such, and the amount of the salaries of the County Court Judges in Upper Canada, and the salary shall be subject to be altered, in the like way, and shall be paid out of the like Fund and in the like manner as the salary of the County Judge in and for the County in which the City is situated.

Salary as Judge of Division Court.

**385.** While a Recorder is authorized to hold the Division Court, he shall not practise as a Barrister, Advocate, Attorney, Solicitor or Proctor in any Court of Law or Equity.

Recorder when not to practise at the Bar.

**386.** In case of the Recorder's illness or unavoidable absence, or absence by leave of the Governor while such Letters Patent are in force, the Judge of the County Court of the County in which the City lies, may officiate for the Recorder, as Judge of such Division Court, and in every other capacity pertaining to the office of the Recorder as Judge of such Division Court; or the Recorder may, by an instrument in writing under his hand and seal, appoint a Barrister of Upper Canada to act for him as Judge of such Division Court with like powers as aforesaid; but no such appointment shall continue in force for more than one month, unless renewed in like form.

Absence of Recorder provided for.

Appointment of Deputy.

**387.** Every such instrument shall contain a recital of the cause which renders the appointment therein contained necessary; and shall be executed in triplicate; and the Recorder shall file one of the triplicate originals in the Office of the Clerk of such Division Court, and shall deliver or send to the person so named to officiate for him another thereof, and shall transmit the third to the Provincial Secretary for the information of the Governor.

Form of.

**388.** The Governor may, by an instrument under his Privy Seal, annul any such appointment; and may, if he thinks fit, by the same instrument or any other instrument under

Governor may supersede and substitute another.

his Privy Seal, appoint another Barrister of Upper Canada to act for the Recorder in the place of the Barrister appointed by the Recorder.

#### JURORS AND WITNESSES.

##### COMPETENCY.

Competency of Jurors and witnesses.

**389.** In any prosecution, suit, action or proceeding to which a Municipal Corporation is a party, no Member, Officer or servant of the Corporation shall, on account of his being such, be an incompetent witness, or be liable to challenge as a Juror.

##### EXEMPTIONS.

Exemptions of Citizens as Jurors.

**390.** The inhabitants of a City, not a separate County for all purposes, shall be exempt from serving on juries at any other than the City Courts and Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol Delivery for the County in which the City is situate, and on trials at Bar before the Superior Courts of Common Law.

#### HIGH BAILIFF AND CONSTABLES.

Bailiffs and Constables.

**391.** Until the organization of the Board of Police hereinafter mentioned, the Council of every City shall appoint annually a High Bailiff, but may provide by By-law that the offices of High Bailiff and Chief Constable shall be held by the same person.

Chief Constable.

**392.** Until such organization, the Council of the City or Town shall appoint one Chief Constable for the Municipality, and one or more Constables for each Ward, and the persons so appointed shall hold office during the pleasure of the Council.

Arrests by Constables for alleged breaches of the Peace (not within view) when sanctioned.

**393.** In case any person complains to a Chief of Police, or to a Constable or Bailiff in a Town or City, of a breach of the Peace having been committed, and in case such officer has reason to believe that a breach of the Peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape or to prevent a renewal of the breach of the Peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the Mayor or Sitting Justice, such officer may, without warrant, arrest the person charged in order to his being conveyed as soon as conveniently may be before the Magistrate, Mayor or Justice, to be dealt with according to Law.

**394.** Until the organization of a Board of Police, every Mayor, Recorder and Police Magistrate may, within his jurisdiction, suspend from office for any period in his discretion, the Chief Constable, or Constable of the Town or City, and may, if he chooses, appoint some other person to the office during such period; and in case he considers the suspended Officer deserving of dismissal, he shall, immediately after suspending him, report the case to the Council, and the Council may dismiss such Officer, or may direct him to be restored to his office after the period of his suspension has expired; and the Recorder and City Council respectively shall have the like powers as to the High Bailiff of a City.

Until a Board of Police is organized, Mayor &c., may suspend Chief Constable, &c., from office.

**395.** During the suspension of such officer he shall not be capable of acting in his office except by the written permission of the Mayor, Recorder or Police Magistrate who suspended him, nor during such suspension shall he be entitled to any salary or remuneration.

Salary to be withheld during suspension.

#### BOARD OF POLICE,—OF WHOM COMPOSED.

**396.** In every City there is hereby constituted a Board of Commissioners of Police, and such Board shall consist of the Mayor, Recorder and Police Magistrate, and if there is no Recorder or Police Magistrate, or if the offices of Recorder and Police Magistrate are filled by the same person, the Council of the City shall appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require.

Board of Police of whom composed.

#### QUORUM.

**397.** A majority of the Board shall constitute a quorum, and the acts of a majority shall be considered acts of the Board.

A majority to constitute a quorum.

#### NUMBER OF THE POLICE FORCE.

**398.** The Police Force shall consist of a Chief Constable and as many Constables and other Officers and Assistants as the Council from time to time deems necessary, but not less in number than the Board reports to be absolutely required.

Number of to be determined by the Council.

#### APPOINTMENT OF POLICEMEN.

**399.** The members of the Police Force shall be appointed by and hold their offices at the pleasure of the Board.

The Policemen to be appointed by the Board.

#### POLICE REGULATIONS.

**400.** The Board shall, from time to time, make such regulations as they may deem expedient, for the government of the Force.

Board to make Police Regulations.

Force and for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties.

POLICE SUBJECT TO THE BOARD, &c.

The Policemen to be subject to the Board.

**401.** The Constables shall obey all the lawful directions, and be subject to the government of the Board, and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to Constables duly appointed.

REMUNERATION AND CONTINGENT EXPENSES.

Duties of.

Remuneration and contingent expenses.

**402.** The Council shall fix and pay a reasonable remuneration for and to the respective members of the Force, and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries as the Board may from time to time deem requisite and require for the accommodation and use of the Force.

COURT HOUSES AND PRISONS.

GAOLS AND COURT HOUSES.

County Council may pass By-laws for buildings.

**403.** Every County Council may pass By-Laws for erecting, improving and repairing a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality, and shall preserve and keep the same in repair, and provide the food, fuel and other supplies required for the same.

Gaols and Court Houses to be common to Counties and Cities ;

**404.** The Gaol, Court House and House of Correction of the County in which a Town or City, not separated for all purposes from a County, is situate, shall also be the Gaol, Court House and House of Correction of the Town or City ; and shall in the case of such a City continue to be so until the Council of the City otherwise directs ; and the Sheriff, Gaoler and Keeper of the Gaol and House of Correction shall receive and safely keep until duly discharged, all persons committed thereto by any competent authority of the Town or City.

Compensation how to be regulated and made.

**405.** While a City or Town uses the Court House, Gaol or House of Correction of the County, the City or Town shall pay to the County such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon or be settled by arbitration under this Act.

When the amount may be revised.

**406.** In case after the lapse of five years from such compensation having been so agreed upon, or awarded, or having been settled by Act of Parliament, and whether before or after the



the passing of this Act, it appears reasonable to the Governor in Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an Order in Council, direct that the then existing arrangement shall cease after a time named in the order, and after such time the Councils shall settle anew, by agreement or by arbitration under this Act, the amount to be paid from the time so named in the Order.

**407.** The Council of every City may erect, preserve, improve and provide for the proper keeping of a Court House, Gaol, House of Correction and House of Industry upon lands being the property of the Municipality, and may pass By-Laws for all or any of such purposes.

City Councils may erect Court House, Gaol, House of Correction and House of Industry.

**408.** In case of a separation of a Union of Counties, all rules and regulations, and all matters and things in any Act of Parliament for the regulation of or relating to Court Houses or Gaols in force at the time of the separation, shall extend to the Court House and Gaol of the Junior County.

Upon separation, Gaol and Court House regulations to continue.

#### LOCK-UP-HOUSES.

**409.** The Council of every County may establish a Lock-up-House or Lock-up-Houses within the County, and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of every such Lock-up-House, and may direct the payment of the salary out of the funds of the County.

Lock-up-houses may be established by County Councils.

**410.** Every Lock-up-House shall be placed in the charge of a Constable specially appointed for that purpose, by the Magistrates of the County at any General Quarter Sessions of the Peace therefor.

A Constable to be placed in charge of.

**411.** Any Justice of the Peace of the County may direct by warrant in writing under his hand and seal, the confinement in a lock-up-house within his County, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement in such Lock-up-House, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to a Lock-up-House instead of to the Common Gaol or other house of Correction, any person convicted on view of the Justice, or summarily convicted before any Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any Statute or Municipal By-law.

Who liable to confinement in, &c.

Expense of conveying and maintaining prisoners.

**412.** The expense of conveying any prisoner to, and of keeping him in a Lock-up-House shall be defrayed in the same manner as the expense of conveying him to and keeping him in the Common Gaol of the County.

Previous Lock-up houses to continue.

**413.** Nothing herein contained shall affect any Lock-up-House heretofore lawfully established, but the same shall continue to be a Lock-up-House as if established under this Act.

Lock-up houses for persons sentenced to short imprisonment.

**414.** The Council of every City, Town and Incorporated Village may, by By-laws, establish, maintain and regulate lock-up-houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any By-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or house of Correction either for trial or in the execution of any sentence.

#### HOUSES OF INDUSTRY AND REFUGE.

County Councils may erect and appoint Inspectors of Houses of Industry.

**415.** The Council of every County may establish a House of Industry and House of Refuge, and provide by By-law for the erection and repair thereof, and for the appointment and duties of Inspectors, Keepers, Matrons and other servants for the superintendence, care and management of such House of Industry or of Refuge, and in like manner make rules and regulations (not repugnant to law) for the government of the same.

Who liable to be committed thereto.

**416.** Any two of Her Majesty's Justices of the Peace, or of the Inspectors appointed as aforesaid, may, by writing under their hands and seals, commit to the House of Industry or of Refuge, to be employed and governed according to the rules, regulations and orders of the House:

Indigent.

1. All poor and indigent persons who are incapable of supporting themselves;

Idle.

2. All persons without means of maintaining themselves and able of body to work and who refuse or neglect so to do;

Lewd.

3. All persons leading a lewd, dissolute, or vagrant life, and exercising no ordinary calling, or lawful business sufficient to gain or procure an honest living;

Frequenters of Public Houses.

4. And all such as spend their time and property in public houses, to the neglect of any lawful calling;

5. And Idiots.

Punishment of refractory inmates.

**417.** Every person committed to the House of Industry or of Refuge, if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person

person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of the House of Industry or of Refuge in that behalf.

**418.** The Inspectors shall keep an account of the charges of erecting, keeping, upholding and maintaining the House of Industry or of Refuge, and of all materials found and furnished therefor, together with the names of the persons received into the House, as well as of those discharged therefrom, and also of the earnings, and such account shall be rendered to the County Council every year, or oftener when required by a By-law of the Council, and a copy thereof shall be presented to each Branch of the Legislature.

Inspectors to keep and render accounts of expenses, &c.

#### WORK-HOUSES.

**419.** The Council of every City and Town may respectively pass By-laws :

1. For erecting and establishing within the City or Town, or on such Industrial farm, or on any ground held by the corporation for public exhibitions, a work-house or house of correction, and for regulating the government thereof ;

Work-houses in Cities and Towns and Houses of Correction.

2. For committing or sending, with or without hard labour, to the work-house or house of correction, or to the Industrial farm, by the Mayor, Recorder, Police Magistrate or two Justices of the Peace for the City or Town respectively, such description of persons as may by the Council be deemed, and by By-law be declared expedient ; and such farm or ground held as aforesaid, shall, for the purposes in this sub-section mentioned, be deemed to be within the City or Town and the jurisdiction thereof.

Who liable to be committed thereto.

#### THE CARE OF GAOLS AND COURT HOUSES, &c.

**420.** The Sheriff shall have the care of the County Gaol, Gaol offices and yard, and Gaoler's apartments, and the appointment of the keepers thereof.

Custody of Gaols and Court Houses.

**421.** The County Council shall have the care of the Court House and of all offices and rooms connected therewith, whether the same forms a separate building or is connected with the Gaol, and shall have the appointment of the keepers thereof ; and shall from time to time provide all necessary and proper accommodation for the Courts of Justice other than the Division Courts and for all officers connected with such Courts.

County Council to appoint keepers, &c.

**422.** In any City not being a separate County for all purposes, but having a Gaol or Court House separate from the County

City Gaols to be regulated by By-law.

County Gaol or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council.

## FALSE DECLARATIONS.

Wilful false declarations to be perjury.

**423.** The wilful and corrupt making of any false statement in any declaration required or authorized by this Act, shall be a misdemeanor punishable as wilful and corrupt perjury.

## INTERPRETATION CLAUSE.

Interpretation of words.

**424.** Unless otherwise declared or indicated by the context, whenever any of the following words occur in this Act, the meanings hereinafter expressed, attach to the same, namely :

Municipality.

1. The word "Municipality" means any locality the inhabitants of which are incorporated under this Act, but it does not mean a Police Village ;

Council.

2. The word "Council" means the Municipal Council or Provisional Municipal Council, *as the case may be* ;

County.

3. The word "County" means County, Union of Counties or United Counties, or Provisional County, *as the case may be* ;

Township.

4. The word "Township" means Township, Union of Townships or United Townships, *as the case may be* ;

Land, Real estate.

5. The words "Land" "Lands," "Real Estate" "Real Property," respectively, include lands, tenements and hereditaments and all rights thereto and interests therein ;

Highway, roads, &c.

6. The words "Highway," "Road" or "Bridge," mean respectively a Public Highway, Road or Bridge ;

Electors.

7. The word "Electors" means the persons entitled for the time being to vote at Municipal Elections in the Municipality, Ward, or Electoral Division or Police Village, *as the case may be* ;

Town Reeve.

8. The term "Reeve" includes the Deputy Reeve when there is a Deputy Reeve for the Municipality ;

Next day.

9. The words "next day" are not to apply to or include Sunday or Statutory Holidays.

## CONFIRMING AND SAVING CLAUSES.

Exception.

**425.** So much of the Schedules in either of the Municipal Corporation Acts of 1849 and of 1850, as defined the limits or boundaries of any Cities or Towns, being Schedule B of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten

ten and eleven, and Schedule C of the same Act numbers one, two and three, and Schedule B of the Act of 1850, numbers one, five, twelve, thirteen, fourteen and fifteen ;

And also so much of Schedule D of the said Acts of 1849 and 1850, as relates to Amherstburg, and also so much of the two hundred and third section of the said Act of 1849, and so much of any other sections of either of the said Acts relating to any of the Schedules thereof as have been acted upon or as are in force and remain to be acted upon at the time this Act takes effect, and all Proclamations, and special statutes by or under which Cities and other Municipalities have been erected, so far as respects the continuing of the same and the boundaries thereof, shall continue in force.

Further excep-  
tion.

Acts formerly  
repealed to con-  
tinue repealed.

**426.** All proceedings on behalf of or against any existing Municipal Corporation, or Police Trustees pending when this Act takes effect, shall be continued under this Act, in the name in which the same are then pending.

Pending pro-  
ceedings to  
continue.

**427.** All things lawfully done under former enactments are confirmed, except any matter which has been, or within one year after the passing of this Act, may be made the subject of proceedings at law or in equity.

Past transac-  
tions confirm-  
ed.

**428.** All offences, neglects, fines, penalties, moneys, debts and other matters and things which immediately before this Act goes into effect might have been prosecuted, punished, enforced or recovered under any former Municipal Act, may be prosecuted, punished, enforced or recovered under this Act, in the same manner, within the same time, and in the same name, and by the same process and proceedings, as if the same respectively had been committed or incurred or had accrued or become due or payable immediately after the taking effect of this Act.

Previous  
offences, penal-  
ties, &c., may  
be prosecuted  
and enforced.

## C A P . L V .

### An Act respecting the Assessment of Property in Upper Canada.

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

#### PRELIMINARY PROVISIONS.

**1.** This Act may be cited as " The Consolidated Assess- Short Title.  
ment Act of Upper Canada." 16 V. c. 182, s. 93.

**2.** In this Act, the word " County," and the word " Town- Interpretation-  
ship," include a Union of Counties or of Townships, as the  
case

case may be, while such Unions continue.—The words “County Council,” include “Provisional County Council,”—the word “Town,” means “Incorporated Town,”—and the word “Village,” means “Incorporated Village,”—the word “Ward,” does not apply to a Township Ward,—and the words “Local Municipality,” does not include Counties or United Counties, unless there is something in the subject or context requiring a different construction. 16 V. c. 182, s. 90.

Meaning of words lands, &c.

**3.** The terms “Land,” “Real Property,” and “Real Estate,” respectively, include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty. 16 V. c. 182, s. 3.

Meaning of personal property.

**4.** The terms “Personal Estate” and “Personal Property” include all goods, chattels, shares in incorporated companies, money, notes, accounts and debts at their full value, and all other property, except land and real estate and real property as above defined, and except property herein expressly exempted. 16 V. c. 182, s. 3.

Meaning of property.

**5.** The term “property” includes both real and personal property as above defined. 16 V. c. 182, s. 3.

Unoccupied land how designated.

**6.** Unoccupied land owned by a person not resident and not having a legal domicile or place of business in the Township, Village, Town or City where the same is situate, or whose residence or domicile or place of business therein cannot, upon diligent enquiry by the assessor be found, and who has not signified to the Assessor personally or in writing, that he owns such land and desires to be assessed therefor, shall be denominated “Lands of non-residents.” 16 V. c. 182, s. 8.

In the case of Railroad Company, &c.

**7.** The real estate of a Railroad Company, situated in a Municipality other than that where the office of the said Company is held, is not to be considered land of non-residents. 16 V. c. 182, s. 8.

All taxes to be levied equally upon the rateable property.

**8.** All municipal, local or direct taxes or rates, shall, when no other express provision has been made in this respect, be levied equally upon the whole rateable property, real and personal, of the Municipality or other locality according to the assessed value of such property, and not upon any one or more kinds of property in particular or in different proportions. 16 V. c. 182, s. 13.

#### PROPERTY LIABLE TO TAXATION.

What property liable to taxation are exempted.

**9.** All land and personal property in Upper Canada shall be liable to taxation, subject to the following exemptions, that is to say: 16 V. c. 182, s. 2.

EXEMPTIONS.

## EXEMPTIONS.

1. All property vested in or held by Her Majesty or vested in any public body, or body corporate, officer or person in trust for Her Majesty, or for the public uses of the Province, and also all property vested in or held by Her Majesty or any other person or body corporate in trust for or for the use of any tribe or body of Indians; and either unoccupied or occupied by some person in an official capacity ; All property belonging to Her Majesty.  
Indian lands.
2. When any property mentioned in the preceding subsection number one is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable ; 16 V. c. 182, ss. 2, 6. Unless occupied.
3. Every place of worship, church-yard or burying ground ; Places of worship, &c.
4. The real estate of every University, College, incorporated Grammar School, or other incorporated Seminary of learning, whether vested in a Trustee or otherwise, so long as such real estate is actually used and occupied by such Institution, but not if otherwise occupied or if unoccupied ; School lands.
5. Every Public School House, Town or City Hall, Court House, Gaol, House of Correction, Lock-up-House, and public Hospital with the land attached thereto, and the personal property belonging to each of them ; School House, City Hall, &c.
6. Every Public Road and Way or Public Square ; Public squares.
7. The property belonging to any County, City, Town, Township or Village, whether occupied for the purpose, thereof, or unoccupied ; Municipal property.
8. The Provincial Penitentiary, and the land attached thereto ; Provincial Penitentiary.
9. Every Industrial Farm, Poor House, Alms House House of Industry, and Lunatic Asylum, and every house belonging to a Company for the reformation of offenders, and the real and personal property belonging to or connected with the same ; Houses, &c., used for philanthropic purposes.
10. The property of every Public Library, Mechanics' Institute, and other public, literary or scientific institution, and of every Agricultural Society ; Scientific Institutions.
11. The personal property and official income of the Governor of the Province ; Personal property of Governor.
12. The full or half pay of any one in any of Her Majesty's Naval or Military services, or any pension, salary or other Imperial salaries, pensions

- or gratuities,  
personal prop-  
erty of officers  
on full pay.
- other gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province, and the personal property of any person in such Naval or Military services on full pay, or otherwise in actual service ;
- Pensions under \$200.
13. All pensions under two hundred dollars a year payable out of the public moneys of this Province ;
- Income of Farmers.
14. The income of a farmer derived from his farm, and the crops the produce thereof for the current year ;
- Personal property secured by mortgage.
15. So much of the personal property of any person as is secured by a mortgage upon land, or is due to him on account of the sale of land, the fee or freehold of which is vested in him ;
- Bank stock.
16. The stock held by any person in any Chartered Bank so long as there is a special tax upon bank issues ;
- Railroad stock.
17. The stock held by any person in any Railroad Company ;
- Stock owned out of the Province.
18. All property, stocks and other securities which any party may own out of this Province ;
- Personal property to amount of debts due.
19. So much of the personal property of any person as is equal to the just debts owed by him, except such debts as are secured by mortgage upon his real estate, or may be unpaid on account of the purchase money therefor ;
- Personalty under \$100.
20. The nett personal property of any person, provided the same be under one hundred dollars in value ;
- Minister's salary under \$1200.
21. The stipend or salary of any Minister of Religion from whatever source derived, as long as the same does not exceed one thousand two hundred dollars annually ;
- Household effects, books, &c.
22. Household effects, books and wearing apparel. 16 V. c. 182, s. 6.
- How rates to be estimated.
10. In Counties and Townships the rates shall be calculated at so much in the dollar upon the actual value of all the real and personal property liable to assessment therein, and in Cities, Towns and Villages, at so much in the dollar upon the yearly value of all real and personal property liable to assessment therein. 16 V. c. 182, s. 31. *The end.*
- Estimates to be made.
11. The Council of every Municipality shall every year make estimates of all sums which may be required for the lawful purposes of the County, City, Town, Township, or Village for the year in which such sums are required to be levied, each local Municipality making due allowance for the cost of collection and for the abatements and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents



non-residents which may not be collected. 16 V. c. 182, s. 31.

**12.** The Council of every Municipality may pass one By-law or several By-laws authorizing the levying and collecting of a rate or rates of so much in the dollar upon the assessed value of the property therein, as the Council deem sufficient to raise the sums required on such estimates. 16 V. c. 182, s. 31.

By-laws for raising money by rate.

**13.** If the amount collected falls short of the sums so required, the Council may direct the deficiency to be made up from any unappropriated fund belonging to the Municipality. 16 V. c. 182, s. 31.

If the amount collected falls short.

**14.** If there be no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. 16 V. c. 182, s. 31.

Estimates to be reduced proportionably.

**15.** If the sums collected exceed the estimates, the balance shall form part of the General Fund of the Municipality, and be at the disposal of the Council, unless otherwise specially appropriated; but if any portion of the amount has been collected on account of a special tax upon any particular locality in the Municipality, no less a sum shall be appropriated to the special local object than has been collected. 16 V. c. 182, s. 31.

If sums collected exceed estimate, the balance to be part of the General Fund, and to be at the disposal of the Council.

**16.** The taxes or rates levied or imposed for any year shall be considered to have been imposed for the then current year commencing with the first day of January, and ending with the thirty-first day of December, unless otherwise expressly provided for by the enactment or By-law under which the same are directed to be levied. 16 V. c. 182, s. 14.

Yearly taxes to be computed from 1st January, unless otherwise ordered.

#### ASSESSORS AND COLLECTORS.

**17.** The Council of every Municipality, except Counties, shall annually appoint such number of Assessors and Collectors for the Municipality as they deem necessary. 16 V. c. 182, s. 15.

One or more Assessors may be appointed.

**18.** And may appoint and assign to each Assessor and Collector the Assessment District or Districts therein, within which he shall act, and may prescribe regulations for governing the Assessors in the performance of their duties. 16 V. c. 182, s. 16.

Townships or Cities, Towns, &c., may be divided into Assessment Districts.

#### HOW ASSESSMENTS TO BE PROCEEDED WITH.

**19.** The Assessor or Assessors shall prepare an Assessment Roll, in which, after diligent enquiry, he or they shall set down according to the best information to be had:

Assessment-Roll to be prepared, its form, contents, &c.

1. The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the Municipality who have taxable property therein, or in the District for which such Assessor or Assessors has or have been respectively appointed;

2. And of all non-resident Freeholders who have either in person or in writing, required the Assessor to enter their names and the land owned by them in the Roll; and

3. The description and extent or amount of property assessable against each;

4. And such particulars in separate columns as follows:

Column 1,—Name of taxable party;

Column 2,—Number of Concession, Street, Square, or other designation of the local division in which the real property lies;

Column 3,—Number of Lot, House, &c., in such division;

Column 4,—Number of Acres, or other measures, shewing the extent of the property;

Column 5,—(applying only to Cities, Towns and Villages)—Rental of each separate parcel of real property;

Column 6,—(applying only to Cities, Towns and Villages)—Yearly value of each separate parcel, when the rental is not assessed;

Column 7,—(applying only to Townships)—Actual value of each separate parcel;

Column 8,—Actual value (*or* yearly value) of all the real property of the party assessed;

Column 9,—Amount of taxable income;

Column 10,—Total value of personal property;

Column 11,—(applying only to Cities, Towns and Villages)—Yearly value of the same. 16 V. c. 182, s. 17.

Land to be assessed in the Municipality or Ward.

**20.** Land shall be assessed in the local Municipality or Ward in which the same lies, and this shall include the land of Incorporated Companies as well as other land. 16 V. c. 182, s. 7.

Land to be assessed in owner's name.

**21.** Land occupied by the owner shall be assessed in his name. 16 V. c. 182, s. 7.

If land not occupied by the owner, but

**22.** As to land not occupied by the owner, but of which the owner is known, and who, at the time of the Assessment being made, resides or has a legal domicile or place of business in the Township,

Township, Village, Town or City, or who has signified personally or by writing to the Assessor that he owns the land and desires to be assessed therefor, the same shall be assessed against such owner alone if the land is unoccupied, or against the owner and occupant if such occupant be any other person than the owner. 16 V. c. 182, s. 7.

owner is known.

**23.** If the owner of the land be not resident, or be unknown, and has not requested to be assessed therefor in the manner in the last section mentioned, then if the land is occupied, it shall be assessed in the name of and against the occupant, but if the land be not occupied, then it shall be assessed as land of a non-resident. 16 V. c. 182, s. 7.

If owner non-resident and unknown.

**24.** When the land is assessed against both the owner and occupant, the assessor shall on the Roll add to the name of the owner the word "owner," and to the name of the occupant the word "occupant," and the taxes may be recovered from either or from any future owner or occupant, saving his recourse against any other person. 16 V. c. 182, s. 7.

If land assessed against owner and occupant, taxes may be recovered from any future owner or occupant.

**25.** When land is owned or occupied by more persons than one, and all their names are known to the Assessor, they shall be assessed therefor, but if the names of all are not so known, those of them whose names are known shall be assessed for the whole, saving their recourse against the others and the names of all known owners and occupants shall be mentioned. 16 V. c. 182, s. 7.

If land occupied by more owners than one.

**26.** Any occupant may deduct from his rent any taxes paid by him, if the same could also have been recovered from the owner, unless there be a special agreement between the occupant and the owner to the contrary. 16 V. c. 182, s. 7.

When tenants may deduct taxes from rent.

**27.** The Assessor shall write opposite the name of any non-resident Freeholder who requires his name to be entered on the Roll, the word "non-resident," and the address of such Freeholder. 16 V. c. 182, s. 17.

Assessor to note non-residents, if required.

**28.** Real property shall be estimated at its full value as it would be appraised in payment of a just debt from a solvent debtor, and the yearly value of real property in Cities, Towns and Villages, shall be the real rack rent for each separate tenement, unless such rent is less than six per cent on the full and real value thereof; in which case the property shall be assessed at the full yearly value calculated at six per cent. upon the real value. 16 V. c. 182, s. 12.

Real property to be estimated at full value.

**29.** If more than one quarter of an acre of land be attached to any house or building forming a separate tenement, the overplus shall be held to be vacant ground, and six per cent on the full actual value thereof, to be estimated by the Assessors, shall be deemed its yearly value. 16 V. c. 182, s. 12.

What shall be deemed vacant land, and how its value shall be calculated in cities, &c.

Railway Companies to transmit annual statements describing value of their real property to Clerk of Municipality; and shall be notified of the amount at which they are assessed.

**30.** Every Railway Company shall annually transmit to the Clerk of every Municipality in which any part of the road or other real property of the Company is situate, a statement describing the value of all the real property of the Company other than the roadway, and also the actual value of the land occupied by the road in the Municipality, according to the average value of land in the locality, and the Clerk shall communicate the same to the Assessor; and the Assessor shall deliver at or transmit by post to any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company, in his Municipality or Ward, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company; and the statement shall be held to be the statement required by the forty-fourth section, and the notice shall be held to be the notice required by the forty-eighth section of this Act. 16 V. c. 182, s. 21.

Land of non-residents how to be designated and described on the Assessment Roll.

**31.** As regards the lands of non-residents, who have not required their names to be entered by the Assessor, the Assessors shall proceed as follows :

1. They shall insert such land in the Roll, separated from the other assessments, and shall head the same as "Non-residents, Land Assessments;"

2. If the land be not known to be sub-divided into lots, it shall be designated by its boundaries or other intelligible description ;

3. If it be known to be sub-divided into lots, or be part of a tract known to be so sub-divided, the Assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts, and if they can obtain correct information of the sub-divisions, they shall put down in the Roll, and in a first column, all the unoccupied lots, by their numbers and names alone and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest, in a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation ; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and if such quantity be a full lot, it shall be sufficiently designated as such by its name or number, but if it be part of a lot, the part shall be designated by boundaries, or in some other way by which it may be known. 16 V. c. 182, s. 22.

#### MANNER OF ASSESSING PERSONAL PROPERTY.

Yearly value of personalty in cities.

**32.** The yearly value of personal property in Cities, Towns and Villages shall be taken to be six per cent. on its actual value. 16 V. c. 182, s. 12.

**33.** If the nett value of the personal property of any person is equal to any of the sums set down in the first column of the following scales, but is not equal to the larger sum set opposite to it in the second column, he shall be assessed for the smaller sum only—

\$100	or more, but under	\$200
\$200	do. do.	\$400
\$400	do. do.	\$1,000
\$1,000	do. do.	\$2,000
\$2,000	do. do.	\$4,000
\$4,000	do. do.	\$10,000
\$10,000	do. do.	\$20,000
\$20,000	do. do.	\$40,000
\$40,000	do. do.	\$60,000
\$60,000	do. do.	\$80,000

and so forward, the sums thenceforth increasing by \$20,000.  
16 V. c. 182, s. 4.

**34.** No person deriving an income exceeding two hundred dollars per annum from any trade, calling, office or profession, shall be assessed for a less sum as the amount of his nett personal property than the amount of such income during the year then last, but such last year's income shall be held to be his nett personal property, unless he has other personal property to a greater amount. 16 V. c. 182, s. 5.

*How persons deriving income from any trade or profession shall be assessed.*

**35.** The personal property of an Incorporated Company shall not be assessed against the Corporation, but each Shareholder shall be assessed for the value of the stock or shares held by him, as part of his personal property, unless such stock is exempted by this Act. 16 V. c. 182, s. 9.

*How the property of Corporations shall be assessed.*

**36.** The personal property of a partnership shall be assessed against the firm at the usual place of business of the partnership, and a partner in his individual capacity shall not be assessable for his share of any personal property of the partnership which has already been assessed against the firm. 16 V. c. 182, s. 10.

*Personal property of partnerships how and where to be assessed.*

**37.** If a partnership has more than one place of business, each branch shall be assessed, as far as may be, in the locality where it is situate, for that portion of the personal property of the partnership which belongs to that particular branch; and if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business, of the amount of personal property assessed against it elsewhere. 16 V. c. 182, s. 10.

*As to partnerships having more than one business locality.*

**38.** Every person having a Farm, Shop, Factory, Office or other place of business, where he carries on a trade, profession or calling, shall, for all personal property owned by him, (wheresoever situate,) be assessed in the Township, Village

*Where parties carrying on trade or business shall be assessed for*

personal property.

or Ward where he has such place of business at the time when the assessment is made. 16 V. c. 182, s. 11.

If the party has two or more places of business.

**39.** If he has two or more such places of business in different Municipalities or Wards, he shall be assessed at each for that portion of his personal property connected with the business carried on thereat, or if this cannot be done, he shall be assessed for part of his personal property at one and part at another of his places of business, or for all his personal property at one such place at his discretion, but he shall in all such cases produce a certificate at each place of business of the amount of personal property assessed against him elsewhere. 16 V. c. 182, s. 11.

If the party has no place of business.

**40.** If any person has no place of business he shall be assessed at his place of residence. 16 V. c. 182, s. 11.

In case of executors, &c.

**41.** Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor or administrator, shall be assessed against such person alone. 16 V. c. 182, s. 11.

Separate assessment of joint owners or possessors.

**42.** In case of personal property owned or possessed by or under the control of more than one person resident in the Municipality or Ward, each shall be assessed for his share only, or if they hold in a representative character, then each shall be assessed for an equal portion only. 16 V. c. 182, s. 11.

Parties assessed as Trustees, &c., to have their representative character attached to their names.

**43.** When a person is assessed as Trustee, Guardian, Executor or Administrator, he shall be assessed as such with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment, and he shall be assessed for the value of the real and personal estate held by him, whether in his individual name or in conjunction with others in such representative character, at the full value thereof, or for the proper proportion thereof, if others resident within the same Municipality, be joined with him in such representative character. 16 V. c. 182, s. 20.

Particulars respecting property or income to be delivered to assessors in writing by the parties to be assessed.

**44.** It shall be the duty of every person assessable in any Local Municipality, to give all necessary information to the Assessors, and if required by the Assessor or by one of the Assessors if there be more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself be absent), containing all the particulars respecting the property or income assessable against such person which are required in the Assessment Roll; and if any reasonable doubt be entertained by the Assessor of the correctness of any information given by the party applied to, the Assessor shall require from him such written statement. 16 V. c. 182, s. 18.

**45.** No such statement shall bind the Assessor, nor excuse him from making due enquiry to ascertain its correctness; and notwithstanding the statement, the Assessor may assess such person for such amount of property or income as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the Assessor has reason to believe that he is not entitled to be placed on the Roll, or to be assessed for such property. 16 V. c. 182, s. 18.

Statements given by parties not binding on assessors.

**46.** In case any person fails to deliver to the Assessor the written statement mentioned in the preceding section when required so to do, such person shall forfeit to the Corporation of the Local Municipality the sum of twenty dollars to be recovered as a debt due to such Corporation. 16 V. c. 182, s. 18.

Penalty for not giving statement.

**47.** In case any person knowingly states any thing falsely in the written statement required to be made as aforesaid, he may be summarily convicted thereof before any Justice of the Peace having jurisdiction within the locality, and shall be liable to a fine of not more than twenty dollars. 16 V. c. 182, s. 19.

Penalty on parties making false statements.

**48.** Every Assessor, before the completion of his Roll, shall leave for every party named thereon and resident or domiciled or having a place of business within the City, Town, Village or Township, and shall transmit by post to every non-resident named thereon, a notice of the actual or yearly value at which his real property, and of the sum at which his personal property or income, has been assessed. 16 V. c. 182, s. 23.

Assessors to give notice to parties of the value at which their properties are assessed.

**49.** The Assessors shall make and complete their Rolls in every year between the first day of February and such day, not later than the first day of May, as the Council of the Municipality appoints, and shall attach thereto a certificate signed by them respectively, and verified upon oath or affirmation, in the form following:

At what time the assessment roll shall be completed.

" I do certify that I have set down in the above Assessment Roll, all the real property liable to taxation, situate in the Township, (Village or Ward of \_\_\_\_\_), as the case may be) and the true actual (or yearly) value thereof, in each case, according to the best of my information and judgment; and also that the said Assessment Roll contains a true statement of the aggregate amount of the personal property of every party named in the said Roll; and that I have estimated the same according to the best of my information and belief; and I further certify that I have entered therein the names of all the resident householders and freeholders, and of all other freeholders who have required their names to be entered thereon, with the true amount of property occupied or owned by each, and that I have not entered the name of any person whom

Certificate to be attached to roll.

“whom I do not truly believe to be a householder or freeholder, or the *bonâ fide* occupier or owner of the property set down opposite his name for his own use and benefit.” 16 V. c. 182, s. 24,—18 V. c. 21, s. 2.

Assessment roll to be delivered up to Clerk of Municipality.

**50.** Every Assessor shall deliver to the Clerk of the Municipality the Assessment Roll completed and added up, with the certificates and affidavits attached; and the Clerk shall thereupon make a copy of every such Roll, arranged in the alphabetical order of the surnames, and shall cause such copy to be put up in a convenient and public place in the Municipality or Ward, and to be maintained there until after the meeting of the Court of Revision. 16 V. c. 182, s. 25.

#### COURT OF REVISION.

Court of Revision, if Council contain 5 Members only.

**51.** If the Council of the Municipality consists of not more than five members, such five members shall be the Court of Revision for the Municipality. 16 V. c. 182, s. 26.

If the Council consists of more than 5.

**52.** If the Council consists of more than five members, such Council shall appoint five of its members to be the Court of Revision. 16 V. c. 182, s. 26.

Three to be a quorum.

**53.** Three members of the Court of Revision shall be a quorum, and a majority of a quorum may decide all questions before the Court. 16 V. c. 182, s. 26.

The Clerk—who to be.

**54.** The Clerk of the Municipality shall be Clerk of the Court. 16 V. c. 182, s. 30.

Court may meet and adjourn from time to time at pleasure.

**55.** The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the Head of the Municipality. 16 V. c. 182, s. 30.

The Court may administer oaths.

**56.** The Court or any member thereof may administer an oath to any party or witness, and may issue a Summons to any witness to attend such Court. 16 V. c. 182, s. 30.

Penalty on witnesses who refuse to attend.

**57.** If any witness so summoned fails to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty not exceeding twenty dollars, to be recoverable, with costs, by and to the use of the Municipality, in any way in which penalties incurred under any By-law thereof may be recovered. 16 V. c. 182, s. 30.

The Court to try complaint of wrongful assessment, &c.

**58.** At the times or time appointed, the Court shall meet and try all complaints in regard to persons being wrongfully placed upon or omitted from the Roll, or being assessed at too high or too low a sum. 16 V. c. 182, s. 26.

The Court to finish its business.

**59.** All the duties of the Court of Revision which relate to the matters aforesaid, shall be completed and the Rolls finally revised



revised by the Court before the first day of June in every year.  
16 V. c. 182, s. 30.

ness by the 1st June.

**60.** The proceedings for the trial of complaints shall be as follows :

Course of proceeding in the trial of complaints.

1. Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the Roll, or as having been undercharged or overcharged by the Assessor in the Roll, may, personally or by his Agent, within fourteen days after the time fixed for the return of the Roll, give notice in writing to the Clerk of the Municipality that he considers himself aggrieved for any or all of the causes aforesaid ; 16 V. c. 182, s. 26.

2. If a Municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the Roll, the Clerk shall, on his request in writing, give notice to such person and to the Assessor, of the time when the matter will be tried by the Court, and the matter shall be decided in the same manner as complaints by a person assessed ; 16 V. c. 182, s. 26.

If an elector thinks a person has been assessed at too low or too high a rate.

3. The Clerk of the Court shall post up in some convenient and public place within the Municipality or Ward, a list of all complainants on their own behalf against the Assessor's return, and of all complainants on account of the assessment of other persons, (stating the names of each) with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints ; 16 V. c. 182, s. 26.

Clerk to give notice.

4. Such list may be in the form following :

Form.

Appeals to be heard at the Court of Revision, to be held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

APPELLANT.	RESPECTING WHOM.	MATTER COMPLAINED OF.
A. B.	Self.	Overcharged on land.
C. D.	E. F.	Name omitted.
G. H.	I. K.	Not <i>bonâ fide</i> occupant.
L. M.	N. O.	Personal property undercharged.
&c.	&c.	&c.

The Clerk to  
advise.

5. The Clerk shall also advertise in some newspaper published in the City, Town, Village or Township, or if there be no such paper then in some newspaper published at the nearest place in the County at which one is published, the time at which the Court will hold its first sitting for the year; 16 V. c. 182, s. 26.

To leave a list  
with the as-  
sessor.

6. The Clerk shall also cause to be left at the residence of each Assessor a list of all the complaints respecting his Roll; 16 V. c. 182, s. 26.

To prepare  
notice.

7. The Clerk shall prepare a notice in the form following for each person with respect to whom a complaint has been made: 16 V. c. 182, s. 26. *Schedule C.*

Form.

Take notice that you are required to attend the Court of Revision at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the matter of the following appeal:

*Appellant.*

(G. H.)

*Subject* (that you are not a *bonâ fide* occupant.)

To J. K.

(Signed,) X. Y.

Township Clerk,

(*or as the case may be.*)

Service to be at  
residence.

8. If the person resides or has a place of business in the Local Municipality, the Clerk shall cause the notice to be left at the person's residence or place of business; 16 V. c. 182, s. 26.

In case of ab-  
sentees, how  
served.

9. Or if the person be not known or be not resident in the Municipality, then to be left with some grown person on the premises assessed, or to be addressed to such person through the Post Office; 16 V. c. 182, s. 26.

Service to be 6  
days.

10. Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sitting of the Court; 16 V. c. 182, s. 26.

Appearance  
and declaration  
of persons  
deeming them-  
selves, or any  
person for  
whom they act,  
overcharged.

11. If the party assessed complains in person or by his agent of an overcharge on his personal property, he, or his agent, may appear before the Court, and make a declaration in the form following:

"I, A. B., do solemnly declare that the true value of all the  
"personal property (*or* income) assessable against me, (*or*  
"against me as Trustee, Guardian, Executor, &c., *or* against  
"C.

“ C. D., for whom I am agent, *as the case may be,*) after deducting the just debts due by me (as such Trustee, &c., or by C. D.) does not, to the best of my knowledge and belief, exceed the sum of \_\_\_\_\_ dollars, *(and if the declaration is made by an agent, add :)* And that I have the means of knowing, and do know the extent and value of the personal property assessable against C. D.” 16 V. c. 182, s. 27.

And the Court shall thereupon enter the person assessed at such an amount of personal property or income as is specified in the declaration, and no more ; and if any party makes a wilfully false statement in any such declaration, he shall be guilty of a misdemeanor, and shall be punished as for perjury ;

12. In other cases the Court after hearing upon oath the complainant and the Assessor or Assessors and any witness adduced by or on behalf of either of them, shall determine the matter and confirm or amend the Roll accordingly ; 16 V. c. 182, s. 26.

In other cases the Court to determine, &c.

13. If either party fails to appear either in person or by an agent, the Court may proceed *ex parte*. 16 V. c. 182, s. 26.

When to proceed *ex parte*

61. The Roll as finally passed by the Court, and certified by the Clerk as so passed, shall be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such Roll, except in so far as the same may be further amended on appeal to the Judge of the County Court. 16 V. c. 182, s. 26.

The roll as finally passed to bind all parties.

62. The Court shall also, before or after the first day of June, and with or without any notice, receive and decide upon the Petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made; or from any person who declares himself from sickness or extreme poverty unable to pay the taxes, or who by reason of any gross and manifest error in the Roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to have been charged, and the Court may, subject to the provisions of any By-law in this behalf, remit or reduce the taxes due by any such person, or reject the Petition ; and the Council of any Local Municipality may, from time to time, make such By-laws and repeal or amend the same. 16 V. c. 182, s. 29.

Further powers granted to Court of Revision.

#### APPEAL FROM THE COURT OF REVISION.

63. If a person be dissatisfied with the decision of the Court of Revision, he may appeal therefrom, in which case—

Parties dissatisfied with decision of Court of

Revision may appeal to Judge of County Court, and in what manner and on what terms.

1. He shall, within three days after the decision, in person or by Attorney or Agent, serve upon the Clerk a written notice of his intention to appeal to the Judge of the County Court; 22 V. c. S2, s. 4, No. 3.

2. The Clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for notice of complaints by the sixtieth section of this Act ;

3. The party appealing shall, at the same time and in like manner, give a written notice of his appeal to the Clerk of the Division Court for the Division within the limits of which the Municipality is situated, and shall deposit with him the sum of two dollars for each party appealed against as security for the costs of the appeal; 22 V. c. S2, s. 4, No. 3, *at the end.*

4. The Judge shall appoint a day for hearing the appeal ;

5. The Clerk of the Division Court shall cause a conspicuous notice to be posted up at the place where the Division Court is held, containing the names of all the appellants and the parties appealed against, ranged under the several Municipalities, if there be more than one Municipality in the Division, together with the date at which a Court will be held to hear the appeal ;

6. At the Court so holden, the Judge shall hear the appeals, and may adjourn the hearing from time to time and defer the judgment thereon at his pleasure, so that a return can be made to the Clerk of the Municipality before the fifteenth day of July. 22 V. c. S2, s. 4, No. 3.

Assessment Roll to be produced to the Court of Revision ;

And amended according to the decision of the Judge.

Amendments how certified.

64. At the Court so holden, the Clerk of the Municipality, or other person having the charge of the Assessment-Roll passed by the Court of Revision, shall appear and produce such Roll, and also all papers and writings in his custody, connected with the matter of appeal ; and when such Roll is so produced in Court, the same shall be altered and amended according to the decision of the Judge (if then given) who shall write his initials against any part of the said list in which any mistake, error or omission is corrected or supplied, or if the said Roll be not then produced, or the decision be not then given by the Judge, or if so ordered by the Judge, such decision and judgment shall be certified by the Division Court Clerk to the Clerk of the Municipality, who shall forthwith, alter and amend the Roll according to the same, and shall write his name against every such alteration or correction.

County Judge to have power to examine on oath, &c.

65. In all proceedings before the County Judge, or acting Judge of the County Court, under or for the purposes of this Act, such Judge shall possess all such powers for compelling the attendance of, and for the examination on oath of all parties whether claiming or objecting, or objected to, and all other persons

persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, as belong to or might be exercised by him, either in term time or vacation in the County Court, in relation to any matter or suit depending in the said Court.

**66.** The cost of any proceeding before the County Judge as aforesaid, shall be paid by, or apportioned between the parties in such manner as the Judge shall think fit, and costs ordered to be paid by any party claiming or objecting, or objected to, or by any Assessor, Clerk of a Municipality or other person, may be enforced by execution from the Division Court in the same manner as upon an ordinary judgment recovered in such Court. Costs to be apportioned by the Judge, and how enforced. 20 V. c. 82, s. 4, No. 3.

**67.** The costs shall be taxed according to the schedule of fees under the Division Courts Act as in suits for the recovery of sums exceeding forty and not exceeding sixty dollars in the said Courts. By what scale of fees costs to be taxed. 16 V. c. 182, s. 28.

**68.** The decision and Judgment of the Judge or acting Judge shall be final and conclusive in every case adjudicated upon, and the Clerk of the Municipality shall amend the Rolls accordingly. The decision of County Judge to be final. 22 V. c. 82, s. 4, No. 3,—16 V. c. 182, s. 28.

**69.** When after the appeal provided by the last section of this Act, the Assessment Roll has been finally revised and corrected, the Clerk of the Municipality shall without delay transmit to the County Clerk a certified copy thereof. Copy of roll to be transmitted to County Clerk. 16 V. c. 182, s. 25.

#### COUNTY COUNCIL.

**70.** The Council of every County shall yearly, before imposing any County rate, and not later than the First day of July, examine the Assessment Rolls of the different Townships, Towns and Villages in the County, for the preceding financial year, for the purpose of ascertaining whether the valuation made by the Assessors in each Township, Town or Village for the current year, bears a just relation to the valuation so made in all such Townships, Towns and Villages, and may, for the purpose of County rates, increase or decrease the aggregate valuations of real property in any Township, Town or Village, adding or deducting so much per cent as may in their opinion be necessary to produce a just relation between all the valuations of real estate in the County, but they shall not reduce the aggregate valuation thereof for the whole County as made by the Assessors. Assessment roll to be examined annually by Municipal Council of the County for the purpose of equalizing the valuation in the different Municipalities. 16 V. c. 182, s. 32.

**71.** If the Clerk of any Municipality has neglected to transmit a certified copy of the Assessment Rolls, such neglect shall not prevent the County Council from equalizing the valuations in the several Municipalities according to the best information obtainable, If Clerk of any Municipality omits sending copy of roll.

obtainable, and any rate imposed according to the equalized Assessment shall be as valid as if all the Assessment Rolls had been transmitted. 16 V. c. 182, s. 32.

The apportionment of County rates to be based upon the assessment rolls of preceding year.

**72.** The Council of a County in apportioning a County rate among the different Townships, Towns and Villages within the County, shall, in order that the same may be assessed equally on the whole rateable property of the County, make the amount of property returned on the Assessment Rolls of such Townships, Towns and Villages as finally revised and equalized for the preceding year, the basis upon which the apportionment is made. 16 V. c. 182, s. 33.

Apportionment thereof as between townships and towns, &c.

**73.** In making the apportionment between Townships (in which rates are assessable on the actual value of property,) and Towns and Villages (in which rates are assessable on the annual value,) the sum total of the rentals assessed in the Town or Village shall be calculated at ten per cent. upon the capital represented, and the capital so ascertained, together with the total value of other real property, and the total value of personal property, shall be considered the aggregate valuation of the Town or Village, for the purpose of rating it for a Provincial or a County tax. 16 V. c. 182, s. 33.

As to new Municipalities.

**74.** If a new Municipality be erected within a County, so that there are no Assessment Rolls of the new Municipality for the next preceding year, the County Council shall, by examining the Rolls of the former Municipality or Municipalities of which the new Municipality then formed part, ascertain to the best of their judgment, what part of the Assessment of the Municipality or Municipalities had relation to the new Municipality, and what part should continue to be accounted as the Assessment of the original Municipality, and their several shares of the County tax shall be apportioned between them accordingly. 16 V. c. 182, ss. 33, 92.

County Council to apportion by By-law, sums required for County purposes.

**75.** When a sum is to be levied for County purposes, or by the County for the purposes of a particular locality, the Council of the County shall ascertain, and by By-law direct, what portion of such sum shall be levied in each Township, Town or Village in such County or locality. 16 V. c. 182, s. 34.

County Clerk to certify amounts to Clerks of Local Municipalities.

**76.** The County Clerk shall, before the first day of August in each year, certify to the Clerk of each Township, Town or Village in the County, the total amount which has been so directed to be levied therein for the then current year, for County purposes, or for the purposes of any such locality, and the Clerk of the Township, Town or Village shall calculate and insert the same in the Collector's Roll for that year. 16 V. c. 182, s. 34.

**77.** But nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on County Debentures, whether such provisions be contained in any Municipal Corporation Act heretofore or still in force in Upper Canada or any Act respecting the Consolidated Municipal Loan Fund in Upper Canada, or in any General or Special Act authorizing the issue of Debentures, or in any By-law of the County Council providing for the issue of the same. 16 V. c. 182, s. 34.

This Act not to affect provisions for rates to raise interest on County Debentures.

STATUTE LABOUR.

**78.** No person in Her Majesty's Naval or Military Service on full pay or on actual service shall be liable to perform Statute Labour or to commute therefor. 16 V. c. 182, s. 6, No. S.

Statute labour. Persons in Military Service exempt.

**79.** Every other male inhabitant of a City, Town or Village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour) who has not been assessed upon the Assessment Rolls of the City, Town or Village, or whose taxes do not amount to two dollars, shall instead of such labour be taxed at two dollars yearly therefor, to be levied and collected in the same manner as other local taxes. 16 V. c. 182, s. 35.

Who liable and in what ratio in towns and villages.

**80.** No such person shall be exempt from the tax in the last preceding section named by reason of his producing a certificate of his having performed statute labour or paid the said tax elsewhere, unless he was actually domiciled out of the limits of the City, Town or Village at the time he so performed statute labour or paid the tax. 16 V. c. 182, s. 35.

Where to be performed.

**81.** Every male inhabitant of a Township, between the ages aforesaid who is not otherwise assessed to any amount and who is not exempt by the seventy-eighth section of this Act or otherwise, shall be liable to two days of statute labour on the Roads and highways in the Township. 16 V. c. 182, s. 36,-- See 4, 5 V. c. 43,--12 V. c. 36,--14, 15 V. c. 85, as to Firemen.

Persons not otherwise assessed in townships.

**82.** Every person assessed upon the Assessment Roll of a Township, shall, if his property is assessed—

Ratio of service.

At not more than \$200, be liable to 2 days' labour;			
At more than \$200, but not more than \$400, to 3 days' labour;			
"	400,	"	600, 4
"	600,	"	800, 5
"	800,	"	1,200, 6
"	1,200,	"	1,600, 7
"	1,600,	"	2,000, 8
"	2,000,	"	2,400, 9
"	2,400,	"	3,200, 10
"	3,200,	"	4,000, 12
And for every	800, above	4,000,	1

But

But the Council of any Township, Town or Village, by a By-law, operating generally and rateably, may reduce or increase the number of days' labour to which all the parties rated on the Assessment Roll or otherwise, shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. 16 V. c. 182, s. 36,—22 V. c. 99, s. 409.

Commutation may be at \$1 per day.

**§3.** The Council of any Township, Town or Village, may, by By-law, direct that a sum, not exceeding one dollar a day, shall be paid in commutation of statute labour, in which case the commutation tax shall be added in a separate column in the Collector's Roll, and shall be collected and accounted for like other taxes. 20 V. c. 6, s. 1,—16 V. c. 182, s. 36.

Commutation may be fixed at any sum not exceeding \$1.

**§4.** Any Local Municipal Council may, by a By-law passed for that purpose, fix the rate at which parties may commute their Statute Labour at any sum not exceeding one dollar for each day's labour, and the sum so fixed shall apply to residents, to all persons subject to Statute Labour, and to non-residents in respect to their property. 20 V. c. 6, s. 1,—22 V. c. 99, s. 317,—See 16 V. c. 182, s. 36.

If no By-law, commutation to be at fifty cents.

**§5.** Where no such By-law has been passed, the statute labour in the Townships, against persons in respect of property hereinbefore designated as lands of non-residents, shall be commuted at the rate of fifty cents, for each day's labour. 16 V. c. 182, s. 35.

Payment of tax in lieu of statute labour may be enforced by distress or committal.

**§6.** If the Collector be not able to collect the sum of two dollars named in the seventy-ninth section, or the tax in lieu of statute labour named in the eighty-first section, and no sufficient distress to satisfy the sum due can be found, then the Head of the Municipality, or a Justice of the Peace having jurisdiction in the locality, upon complaint shewing that the person appears upon the Collectors' Roll to be rated for such sum, that the same has been duly demanded and that the party has neglected to pay the same, and that no sufficient distress can be found, may issue a Warrant under his Hand and Seal, and commit the party to the Common Gaol of the County for any time not exceeding six days, unless such sum and the costs of the Warrant and of the execution thereof be sooner paid. 16 V. c. 182, s. 37.

Non-residents when not admitted to perform statute labour.

**§7.** No non-resident who has not required his name to be entered on the Roll, and whose name has not been entered thereon, shall be admitted to perform statute labour in respect of any land owned by him, but shall in lieu be charged with a commutation tax, and the commutation shall be charged against every separate lot or parcel according to its assessed value.



**88.** In case any non-resident admitted to perform statute labour as a resident, does not perform his statute labour, or pay commutation for the same, the Overseer of Highways, in whose division he is placed, shall return him as a defaulter to the Clerk of the Municipality before the first day of September, and the Clerk shall in that case enter the commutation for statute labour against his name in the Collectors' Roll, and if at any time before the first day of May then next ensuing, the owner of any non-resident's land which has been returned as such to the Treasurer of the County, gives in writing to the Treasurer a list of the lands owned by him in the Municipality, and tenders to him the taxes in full on such land and the just commutation money as herein provided, he shall be liable to the commutation for statute labour only upon the aggregate value of all the lands owned by him in each Local Municipality, but after the first day of May as aforesaid, no change shall be made in the commutation for statute labour charged against each separate parcel, in consequence of more than one parcel being owned by the same party. 16 V. c. 182, s. 38.

If non-resident admitted but does not perform.

#### COLLECTION OF RATES.

**89.** The Clerk of every City, Town, Village or Township, shall make out a Collector's Roll for the Township or Village, or for each ward in the City or Town, as the case may be, on which he shall set down the name in full of every person assessed, and the assessed value of his real and personal property as ascertained after the final revision of the assessments, and he shall calculate, and opposite the lot or parcel of land as therein described of each respective party, he shall set down, in one column headed "County rate," the amount for which the party is chargeable for any sum ordered to be levied by the Council of the County for County purposes, and in another column, headed, "Township," "Village," "Town" or "City Rate," the amount with which the party is chargeable in respect of sums ordered to be levied by the Council of the Township, Village, Town or City for the purposes thereof, or for commutation of statute labour; and in other columns any special rate for collecting the interest upon Debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law or by the By-law imposing it, to be kept distinct and accounted for separately. 16 V. c. 182, s. 39.

Clerk of the Municipality to make out a Collector's roll: its form and contents.

**90.** Every last mentioned rate shall be calculated separately, and the column therefor be headed "Special Rate," "Local Rate," "School Rate," as the case may be. 16 V. c. 182, s. 39.

How rates to be headed.

**91.** All moneys assessed, levied and collected under any Act by which the same are made payable to the Receiver General, or to any other Public Officer for the Public uses of the

Public taxes to be assessed and collected in the same manner as local rates.

the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the Collector's Rolls in separate columns in the heading whereof shall be designated the purpose of the rate, and the Clerk shall deliver the Roll, certified under his hand, to the Collector on or before the first day of October, or such other day as may be prescribed by a By-law of the Municipality. 16 V. c. 182, s. 39.

Clerk to make out another roll of lands of non-residents whose names are not in the assessment roll, and transmit it to County Treasurer or City Chamberlain.

**92.** The Clerk of every Local Municipality shall also make out a Roll in which he shall enter the lands of non-residents, whose names have not been set down in the Assessor's Roll, together with the value of every lot, part of lot or parcel as ascertained after the revision of the Rolls, and he shall enter opposite to each lot, part of lot or parcel, all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the Collector's Roll; and at the time prescribed for the delivery of his Roll to the Collector he shall also transmit the Roll so made out, certified under his hand, to the Treasurer of the County in which his Municipality is situate, or to the City Chamberlain, as the case may be. 16 V. c. 182, s. 40.

#### COLLECTORS AND THEIR DUTIES.

Duties of Collectors on receiving collection rolls.

**93.** The Collector, upon receiving his Collection Roll, shall proceed to collect the taxes therein mentioned, and shall not accept any money on account of any land not set down on the Roll. 16 V. c. 182, s. 41.

Shall demand the payment of rates.

**94.** He shall call at least once on the person taxed, or at the place of his usual residence or domicile or place of business, if within the Local Municipality in and for which such Collector has been appointed, and shall demand payment of the taxes payable by such person. 16 V. c. 182, s. 41.

By post in cases of non-residents.

**95.** If any person whose name appears on the Roll be not resident within the Municipality, the Collector shall transmit to him by post a statement and demand of the taxes charged against him in the Roll. 16 V. c. 182, ss. 41, 45.

If payment be not made, collectors to levy the tax by distress and sale.

**96.** In case any person neglects to pay his taxes for fourteen days after such demand, made as aforesaid, the Collector shall levy the same with costs, by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the County in which the Local Municipality lies. 16 V. c. 182, ss. 42, 45.

When Collectors may distrain for rates.

**97.** In case of the land of non-residents, the Collector, after one month from the date of the delivery of the Roll to him, and

and after fourteen days from the time of such demand, may make distress of any goods and chattels which he may find upon the land; and no claim of property, lien or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof. 16 V. c. 182, s. 42.

**98.** The Collector shall, by advertisement posted up in at least three public places in the Township, Village or Ward wherein the sale of the goods and chattels distrained is to be made, give at least six days' public notice of sale, and of the name of the person whose property is to be sold, or in case of a non-resident whose name is not known to the Collector, of the number and description of the lot on account of the taxes on which the distress has been made; and at the time named in the notice, the Collector shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. 16 V. c. 182, s. 43.

Public notice of sale to be given: and in what manner.

**99.** If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to the surplus be made by any other person on the ground that the property sold belonged to him, or that he was entitled by lien or other right to the surplus, such surplus shall be returned to the person in whose possession the property was when the distress was made. 16 V. c. 182, s. 44.

Surplus, if unclaimed, to be paid to the party in whose possession the goods were.

**100.** If any such claim be made and admitted by the person for whose taxes the property was distrained, the surplus shall be paid to the claimant. 16 V. c. 182, s. 44.

Or to admitted claimant.

**101.** If the claim be contested, such surplus money shall be paid over by the Collector to the Treasurer or Chamberlain of the Local Municipality, who shall retain the same until the respective rights of the parties have been determined by action at law or otherwise. 16 V. c. 182, s. 44.

If the right to such surplus be contested.

**102.** If the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs, as a debt due to the Local Municipality; in which case the production of a copy of so much of the Collector's Roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the Clerk of the Local Municipality, shall be *prima facie* evidence of the debt. 16 V. c. 182, s. 45.

Taxes not otherwise recoverable may be recovered by action at law.

Copy of Collectors' Roll to be *prima facie* evidence of amount due.

**103.** On or before the fourteenth day of December, in every year, or on such day in the next year not later than the first of March as the Council of the County or City may appoint, every Collector shall return his Roll to the Treasurer of the Township, Town, or Village or to the City Chamberlain, and shall pay over the amount payable to such Treasurer or Chamberlain, specifying in a separate column on his Roll how much

Collector to return his roll and pay over the proceeds on the day to be appointed by Municipal Council.

much of the whole amount paid over is on account of each respective rate. 16 V. c. 182, s. 46.

Another person may be employed to collect taxes which the collector does not collect by a certain day.

**104.** In case the Collector fails or omits to collect the taxes or any portion thereof, by the fourteenth day of December, or by such other day appointed by the Council of the County or City as aforesaid, such Council may, by resolution, authorize the Collector or any other person in his stead, to continue the Levy and Collection of the unpaid taxes in the manner and with the powers provided by law for the general Levy and Collection of taxes; but no such resolution or authority shall alter or affect the duty of the Collector to return his Roll, or shall in any manner whatsoever invalidate or otherwise affect the liability of the Collector or his sureties. 18 V. c. 21, s. 3.

Proceedings if any taxes are returned as unpaid.

**105.** If any of the taxes mentioned in the Collector's Roll remain unpaid, and the Collector be not able to collect the same, he shall deliver to the Township, Town or Village Treasurer, or to the City Chamberlain, an account of all the taxes remaining due on the Roll; and in such account the Collector shall shew, opposite to each assessment, the reason why he could not collect the same, by inserting in each case the words "non resident" or "no property to distrain." as the case may be. 16 V. c. 182, s. 47.

When collector to be credited for the amount.

**106.** Upon making oath before the Treasurer or Chamberlain that the sums mentioned in such account remain unpaid, and that he has not upon diligent enquiry been able to discover any goods or chattels belonging to or in the possession of the parties charged with or liable to pay such sums whereon he could levy the same, the Collector shall be credited with the amount thereof. 16 V. c. 182, s. 47.

Taxes to be a lien upon land.

**107.** The taxes accrued or to accrue on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrances of any party except the Crown, and shall not require registration to preserve it. 16 V. c. 182, s. 45.

#### LISTS OF LANDS GRANTED BY THE CROWN TO BE RETURNED YEARLY.

Lists of lands granted or leased, &c., to be furnished annually to County Treasurer by Commissioner of Crown Lands.

**108.** The Commissioner of Crown Lands shall, in the month of January in every year, transmit to the Treasurer of every County, a list of the lands within the County granted or leased or in respect of which a license of occupation issued during the preceding year, and of all ungranted lands of which no person has received permission to take possession, and also of all lands on which an instalment of purchase money or rent or any other sum of money remains over-due and unpaid.

**109.** The County Treasurer shall furnish to the Clerk of each Local Municipality in the County, a copy of the said lists as far as regards lands in such Municipality; and such Clerk shall furnish to the Assessors respectively a statement shewing what lands are liable to Assessment within such Assessor's Assessment District. 16 V. c. 182, s. 48.

County Treasurer to furnish a copy of the list to the Clerk of every Municipality within his County.

#### TREASURERS, THEIR DUTIES.

**110.** The Treasurer of every Local Municipality shall, within fourteen days after the time appointed for the return and final settlement of the Collector's Roll, furnish the Treasurer of the County with a correct copy of the Roll, so far as the same relates to the lands in the Municipality, distinguishing the rates with which they are chargeable and the sums paid, and if any such rates only affect lands in a certain locality, shall furnish him with a description of the locality, and also with an account of all arrears remaining due upon lands on account of any rate imposed by School Trustees, and generally with any other information which the Treasurer of the County may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the Township for that year. 16 V. c. 182, s. 49.

Treasurer of Municipality to furnish correct copies of collector's roll to County Treasurer as far as regards lands.

**111.** After the Collector's Roll has been returned to the Township Treasurer, no more money on account of the arrears then due shall be received by any officer of the Municipality to which the Roll relates. 16 V. c. 182, s. 50.

After collector's roll has been returned, collection of arrears to belong to Treasurer of County only.

**112.** The collection of the arrears shall thenceforth belong to the Treasurer of the County alone, and he shall receive payment of such arrears and of all the taxes on lands of non-residents, and he shall give a receipt therefor, specifying the amount paid, the period for which it is paid, the lot or parcel of land and the Concession and Township in which the land lies, upon which it is paid, and the date of payment. 16 V. c. 182, s. 50.

Same subject.

**113.** The Treasurer shall not receive any part of the tax charged against any parcel of land, unless the whole arrears then due be paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof; but if satisfactory proof is adduced to him that any parcel of land on which taxes are due, has been sub-divided, he may receive the proportionate amount of the tax chargeable upon any of the sub-divisions and leave the other sub-divisions chargeable with the remainder. 16 V. c. 182, s. 50.

Treasurer shall not receive part of the taxes due on any land.

**114.** The Treasurer shall on demand give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge Twenty cents for the search on each separate lot or parcel, but the Treasurer shall

If demanded, Treasurer to give a written statement of arrears.

shall not make any charge for search to any person who forthwith or within one month after being furnished with a statement of the amount thereof, pays the taxes, or who transmits to the Treasurer a schedule of his lands for the purpose of ascertaining the amount of taxes thereon. 16 V. c. 182, s. 50.

Lands on which taxes remain unpaid to be entered in books kept for the purpose by the County Treasurer, &c.

Books to be made up and balanced yearly.

**115.** The Treasurer of every County shall keep books in which he shall enter, under the heading of every Local Municipality in his County, all the lands in the Municipality, on which it appears from the returns made to him by the Clerk and from the Collector's Roll returned to him, that there are any taxes unpaid, and the amounts so due, and he shall on the first day of May in every year, complete and balance his books by entering against every parcel of land the arrears, if any, due at the last settlement, and the taxes of the preceding year, which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. 16 V. c. 182, s. 51.

Proceedings were any land is found not to have been assessed in any year.

**116.** If, at the yearly settlement to be made on the first day of May, it appears to the Treasurer that any land liable to assessment has not been assessed, he shall report the same to the Clerk of the Municipality, and the Clerk shall enter such land on the Collector's Roll of the following year, or on the Roll of the non-residents, as the case may be, as well for the arrears omitted as for the tax of that year. 16 V. c. 182, s. 52.

And if any lot has not been included in collector's roll.

**117.** If it appears to the Treasurer that any parcel of land assessed has not been included in the Collector's Roll, in the return made to him by the Clerk, or that having been included in the Collector's Roll, the tax thereon has not been paid, he shall insert such parcel of land, and the just tax thereon, in his books. 16 V. c. 182, s. 52.

Or that land has been returned not liable to assessment.

**118.** If it appears to the Treasurer that any land has been placed on the return of non-resident lands made to him, which is not liable to assessment, or which has also been placed upon the Collector's Roll and the tax thereon paid, he shall erase such tax from his books. 16 V. c. 182, s. 52.

Treasurer to correct errors.

**119.** The Treasurer shall correct any other palpable error which he discovers or any error which may from time to time be certified to him by the Clerk of any Municipality. 16 V. c. 182, s. 52.

As to pretended receipts, &c.

**120.** If any person produces to the Treasurer, in satisfaction of a tax, any paper purporting to be a receipt of a Collector, School Trustee, or other Town, Village or Township Officer, he shall not accept such proof until he has received a report upon the same from the Clerk of the Municipality interested, certifying the correctness thereof. 16 V. c. 182, s. 52.

**121.** If, at the balance to be made on the first day of May in every year, it appears that there is any arrear of tax due upon any parcel of land, the Treasurer shall add to the whole amount then due ten per cent. thereon. 16 V. c. 182, s. 53.

Ten per cent. to be added to arrears yearly.

**122.** Whenever the County Treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, he shall issue a warrant under his hand and seal to the Sheriff of the County, who shall thereby be authorized to levy the amount due upon any goods and chattels found upon the land, in the same manner and subject to the same provisions as are contained in the sections ninety-seventh to the one hundred and first of this Act, with respect to distresses made by Collectors. 16 V. c. 182, s. 54.

If there be distress upon lands of non-residents, County Treasurer may authorize Sheriff to levy.

**123.** No land shall be sold for taxes unless a portion thereof has been due for five years. 16 V. c. 182, s. 55.

When lands to be sold.

**124.** Whenever a portion of the tax on any land has been due for five years, or for such longer period and of such amount as a By-Law of the Council prescribes, the Treasurer of the County shall issue a Warrant under his hand and seal directed to the Sheriff of the County, commanding him to levy upon the land for the arrears due thereon with his costs. 16 V. c. 182, s. 55.

Arrears due for five years to be levied by warrant of the Treasurer to the Sheriff.

**125.** The Treasurer shall, in every Warrant so issued, distinguish lands which have been granted in fee from those which are under a lease or license of occupation, and of which the fee still remains in the Crown. 16 V. c. 182, s. 56.

Lands granted to be distinguished from lands lease by the Crown, &c.

**126.** After the issuing of the Warrant, the Treasurer shall receive no payment on account of the sums contained in the Warrant.

After which the Treasurer not to receive payment.

**127.** The Council of the County may direct that no warrant shall issue to the Sheriff until some portion of the arrears have been due for such other period longer than five years as the Council may by By-law prescribe, and also may direct such parcels of land only to be included in the warrant as are chargeable with an arrear of tax exceeding a certain sum to be determined by the Council. 16 V. c. 182, s. 55.

County Council may extend the period.

**128.** Immediately upon receipt of the Warrant, the Sheriff shall prepare a list of all the lands included therein, and of the amount of arrears due on each parcel, distinguishing lands granted in fee from those the fee of which is in the Crown, and shall cause such list to be published for three months in the *Official Gazette*, and for the like period in some other newspaper published in the County, or if none be so published, in some other newspaper published in an adjoining County. 16 V. c. 182, s. 57.

Proceedings to be taken by Sheriff on receipt of warrant.

- Advertisement.** **129.** The advertisement shall contain a notification that unless the arrears are sooner paid, he will proceed to sell the lands for the taxes, on a day named in the advertisement. 16 V. c. 182, s. 57.
- Time of sale.** **130.** The day of sale shall be more than three months after the first publication of the list. 16 V. c. 182, s. 57.
- Notice to be posted up.** **131.** The Sheriff shall also post a notice, similar to such advertisement, in some convenient and public place at the Court House of the County, at least three weeks before the time of sale. 16 V. c. 182, s. 57.
- Expenses to be added to the arrears.** **132.** The Sheriff shall in each case add to the arrears so published, a proportionate share of the cost of publication according to their amounts respectively. 16 V. c. 182, s. 57.
- Taxes over due under former Acts may be collected under this Act.** **133.** If at the time when this Act comes into force no advertisement or sale of land for arrears of taxes has taken place in any County at the time required by the former Upper Canada Assessment Acts, the sales of such lands thereafter shall not on that account be illegal, but all arrears of taxes and the expenses of advertising (if any) may be collected under this Act, and on non-payment thereof, any parcel of such lands, after any part of the tax thereon has been five years in arrear, may be sold according to the provisions of this Act. 16 V. c. 182, s. 62.
- In case of distress being found on the lands, Sheriff to levy thereon.** **134.** If at any time after the receipt of the Warrant, there is, to the knowledge of the Sheriff or his Deputy, distress upon any land included therein, he shall levy the arrears of taxes and the costs, by distress and sale of any goods and chattels found on the land, in the same manner and subject to the same provisions as is required by the ninety-seventh to one hundred and first sections of this Act; but no subsequent sale of the land by the Sheriff shall be invalid by reason of there having been any goods and chattels thereon before or at the time of the sale. 16 V. c. 182, s. 58.
- And sell in like manner as collectors.** **135.** Whenever any distress of goods and chattels is made by the Sheriff under such Warrant, he may sell such goods and chattels in the same manner and subject to the same provisions as are contained in the ninety-seventh to the one hundred and first sections of this Act, with respect to distresses made by a Collector, and he may charge Two dollars for each distress and sale. 16 V. c. 182, s. 63.
- Fees thereon.**
- If there be no bidders.** **136.** If at the time appointed for the sale of the lands no bidders appear, the Sheriff may adjourn the sale from time to time. 16 V. c. 182, s. 59.
- Mode in which the lands shall** **137.** If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed



appointed for the sale, the Sheriff shall sell by Public Auction so much of the land as may be sufficient to discharge the taxes and all lawful charges incurred in and about the sale and the collection of the taxes, selling in preference such part as he may consider it most for the advantage of the owner to sell first. 16 V. c. 182, s. 59.

be sold by the Sheriff.

**138.** If the Sheriff sells any land of which the fee is in the Crown, he shall only sell the interest therein of the lessee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the Sheriff, and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee or locatee enjoyed, and shall be valid without requiring the assent of the Commissioner of Crown Lands. 16 V. c. 182, s. 56.

If the Sheriff sells any land the fee of which is in the Crown, he shall only sell the interest of lessee or locatee.

**139.** If the purchaser of any parcel of land fails on demand to pay to the Sheriff the amount of the purchase money, the Sheriff may forthwith again put up the property for sale. 16 V. c. 182, s. 59.

If purchaser fails to pay purchase money, the property to be put up again for sale.

**140.** The Sheriff, after selling any land for taxes, shall give a certificate under his hand to the purchaser, stating distinctly what part of the land and what interest therein have been so sold, or stating that the whole lot or estate has so been sold, and describing the same, and also stating the quantity of the land, the sum for which it has been sold and the expenses of sale, and further stating that a Deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold with reference to the one hundred and twenty-fifth, one hundred and twenty-eighth and one hundred and thirty-eighth Sections of this Act, will be executed by the Sheriff on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land be not previously redeemed. 16 V. c. 182, ss. 59, 60,—20 V. c. 72.

Sheriff selling to give purchaser a certificate of land sold.

**141.** The purchaser shall, on receipt of the Sheriff's certificate of sale, become the owner of the land so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value. 16 V. c. 182, s. 61.

Purchaser of lands sold for taxes to be deemed owner thereof, for certain purposes, on receipt of Sheriff's certificate.

**142.** From the time of a tender to the Treasurer of the full amount of redemption money required by this Act, the said purchaser shall cease to have any further right in or to the land in question. 16 V. c. 182, s. 61.

Effect of tender of arrears, &c.

**143.** Within one month after the sale, the Sheriff shall make a detailed return to the Treasurer of each separate parcel

Sheriff's return.

of

of land included in the Warrant, and shall pay to him the money levied by virtue thereof. 16 V. c. 182, s. 59.

Sheriff's com-  
mission.

**144.** Every Sheriff shall be entitled to five per cent. commission upon the sums collected by him under such Warrant as aforesaid. 16 V. c. 182, s. 63.

Fees on sales  
of land.

**145.** Whenever land is sold by a Sheriff according to the provisions of the one hundred and thirty-seventh section of this Act, he may receive the sum of one dollar for the sale of each separate parcel, and the Sheriff may add the commission and fees which he is hereby authorized to charge for the services above mentioned, to the amount of arrears included in the Treasurer's Warrant on those lands in respect of which such services have been severally performed. 16 V. c. 182, s. 63.

Expenses of  
search in Re-  
gistrar's office.

**146.** If the Sheriff cannot give a sufficient description of any land sold by him without a search in the Registrar's Office to ascertain the description and boundaries of the whole parcel as returned to him in the Treasurer's Warrant, he shall, in addition to the charges hereinbefore authorized, be entitled to charge the fee for the necessary search. 16 V. c. 182, s. 63.

Sheriff entitled  
to no other  
fees.

**147.** Except as before provided, the Sheriff shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. 16 V. c. 182, s. 63.

Owners may,  
within one  
year, redeem  
estate sold by  
paying pur-  
chase money  
and 10 per cent.  
thereon.

**148.** The owner of any land which may hereafter be sold for non-payment of taxes, or his heirs, executors, administrators or assigns, may, at any time within one year from the day of sale, exclusive of that day, redeem the estate sold by paying or tendering to the County Treasurer, for the use and benefit of the purchaser or his legal representatives, the sum paid by him, together with ten per cent. thereon, and the Treasurer shall give to the party paying such redemption money, a receipt, stating the sum paid and the object of payment, and such receipt shall be evidence of the redemption. 16 V. c. 182, s. 64.

After expiration  
of year allowed  
for redemption,  
Sheriff to de-  
liver a Deed of  
Sale to pur-  
chaser.

**149.** If the land be not redeemed within the period so allowed for its redemption, being one year exclusive of the day of sale as aforesaid, then on the demand of the purchaser, or his assigns or other legal representative, at any time afterwards, and on payment of one dollar, the Sheriff shall execute and deliver to him or them a Deed of Sale of the land. 16 V. c. 182, s. 65.

Contents of  
deed, and effect  
thereof.

**150.** Such Deed shall state the date and cause of the sale and the price, and shall describe the land by its situation, boundaries and quantity, and the estate and interest sold, and shall have the effect of vesting the land in the purchaser, or his heirs and assigns

assigns or other legal representatives in fee simple, or otherwise, according to the nature of the Estate or Interest sold, and free and clear of all charges and incumbrances thereon, except taxes accrued since those for the non-payment whereof it was sold. 16 V. c. 182, s. 65.

**151.** As respects land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, on the receipt by the Registrar of the proper County or place of a Certificate of the Sale to the purchaser under the hand and Seal of Office of the Sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the Sheriff's conveyance to the purchaser, his heirs, executors, administrators or assigns, and on production of the conveyance from the Sheriff to the purchaser, his heirs, executors, administrators or assigns, such Registrar shall register any Sheriff's Deed of land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, and the mode of such Registry shall be the entering on record a transcript of such Deed of conveyance. 16 V. c. 182, s. 66,—6 G. 4, c. 7, s. 19.

On what certificates Registrars of Counties to register Sheriff's deeds of lands sold for taxes before 1851.

**152.** As respects lands sold for taxes since the first day of January, one thousand eight hundred and fifty-one, the Sheriff shall also give the purchaser or his assigns, or other legal representatives, a Certificate under his hand and seal of office of the execution of the Deed, containing the particulars, in the last section mentioned and such certificate for the purpose of registration in the Registry Office of the proper County of any Deed of Lands sold for Taxes since the first of January, one thousand eight hundred and fifty-one, shall be deemed a Memorial thereof, and the Deed shall be registered, and a Certificate of the Registry thereof, shall be granted by the Registrar on production to him of the Deed and Certificate, without further proof; and the Registrar shall, for the Registry and Certificate thereof, be entitled to Seventy cents, and no more. 16 V. c. 182, s. 65.

The Sheriff to give certificate of execution of conveyances since 1st January, 1851. for registration.

**153.** The Sheriff shall enter in a book, which the County Council shall furnish, a full description by metes and bounds, of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries have been made therein, shall be returned to the Treasurer, and shall, together with all copies of Assessors and Collector's Rolls and other Documents relating to non-resident lands, be by him kept amongst the records of the County. 16 V. c. 182, s. 67.

Sheriff to enter in a book description of lands conveyed to purchaser by him.

**154.** All the moneys received by the County Treasurer on account of the taxes on non-residents' lands, whether paid to him directly or levied by the Sheriff, shall constitute a distinct and separate fund, to be called the "Non-Resident Land Fund" of such County. 16 V. c. 182, s. 68.

Non-resident Land Fund established in each County, and of what it shall consist.

Treasurer to open an account for.

**155.** The Treasurer shall open an account for each Local Municipality with the said fund. 16 V. c. 182, s. 68.

Counties united and afterwards disunited.

**156.** If two or more Local Municipalities having been united for Municipal purpose be afterwards disunited, or if a Municipality or part of a Municipality be afterwards added to or detached from any County or to or from any other Municipality, the Treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land at the date of the alteration, shall be placed to the credit of the Municipality within which the land after such alterations is situate; and if a union of Counties is about to be dissolved, all the taxes on non-resident's land imposed by By-laws of the Provisional Council of the Junior County, shall be returned to and collected by the Treasurer of the United Counties, and not by the Provisional Treasurer, and the Treasurer of the United Counties shall open an account forthwith for the Junior County with the non-resident land fund. 16 V. c. 182, s. 68.

If any union be about to be dissolved.

All arrears to form one charge upon the lands subject to them, &c.

**157.** The Treasurer of the County shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears from whatever rates arising shall be taken together and form one charge on the land 16 V. c. 182, s. 69.

Deficiencies in certain taxes to be supplied by the Municipality.

**158.** Every Local Municipal Council in paying over any school or local rate, or its share of any County rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply out of the general funds of the Municipality any deficiency arising from the non-payment of the tax on land, but shall not be held answerable for any deficiency arising from abatements of, or inability to collect the tax on personal property. 16 V. c. 182, s. 69.

Land Fund how appropriated.

**159.** All sums which may at any time be paid to a Municipality out of the Non-Resident Land Fund of the County, shall form part of the general funds of such Municipality. 16 V. c. 182, s. 69.

Debentures may be issued on the credit of the Non-resident Land Fund.

**160.** The Council of the County may from time to time by By-law, authorize the Warden to issue under the Corporate Seal upon the credit of the Non-Resident Land Fund, Debentures payable not later than eight years after the date thereof, and for sums not less than One hundred dollars each, so that the whole of the Debentures at any time issued and unpaid do not exceed two thirds of all the arrears then due and accruing upon the lands in the County, together with such other sums as may be in the Treasurer's hands, or otherwise invested to the credit of the said fund. 16 V. c. 182, s. 70.

**161.** Such Debentures shall be negotiated by the Warden and Treasurer of the County, and the proceeds shall be paid into the said fund, and the interest on such Debentures, and the principal, when due, shall be payable out of such fund. 16 V. c. 182, s. 70.

By whom to be negotiated.

**162.** If at any time there be not in the Non-Resident Land Fund money sufficient to pay the interest upon a Debenture, or to redeem the same when due, such interest or Debenture shall be payable out of the General County Funds, and the payment thereof may be enforced in the same manner as is by law provided in the case of other County Debentures. 16 V. c. 182, s. 71.

Payment of interest on such debentures provided for.

**163.** The Council of the County may, from time to time, pass By-laws apportioning the surplus moneys in the Non-Resident Land Fund amongst the Municipalities, rateably according to the moneys received and arrears due on account of the Non-Resident lands in each Municipality; but such apportionment shall always be so limited that the Debentures unpaid shall never exceed two thirds of the whole amount to the credit of the fund. 16 V. c. 182, s. 72.

Surplus of the Non-resident Land Fund to be divided among Municipalities.

**164.** The Treasurer shall not be entitled to receive, from the person paying taxes, any per centage thereon, but may receive from the fund such per centage upon all moneys in his hands, or such fixed salary in lieu thereof, as the County Council by By-law directs. 16 V. c. 182, s. 73.

Treasurer's per centage or salary how paid.

**165.** The County Treasurer shall prepare and submit to the County Council, at its first Session in January in every year, a Report, certified by the Auditors, of the state of the non-Resident Land Fund. 16 V. c. 182, s. 74.

Annual statement of the said fund, to be submitted to the County Council.

**166.** This Report shall contain an account of all the moneys received and expended during the year ending on the thirty-first of December next preceding, distinguishing the sums received on account of and paid to the several Municipalities, and received and paid on account of interest or of Debentures negotiated or redeemed, and the sums invested and the balance in hand; a list of all Debentures then unpaid, with the dates at which they will become due; and a statement of all the arrears then due, (distinguishing those due in every Municipality,) and the amount due on lands then advertised for sale, or which by law may be advertised during the ensuing year. 16 V. c. 182, s. 74.

What it shall shew.

**167.** The Warden shall cause a copy of the Report to be transmitted to the Provincial Secretary for the information of the Governor General. 16 V. c. 182, s. 74.

Copy to be transmitted to Provincial Secretary.

## LANDS OF NON-RESIDENTS IN CITIES.

Taxes on lands of Non-residents in Cities provided for.

**168.** Arrears of Taxes due to cities on the lands of non-Residents shall be funded, collected and managed in the same way as like arrears due to other Municipalities, and the Chamberlain and High Bailiff shall for these purposes perform in the case of Cities the like duties as are hereinbefore in the case of other Municipalities imposed on the Treasurer and the Sheriff. 16 V. c. 182, s. 75.

## RESPONSIBILITY OF OFFICERS.

Treasurers and Collectors to give security, and how.

**169.** Every Treasurer, Chamberlain and Collector, before entering upon the duties of his office, shall enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. 16 V. c. 182, s. 76.

Bond with sureties.

**170.** Such Bond shall be given by the Officer and two or more sufficient sureties, to the satisfaction of the Council of the Corporation, in such sum as the Council requires by any By-law in that behalf, and shall conform to all the provisions of such By-law. 16 V. c. 182, s. 76.

Penalty on Assessors or Clerks failing to perform their duty; and how such penalty shall be enforced.

**171.** If an Assessor or Clerk refuses or neglects to perform any duty required of him by this Act, he shall, for every such offence, upon conviction thereof before the Recorder's Court of the City, or before the Court of General Quarter Sessions of the County in which he is Assessor or Clerk, forfeit the sum of One hundred dollars to Her Majesty. 16 V. c. 182, s. 77.

Other Assessors may act for those in default.

**172.** If an Assessor neglects or omits to perform his duties, the other Assessor, or if there be more Assessors than one for the same locality, one of them shall, until a new appointment, perform the duties, and shall certify upon his or their Assessment Roll the name of the delinquent Assessor, and shall also state on the Roll if he or they know it, the cause of the delinquency. 16 V. c. 182, s. 77.

Punishment of Clerks, Assessors or Collectors making fraudulent assessments, collections, &c.

**173.** If any Clerk, Assessor or Collector, acting under this Act, makes any unjust or fraudulent assessment or collection, or copy of any Assessor's or Collector's Roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, he shall be guilty of a misdemeanor, and upon conviction thereof before a Court of competent jurisdiction, shall be liable to a fine not exceeding Two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the Common Gaol of the County or City, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. 16 V. c. 182, s. 78.

**174.**

**174.** Proof to the satisfaction of the Jury, that any real property was assessed by the Assessor at an actual or yearly value, greater or less than its true actual or yearly value, by thirty per centum thereof, shall be *prima facie* evidence that the assessment was fraudulent and unjust. 16 V. c. 182, s. 78.

Evidence of fraud.

**175.** An Assessor convicted of having made any fraudulent and unjust assessment, shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this Act. 16 V. c. 182, s. 78.

When Assessors incur the highest punishment.

**176.** With reference to the Upper Canada Juror's Act, if an Assessor of any Township, Village or Ward, neglects or omits to make out and complete his Assessment Roll for the Township, Village or Ward, and to return the same to the office of the Clerk of such Township or Village or of the City or Town in which any such Ward is situated, or to the other office or place of deposit for such Roll, on or before the first day of September of the year for which he is Assessor, every such Assessor so offending shall forfeit for every such offence the sum of two hundred dollars, one moiety thereof to the use of Her Majesty, and the other moiety, with full costs, to such person as may sue for the same in any Court of competent jurisdiction by action of debt or information; but nothing herein contained shall be construed to relieve any Assessor from the obligation of returning his Assessment Roll at an earlier period of the year, or from the penalty he may incur by not returning the same accordingly. 22 V. c. 100, s. 171. Nos. 3 and 7.

Assessors not making and returning assessment roll on proper time, may be fined.

**177.** If a Collector refuses or neglects to pay to the proper Treasurer or Chamberlain, or other person legally authorized to receive the same, the sums contained on his Roll, or duly to account for the same as uncollected, the Treasurer or Chamberlain shall, within twenty days after the time when the payment ought to have been made, issue a Warrant under his hand and seal, directed to the Sheriff of the County, or to the High Bailiff of the City, (as the case may be) commanding him to levy, of the goods, chattels, lands and tenements of the Collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer or Chamberlain the sum so unaccounted for, and to return the Warrant within forty days after the date thereof. 16 V. c. 182, s. 79.

Proceedings for compelling Collectors or Treasurers to account for or pay over moneys in their hands by warrant to Sheriff or High Bailiff.

**178.** The said Treasurer or Chamberlain shall immediately deliver the Warrant to the Sheriff of the County or High Bailiff of the City, as the case may require. 16 V. c. 182, s. 79.

Treasurer to deliver warrant to Sheriff.

**179.** The Sheriff or High Bailiff to whom the Warrant is directed, shall, within the forty days, cause the same to be executed,

Sheriff, &c., to execute such warrant.

executed, and make return thereof to the Treasurer or Chamberlain, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation which the Collector would have been entitled to retain. 16 V. c. 182, s. 80.

Sheriff or High Bailiff neglecting to levy under such warrant, &c., to be responsible therefor, and mode of enforcing such responsibility.

**180.** If a Sheriff or High Bailiff refuses or neglects to levy any money when so commanded or to pay over the same, or makes a false return to the Warrant, or neglects or refuses to make any return, or makes an insufficient return, the Treasurer or Chamberlain may, upon affidavit of the facts, apply in a summary manner to either of the Superior Courts of Common Law in term time, or to any Judge of either Court in vacation, for a Rule or Summons calling on the Sheriff or High Bailiff to answer the matter of the affidavit. 16 V. c. 182, s. 81.

When rule or summons to be returnable.

**181.** The said Rule or Summons shall be returnable at such time as the Court or Judge directs. 16 V. c. 182, s. 81.

Proceedings on return thereof.

**182.** Upon the return of such Rule or Summons, the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleadings, to hear and determine the matters of the application. 16 V. c. 182, s. 81.

If Court or Judge deems Sheriff guilty of dereliction, what to be done.

**183.** If the Court or Judge be of opinion that the Sheriff or High Bailiff has been guilty of the dereliction alleged against him, such Court or Judge shall order the proper officer of the Court to issue a Writ of *Fieri Facias* adapted to the case, directed to a Coroner of the County in which the Municipality is situate for which the Collector is in default. 16 V. c. 182, s. 81.

*Fieri Facias* to issue to the Coroner, &c.

**184.** Such Writ shall direct the Coroner to levy of the goods and chattels of the Sheriff or High Bailiff, the sum which the Sheriff or High Bailiff was ordered to levy by the Warrant of the Treasurer or Chamberlain, together with the costs of the application and of such Writ and of its execution; and the Writ shall bear date on the day of its issue, whether in term or in vacation, and shall be returnable forthwith upon its being executed, and the Coroner upon executing the same shall be entitled to the same fees, as upon a Writ grounded upon a judgment of the Court. 16 V. c. 182, s. 81.

Penalty on Sheriff or High Bailiff wilfully neglecting his duty under this Act.

**185.** If a Sheriff or High Bailiff wilfully omits to perform any duty required of him by this Act, and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of two hundred dollars, to be recovered from him in any Court of competent jurisdiction at the suit of the Treasurer of the County or Chamberlain of the City. 16 V. c. 182, s. 82.

How moneys collected for Provincial purposes to be col-

**186.** All money assessed, levied and collected for the purpose of being paid to the Receiver General, or to any other Public Officer, for the public uses of the Province, or for any special



special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over to, the same persons and in the same manner and at the same time, as taxes imposed on the same property for County or City purposes, and shall in Law and Equity be deemed and taken to be moneys collected for the County or City so far as to charge every Collector, Chamberlain or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the City or County. 16 V. c. 182, s. 83.

lected and paid.  
&c.

**187.** All money collected for County purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the Collector to the Township, Town or Village Treasurer, and by him to the County Treasurer, and the Corporation of the Township, Town or Village shall be responsible therefor to the Corporation of the County. 16 V. c. 182, s. 84.

How moneys for County purposes shall be paid over when collected.

**188.** Any bond and security given by a Collector or Treasurer to the Corporation of the Township, Town or Village, that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for County purposes, or for any of the purposes mentioned in the one hundred and eighty-sixth section.

Collector's bond to be a security for all moneys collected by him.

**189.** The Treasurer of every Township, Town or Village shall, within fourteen days after the time appointed for the final settlement of the Collector's Rolls, pay over to the Treasurer of the County all moneys which were assessed and by law required to be levied and collected in the Municipality for County purposes, or for any of the purposes mentioned in the one hundred and eighty-sixth section of this Act, (retaining for his fees two and a half per cent. thereon.) 16 V. c. 182, s. 85.

Treasurers of Township, &c., to pay over money raised for County purposes to the County Treasurer.

**190.** If default be made in such payment, the County Treasurer may retain or stop a like amount out of any moneys which would otherwise be payable by him to the Municipality, or may recover the same by a suit or action for debt against such Municipality, or whenever the same has been in arrear for the space of three months, he may by Warrant under his hand and seal reciting the facts, direct the Sheriff of the County to levy and collect the amount so due with interest and costs from the Municipality in default. 16 V. c. 182, s. 85.

Mode of enforcing such payment.

**191.** The Sheriff, upon receipt of the Warrant, shall levy and collect the amount, with his own fees and costs as if the Warrant had been a Writ of Execution issued by a Court of law, and he shall levy the amount of costs and fees, in the same manner as is provided by the "Act respecting the regulation of Municipal Institutions in Upper Canada," in cases of Writs of Execution. 16 V. c. 182, s. 85.

How the Sheriff shall levy the amount.

County Treasurer and Chamberlains of Cities, to account to the Crown for certain moneys.

**192.** The County Treasurer, and City Chamberlain, respectively, shall be accountable and responsible to the Crown for all moneys collected for any of the purposes mentioned in the one hundred and eighty-sixth section of this Act, and shall pay over such moneys to the Receiver General, less two and a half per cent. to be retained for himself, and the two and a half per cent. retained by the Township, Town or Village Treasurers. 16 V. c. 182, s. 86.

Municipalities to be responsible for moneys collected by Collectors.

**193.** Every County and City shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the Treasurer or Chamberlain of the County or City in virtue of his office, shall be by him duly paid over and accounted for according to law. 16 V. c. 182, s. 87.

Treasurers to be responsible in Counties and Cities.

Their bonds to apply to section 186.

**194.** The Treasurer or Chamberlain and his sureties shall be responsible and accountable for such moneys in like manner to the County or City, and any Bond or Security given by them for the duly accounting for and paying over moneys coming into his hands belonging to the County or City, shall be taken to apply to all such moneys as are mentioned in the one hundred and eighty-sixth section, and may be enforced against the Treasurer or Chamberlain in case of default on his part. 16 V. c. 182, s. 87.

What defaultation may be enforced by the Crown.

**195.** If the default relates to School moneys or other Public moneys of the Province, Her Majesty may enforce the responsibility of the County or City, by stopping or retaining a like amount out of any Public moneys which would otherwise be payable to the County or City, or to the Treasurer or Chamberlain thereof, or by suit or action against the Corporation. 16 V. c. 182, s. 87.

Remedy to persons aggrieved by default of Treasurer.

**196.** Any person aggrieved by the default of the Chamberlain or Treasurer, may recover from the Corporation of the City or County, the amount due or payable to such person, as money had and received to his use. 16 V. c. 182, s. 87.

#### MISCELLANEOUS.

Penalty for tearing down notices, &c., posted up.

**197.** If any person wilfully tears down, injures or defaces any Assessment Roll, advertisement, notice, or other document, which is required by this Act to be posted up at a public place for the information of persons interested, he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the locality, be liable to a fine of Twenty dollars. 16 V. c. 182, s. 88.

Recovery of fines imposed by this Act.

**198.** The fines and forfeitures authorized to be summarily imposed by this Act, shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods

goods and chattels, under the authority of a Warrant of Distress for that purpose, to be issued by the Justice before whom the offender has been convicted; and in case no goods or chattels can be found to satisfy the Warrant, the offender shall be committed to the Common Gaol of the County for a period not exceeding one month. 16 V. c. 182, s. 89.

**199.** When not otherwise provided, all penalties recovered under this Act shall be paid to the Treasurer or Chamberlain, for the use of the Municipality. 16 V. c. 182, s. 82. How disposed of.

**200.** The provisions of this Act shall among other things apply to the sections of the Act respecting Municipal Institutions, numbered three hundred and fifty to three hundred and fifty-six, so far as applicable thereto, and not inconsistent therewith. 22 V. c. 39, s. 4, (1859.) Title of Act.

**201.** This Act shall be known as "The Assessment Act."

## C A P . L V I .

### An Act to regulate travelling on Public Highways.

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

#### WHEELED CARRIAGES OR SLEIGHS MEETING.

**1.** In case any person travelling or being upon any Highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met, one half of the road. 18 V. c. 138, s. 2. Carriages meeting to drive to the right giving half the road.

**2.** In case any person travelling or being upon any Highway in charge of a vehicle as aforesaid, or on horseback, be overtaken by any vehicle or horseman travelling at greater speed, the person so overtaken shall quietly turn out to the right, and allow the said vehicle or horseman to pass. 18 V. c. 138, s. 3. Carriage overtaken to turn to the right.

**3.** In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle and if required so to do, he shall assist the person in charge thereof to pass without damage. If the weight of one of them prevents this.

#### PENALTY IF DRIVER INTOXICATED.

**4.** In case any person in charge of a vehicle, or of a horse or other animal used as the means of conveyance travelling or being on any Highway as aforesaid, be through drunkenness unable to drive or ride the same with safety to other persons travelling Penalty on drivers, &c., too drunk to manage their horses.

travelling on or being upon the highway, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 4.

#### RACING PROHIBITED.

Racing on highways, forbidden.

**5.** No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway. 18 V. c. 138, s. 5.

Swearing on highways, forbidden.

**6.** In case any person so races or drives, or shouts or uses blasphemous or indecent language, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 5.

#### SLEIGH BELLS.

Sleigh horses to have bells.

**7.** Every person travelling upon any highway with a sleigh, sled or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. 18 V. c. 138, s. 7.

#### BRIDGES.

Notice to be posted at the bridges to which this Act applies.

**8.** Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form :

“ Any person or persons riding or driving on or over this Bridge at a faster rate than a walk, will on conviction thereof, be subject to a fine, as provided by law.” 8 V. c. 44, s. 3.

Penalty on persons defacing such notice.

**9.** In case any person injures, or in any way interferes with such notice, he shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this Act. 8 V. c. 44, s. 4.

Fast driving over bridges, forbidden.

**10.** If, while such notice continues up, any person rides or drives a horse or other beast of burden, over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 6.

#### PENALTIES.

Penalty for contravening this Act.

**11.** In cases not otherwise specially provided for, if any person contravenes this Act, and such contravention be duly proved by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more than twenty dollars, in the discretion of such Justice, with costs.

**12.** If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty, and costs and charges of sale, shall be returned, on demand, to the owner of such goods and chattels.

To be enforced by distress.

**13.** In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges be sooner paid.

Or by imprisonment.

**14.** No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. 18 V. c. 138, s. 8.

Not to bar action of damages.

**15.** Every fine collected under this Act shall be paid to the Chamberlain or Treasurer of the Local Municipality or Place in which the offence was committed, and shall be applied to the general purposes thereof. 18 V. c. 138, s. 9.

Application of penalties.

**16.** Any conviction under this Act may be appealed in the manner provided in the Act respecting appeals in cases of summary convictions. 18 V. c. 138, s. 10.

Appeal.

## C A P. L V I I .

### An Act respecting Line Fences and Water-courses.

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

**1.** Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the Division or Line Fence on the line dividing such tracts, and equally on either side thereof. 8 V. c. 20, s. 2.

Each party to make and repair a portion of the division fence.

**2.** Any Fence coming within the meaning of a lawful fence in any By-law of the Municipal Council in that behalf, is to be considered a lawful Fence, and when no such By-law exists, any Fence Viewers, when called upon, are to exercise their own judgment and decide what they consider to be a lawful fence. 8 V. c. 20, s. 3.

What constitutes a lawful fence.

**3.** The owner of the whole or part of a Division or Line Fence which forms part of the Fence inclosing the occupied or improved land of another person, shall not take down or remove any part of such Fence : 8 V. c. 20, s. 9.

Division fences not to be removed without notice.

12 months previous.

1. Without giving at least twelve months previous notice of his intention to the owner or occupier of such adjacent enclosure; 8 V. c. 20, s. 9.

Nor unless the adjoining occupant refuses to pay therefor.

2. Nor unless such last mentioned owner or occupier, after demand made upon him in writing by the owner of such Fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section; 8 V. c. 20, s. 9.

Nor if he pays what three fence viewers award.

3. Nor, if such owner or occupier will pay to the owner of such Fence, or of any part thereof, such sum as three Fence Viewers, or a majority of them in writing, determine to be the reasonable value thereof. 8 V. c. 20, ss. 8, 9.

When vacant land is inclosed, the owner to pay a share of any adjoining division fence.

4. When any land which has laid uninclosed or in common, is afterwards inclosed or improved, the occupier shall pay to the owner of the Division or Line Fence standing upon the divisional line between such land and the enclosure of any other occupant or proprietor, a just proportion of the value thereof. 8 V. c. 20, s. 8.

Water fences to be made in equal proportions.

5. When a Water Fence or a Fence running into the water is necessary, the same is also to be made in equal parts, unless the parties otherwise agree. 8 V. c. 20, s. 10.

When lands are divided by a river or creek.

6. When lands belonging to or occupied by different persons, are divided from each other by any river, brook, pond or creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary line, the Fence shall be set up on one side of the River, Brook, Pond or Creek, or partly on one side and partly on the other, as may be just. 8 V. c. 20, s. 11.

When ditches or water courses may be opened.

7. When it is the joint interest of parties resident, to open a Ditch or Water Course for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such Ditch or Water Course according to their several interests. 8 V. c. 20, s. 12.—See 22 V. c. 99, s. 271.

Three fence viewers to decide all disputes.

8. Three Fence Viewers of the Municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this Act, and also all disputes respecting the opening, making or paying for Ditches and Water Courses, under this Act. 8 V. c. 20, ss. 2, 11.

Award to be in writing and copy delivered.

9. Every determination or award of Fence Viewers shall be in writing signed by such of them as concur therein, and they shall transmit the same (or a certified copy thereof) to the Clerk of

of the Municipality, and shall also deliver a copy to every party requiring the same, and such determination or award shall be binding on the parties thereto. 8 V. c. 20, s. 2.

**10.** When the dispute is as to the commencement or extent of the part of the Fence to be made or repaired by either party, or as to the opening of a Ditch or Water Course, or as to the part, width, depth, or extent that any person should open or make, either party may by writing notify the Fence Viewers, of the dispute, and name in the notice for the investigation thereof, the time and place of meeting, and shall also notify the other party to appear at the same time and place. 8 V. c. 20, ss. 2, 12,—See 18 V. c. 137.

What the fence viewers are to determine.

**11.** On receiving such notice the Fence Viewers shall attend at the time and place named, and after being satisfied that the other party has been also duly notified, they shall examine the premises and hear the parties and their witnesses if demanded, and according to the subject matter of the reference shall decide the commencement or extent of the part of the fence which either party claims to have made or repaired, or refuses to make or repair; or shall divide or apportion the Ditch or Water Course among the several parties, having due regard to the interests of each in the opening thereof, and shall fully determine the matters in dispute. 8 V. c. 20, s. 2.

The fence viewers upon receiving notice, are to attend, investigate and decide or apportion, &c.

**12** On any reference regarding the opening or making of a Ditch or Water Course, the Fence Viewers shall decide what length of time each of the parties shall have to open the share of the Ditch or Water-Course, which the Fence Viewers decide each such party shall open, and if it appears to the Fence Viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the Ditch or Water Course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such Ditch should be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last mentioned party may open the Ditch or Water Course across the tract, at his own expense, without being a trespasser. 8 V. c. 20, ss. 12, 13.

To decide what length of time shall be allowed to open ditches, &c.

**13.** When by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made under this Act ceases, in the opinion of either of the parties, to be equitable between them, such party may obtain another award of Fence Viewers by a like mode of proceeding; and if the Fence Viewers called upon to make a subsequent award find no reason for making an alteration, the whole cost of the reference shall be borne by the party at whose instance it has been made. 8 V. c. 20, s. 12.

When an award of fence viewers may be reviewed.

If a party refuses to perform his share of a ditch or water course, the other party may do it for him, but at the expense of the person in default.

**14.** If any party neglects or refuses upon demand made in writing as aforesaid, to open or make and keep open, his share or proportion of the Ditch or Water Course allotted or awarded to him by the Fence Viewers, within the time allowed by them, any of the other parties may, after first completing his own share or proportion, open the share or proportion allotted to the party in default, and shall be entitled to recover not exceeding forty cents per rod for the same from the party so in default. S V. c. 20, s. 14.

If a party does not perform his share of the division fence, the other party may do it, but at the expense of the party in default.

**15.** If after an award of Fence Viewers, or after being required by a demand in writing by the party occupying the adjoining tract, or a tract separated therefrom by a River, Pond or Creek, a party in the occupation of any tract of land neglects or refuses for a period of thirty days, to make or repair (as the case may be) his proportion of the Division or Line Fence between his tract and such adjoining or separated tract, or if the party making the demand neglects or refuses for the like period to make or repair his own proportion of the Fence, either party, after first completing his own proportion, may make or repair, in a substantial manner and of good sound materials, the whole or any part of the Fence, which ought to have been made or repaired by the other party, and may recover from him the value thereof. S V. c. 20, s. 3.

How the amount shall be ascertained.

**16.** To ascertain the amount payable by any person who, under the authority of this Act, makes or repairs a Fence, or makes, opens, or keeps open any Ditch or Water Course which another person should have done, and to enforce the payment of such amount, the following proceedings shall be taken: S V. c. 20, s. 4.

A Justice of the Peace to summon three fence viewers.

1. Any of the persons interested may apply to a Justice of the Peace residing within the Municipality or Township in which any such Fence is situated, and if there be no such Justice residing therein, then to any Justice of the Peace residing in any adjacent Municipality or Township, and thereupon such Justice shall issue a summons under his hand and seal, directed, by name, to three Fence Viewers of the Municipality in which the Fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such Fence and to appraise the same; S V. c. 20, s. 4.

And the party alleged to be in default.

2. The Justice shall at the same time issue a summons to the party so having neglected or refused to make or repair his proportion thereof (who shall thenceforth be considered the Defendant in the case), requiring him to appear at the same time and place, to shew cause why the party claiming payment (who shall thenceforth be considered the Plaintiff in the case) should not recover the same; S V. c. 20, s. 4.



3. The Fence Viewers shall be personally served with the summons at least four days before the day named for their attendance; 8 V. c. 20, s. 5.

Fence viewers to receive four days' notice.

4. If either party desires to procure the attendance of any person to give evidence before the Fence Viewers, the Justice shall, upon the application of such party, issue a Summons to such witness or witnesses to attend before the Fence Viewers at the time and place mentioned in the Summons to the Fence Viewers; 8 V. c. 20, s. 6.

Witnesses may be summoned.

5. The Fence Viewers, when met at the time and place appointed shall, whenever desired by either party or whenever they themselves think it proper, may administer an oath to any witness, which oath is to be in the following form: 8 V. c. 20, s. 6.

The fence viewers may swear witnesses.

“ You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the Fence Viewers now present, touching the matters which they are now to examine and determine. So help you God.”

Oath.

6. The Fence Viewers, or any two of them being present, shall, after having duly examined the Fence and received evidence, determine whether the Plaintiff is entitled to recover any and what sum from the Defendant; 8 V. c. 20, s. 5.

A majority of the fence viewers may decide.

7. In case the commencement or extent of the part of the Division or Line Fence which each should make or repair had not been previously determined by the award of Fence Viewers, the Fence Viewers named in the Summons, or any two of them, shall determine the same, and if they determine that the Plaintiff is entitled to recover from the Defendant, they shall also state what distance of Fence the Defendant should have made or repaired; 8 V. c. 20, s. 5.

What to be decided if there has been no previous award.

8. The Fence Viewers, if required by either party, before they report, shall give to such party a copy of their determination; 8 V. c. 20, s. 5.

Fence viewers to deliver copy of award, if required.

9. The Fence Viewers shall report their determination in writing under their hands to the Justice who issued the Summons, and such determination shall be final; 8 V. c. 20, s. 5.

To deliver their award to the Justice of the Peace.

10. The Justice to whom the determination of the Fence Viewers is returned, shall transmit the same to the Clerk of the Division Court having jurisdiction over that part of the Municipality, and shall certify and transmit a copy thereof to the Clerk of the Municipality, to be entered in the book in which the Municipal proceedings are recorded; 8 V. c. 20, s. 7.

Who shall send the same to the Clerk of the Division Court

11. After the expiration of forty days, from the time of the determination, the Clerk of the Division Court shall issue an execution

Who after forty days may issue

execution  
thereon.

execution against the goods and chattels of the Defendant in the same manner as if the party in whose favor the determination has been made had recovered judgment in the Division Court for the sum which the Fence Viewers have determined him to be entitled to receive, with costs. S V. c. 20, s. 7.

Fees.

17. The following fees, and no more, may be received under this Act, by the persons mentioned, that is to say :

*To the Justice of the Peace :*

For Summons to Fence Viewers, twenty-five cents ;

For Subpœna, which may contain three names, twenty-five cents

For transmitting copy of Fence Viewers' determination to Division Court and to Clerk of the Municipality, twenty-five cents.

*To the Fence Viewers :*

One dollar per day each : if less than half a day employed, fifty cents.

*To the Bailiff or Constable employed :*

For Serving Summons or Subpœna, twenty cents.

Mileage—per mile, six and two-thirds cents.

*To Witness*—per day, each, fifty cents.—S V. c. 20, s. 16.

Disbursements.

18. Upon the party in whose favor the determination of the Fence Viewers has been made, making an affidavit, which the Clerk of the Division Court may administer, that such fees have been duly paid and disbursed to the persons entitled thereto, the Clerk shall include the amount thereof in the execution, and when collected, shall pay over the same to the said party. S V. c. 20, s. 17.

C A P. L V I I I .

An Act respecting Weights and Measures.

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

The standard  
weights and

1. The Set of Weights and Measures according to the Standard of Her Majesty's Exchequer in England, heretofore procured for

for Upper Canada, shall at all times be and remain in the charge and custody of the Provincial Secretary. 4 G. 4, c. 16, s. 2.

measures to remain in the custody of Provincial Secretary.

2. Whenever any Municipal Council, authorized to appoint an Inspector of Weights and Measures, addresses the Governor requesting that the Municipality may be furnished with a true copy or set of such Weights and Measures, the Governor may direct the Provincial Secretary forthwith, at the cost of the Municipal Corporation, to furnish such copy or set made of such durable Materials as the Secretary deems the most proper for the purpose. 4 G. 4, c. 16, s. 3,—12 V. c. 85, s. 12,—See 22 V. c. 99, ss. 273, 274.

Provincial Secretary to furnish each Municipality with standard weights, &c.

3. The Municipal Council of every City may by By-law appoint one or more Inspectors of Weights and Measures for the Municipality. 12 V. c. 85, s. 12,—22 V. c. 99, s. 274.

Every City Council may appoint one or more Inspectors of weights, &c.

4. The Municipal Council of every Incorporated Town may, by By-law, appoint one Inspector of Weights and Measures for the Municipality. 12 V. c. 85, s. 12,—22 V. c. 99, s. 274.

Every Town Council may appoint one.

5. The Municipal Council of every County may, by By-law, appoint one or more Inspectors of Weights and Measures for the County, or for any Division thereof, to be defined in the By-law, but no appointment or Division under this section shall extend to or include Incorporated Towns. 18 V. c. 135, s. 1,—22 V. c. 99, s. 274.

Every County Council may appoint one or more.

6. When there are two or more Inspectors in the Municipality, the Council thereof shall, by By-law, appoint one of them to be the Senior Inspector. 18, V. c. 135, s. 1.—See 12 V. 85, s. 9.

When more than one, the Council to appoint who to be the Senior.

7. Every Inspector now or hereafter appointed shall continue in office until removed by the Municipal Council. 18 V. c. 135, s. 1.

To continue in office till removed.

8. The Inspector, or where there is more than one, the Senior Inspector, shall have charge of the Standard Weights and Measures of the Municipality, and of the Mark, Stamp, or Brand marked with the Royal initials V. R., for the purpose of marking such Weights and Measures as are required to be marked under this Act; and such Senior Inspector shall keep the same for the use of himself, and of the other Inspectors. 12 V. c. 85, ss. 2, 9.

Standard to be deposited with Inspector or Senior Inspector, as the case may be.

9. Every Inspector shall, before entering on the duties of his office, take and subscribe the following oath:

Inspectors to take an oath of office.

“I, A. B., do hereby promise and swear that I will carefully preserve all Weights and Measures given me in charge, or for my use as Inspector, as a Standard for the Municipality (or Division, as the case may be,) of \_\_\_\_\_, and that  
“ I

The Oath.

“ I will deliver them over to my successor in office, duly appointed for that purpose, when required so to do, and that I will honestly and faithfully discharge the duties of Inspector of Weights and Measures for such Municipality, (or Division) pursuant to the true intent and meaning of the law in that behalf, according to the best of my abilities and knowledge, “ So help me God.” 12 V. c. 85, s. 2.

Inspector to inspect and mark if correct all weights and measures submitted to him.

**10.** Every Inspector shall carefully examine and compare, with the Standard so furnished as aforesaid, any Weights and Measures presented to him for that purpose within his Municipality or Division, and when the same are found of the true Weight or Measure, he shall mark, stamp or brand the same, (if a Measure, as near the two ends, top and bottom, as may be,) with the Stamp or Brand furnished for the purpose. 12 V. c. 85, s. 3.

Inspector to attend for that purpose at such times and places as the Municipal Council appoints.

**11.** Every Inspector shall attend at such time and place in his Municipality or Division as the Municipal Council may appoint, once, but not oftener than twice in each year, with the Stamps and Set of Standard Weights and Measures in his custody, to examine and compare, and if found correct, to stamp all Weights and Measures brought to him for that purpose.

To give notice.

**12.** He shall give one month's notice of the time and place so appointed, by publishing the same in one or more newspapers, or by posting up copies thereof in four of the most public places in his Municipality or Division. 12 V. c. 85, ss. 4, 10.

Fees of Inspectors.

**13.** Every Inspector may demand and receive ten cents, and no more, for every Weight or Measure he marks or stamps. 12 V. c. 85, s. 8.

Standard weights of different kinds of grain, &c., established for U. C.

**14.** The following rates shall be the Standard Weight, and shall in all cases be allowed to be equal to the Winchester Bushel, namely :

Wheat,.....	Sixty pounds,
Indian Corn,.....	Fifty-six pounds,
Rye,.....	Fifty-six pounds,
Peas,.....	Sixty pounds,
Barley,....	Forty-eight pounds,
Oats,.....	Thirty-four pounds,
Beans,.....	Sixty pounds,
Clover Seed,.....	Sixty pounds,
Timothy Seed,....	Forty-eight pounds,
Buck-Wheat,.....	Forty-eight pounds,

Certain contracts not affected.

But the effect of any contract made before this Act, shall not be varied by any thing herein contained. 16 V. c. 193, s. 2.

**15.** Upon every sale and delivery, and in every contract for the sale or delivery of any Grain, Pulse or Seeds, the Bushel shall, unless otherwise agreed upon by the parties, be taken to mean the Weight of a Bushel as regulated by this Act, and not a Bushel in Measure, or according to any greater or less Weight. 16 V. c. 193, s. 3.

The bushel to be regulated by weight not by measure.

**16.** Every Storekeeper, Shopkeeper, Miller, Distiller, Butcher, Baker, Huckster, or other trading person, and every Wharfinger or Forwarder in any County or place in Upper Canada, who, two months after the appointment of an Inspector therefor, uses any Weight or Measure, which has not been duly stamped according to Law, or which may be found light or otherwise unjust, shall, on conviction, forfeit a sum of not more than twenty nor less than eight dollars; and every such light or unjust Weight or Measure so used shall, on being discovered by any Inspector, be seized, and on conviction of the person using the same, shall be forfeited, and broken up by the Inspector. 12 V. c. 85, s. 4,—4 G. 4, c. 16, s. 6,—3 V. c. 17, s. 3.

Penalty if weight is not stamped with in a certain time.

**17.** Every Inspector may, at all reasonable times, enter any shop, store, warehouse, stall, yard, or place whatsoever within his County or Division where any commodity is bought, sold or exchanged, weighed, exposed or kept for sale, or weighed for conveyance or carriage, and there examine all Weights, Measures, Steel-yards or other Weighing Machines, and compare and try the same with the copies of the Standard Weights and Measures provided by Law. 12 V. c. 85, s. 5.

Inspector may enter shops, &c., to examine weights and measures.

**18.** If upon such examination it appears that the said Weights or Measures, or any or either of them, have not been stamped or are light or otherwise unjust, the same shall be liable to be seized and forfeited, and the person or persons in whose possession the same are found, shall, on conviction, forfeit a sum not exceeding eight dollars for the first and twenty dollars for every subsequent offence.

Forfeiture of false or un-stamped weights and measures.

**19.** Any person who has in his possession a Steel-yard or other Weighing Machine which on such examination is found incorrect or otherwise unjust, or who, when thereto required, neglects or refuses to produce for such examination, all Weights, Measures, Steel-yards or other Weighing Machines, in his possession, or who otherwise obstructs or hinders such examination, shall be liable to a like penalty. 12 V. c. 85, s. 5.

Penalty for having false steel-yards.

**20.** No penalty as aforesaid shall be incurred in any County Division or Locality, until two months at least after a Standard of Weights and Measures have been received by the Inspector legally appointed therefor.

Penalty not to be incurred till two months after receipt of standard weights, &c.

**21.** All penalties under this Act, together with all reasonable costs, shall be recoverable before any Justice of the Peace, on the

How penalties recoverable.

the oath of the Inspector or of any other credible witness, and shall, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, and in default of distress the offender shall be committed to the Common Gaol of the County wherein the conviction took place for a term not exceeding one month; and all such penalties when recovered, shall belong to the Crown for the public uses of the Province, and shall be paid over to the Inspector, and shall by him be accounted for in the same manner as other public moneys coming into his hands by virtue of his office. 12 V. c. 85, s. 5.

When recovered how to be applied.

Punishment of persons forging stamps, &c.

**22.** If any person makes, forges, or counterfeits, or causes, or procures to be made, forged or counterfeited, or knowingly acts or assists in the making, forging or counterfeiting any stamp or mark legally used for the stamping or marking of any Weights or Measures in any County or place in Upper Canada, he shall be guilty of a misdemeanor, and on being convicted thereof, shall be liable, at the discretion of the Court, to be fined and imprisoned in the Common Gaol of the County where the conviction takes place; but such fine shall not exceed eighty dollars and such imprisonment shall not exceed three months.

Penalty for knowingly selling, &c., any weight or measure with counterfeit stamp.

**23.** If any person knowingly sells, alters, disposes of or exposes to sale any Weight or Measure, with such forged or counterfeit stamp or mark thereon, he shall, for every such offence, forfeit, on conviction, a sum not exceeding forty dollars, nor less than eight dollars, to be recovered under the provisions of the twenty-first section of this Act; and all Weights and Measures with such forged or counterfeited stamps or marks shall be forfeited, and broken up by the Inspector. 12 V. c. 85, s. 6.

Penalty if Inspector stamps brands or marks any Weight or Measure without having first duly compared and verified the same with and by the Standard Weights and Measures provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this Act, he shall, on conviction, forfeit a sum not exceeding twenty dollars to be recovered and applied as aforesaid. 12 V. c. 85, s. 7.

**24.** If any Inspector stamps, brands or marks any Weight or Measure without having first duly compared and verified the same with and by the Standard Weights and Measures provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this Act, he shall, on conviction, forfeit a sum not exceeding twenty dollars to be recovered and applied as aforesaid. 12 V. c. 85, s. 7.

Standards to be delivered over to successors in office.

**25.** When any Inspector of Weights and Measures is removed from office, or resigns, or removes from the place for which he has been appointed, he shall deliver to his successor in office, or to such other person as the Council of the Municipality may for that purpose by By-law appoint, all the Beams, Stamps and Standard Weights and Measures in his possession as such Inspector, and in case of the death of such Inspector, his representatives shall in like manner deliver the same to his successor in office, or to such other person as aforesaid.

Remedy by action for standards not so delivered.

**26.** In case of refusal or neglect to deliver such Beams, Stamps and Standard Weights and Measures entire and complete, the successor in office may maintain an action on the case,

case, against the person or persons so refusing or neglecting, and shall recover double the value of such of them as have not been delivered, and in every such action in which judgment is rendered for the Plaintiff, he shall recover double costs; and of the damages levied, one moiety shall be retained by the Plaintiff, and the other moiety shall be applied in supplying such Standards as may be required in his office. 12 V. c. 85, s. 13.

**27.** Any conviction under this Act may be appealed in the manner provided in the Act respecting Appeals in cases of summary convictions. 12 V. c. 85, s. 14. Appeals.

**28.** This Act is to be subject to and controlled by and to be construed with the Consolidated Statute of Canada respecting Weights and Measures. 22 V. c. 21, (1859.) This Act governed by Joint Act chap. 53.

## C A P . L I X .

### An Act respecting the Public Health.

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

**1.** The Health Officers of any Municipality or Police Village in Upper Canada, or any two of them, may, in the day time, as often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises. 5 W. 4, c. 10, s. 2. Health Officers may enter upon and examine any premises.

**2.** If upon such examination they find that the premises are in a filthy or unclean state, or that any matter or thing is thereon which, in their opinion, may endanger the public health, they, or any two of them, may order the proprietor or occupant of the premises to cleanse the same, and to remove what is so found thereon. 5 W. 4, c. 10, s. 2. If found unclean, may order proprietor to cleanse.

**3.** Such Health Officers, in case the proprietor or occupier of the premises neglects or refuses to obey their directions, may call to their assistance all Constables and any other persons they think fit, and may enter on the premises and cleanse the same, and remove therefrom and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health. 5 W. 4, c. 10, s. 2. In case of his neglect or refusal, the Health Officers and Constables may enter and cleanse.

**4.** The Governor in Council may make and declare such regulations concerning the entry or departure of boats or vessels at the different ports or places in Upper Canada, and concerning the landing of passengers, or cargoes from such boats or vessels or the receiving passengers and cargoes on board of the same, as may be thought best calculated to preserve the public health. 5 W. 4, c. 10, s. 3. The Governor may make rules respecting Vessels entering Ports, &c.

**5.** If any person wilfully disobeys or resists any lawful order of the Health Officers, or of any two of them, or wilfully violates Penalty for disobedience of

Health Officers,  
&c.

violates any regulation made and declared by the Governor in Council under this Act, or wilfully resists or obstructs the Health Officers in the execution of their duties, such person, on conviction before two or more of Her Majesty's Justices of the Peace for the locality where the offender resides, or where the offence has been committed, shall pay a fine of not less than four dollars nor more than eighty dollars; which fine shall be paid to Her Majesty's Receiver General for the public uses of the Province. 5 W. 4, c. 10, s. 4,--16 V. c. 178, s. 18.

Proceedings in  
case of malign-  
ant diseases  
in crowded or  
unhealthy  
places.

6. Whenever a disease of a malignant and fatal character is discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, in a City, Town or Village in Upper Canada or within a mile thereof, and which house is situated in an unhealthy or a crowded part of the City, Town or Village, or adjoining country, or is in a filthy and neglected state, or is inhabited by too many persons, the Board of Health of the City, Town or Village, or a majority of the members thereof, may, in the exercise of a sound discretion, and at the expense of the Board, compel the inhabitants of such dwelling-house or out-house to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken, under the direction and at the expense of the Board, for the immediate cleansing, ventilation, purification and disinfection, of such dwelling-house or out-house. 5 W. 4, c. 10, s. 6.--See ante Chapter 54, S. 245, P. 583.

## C A P . L X .

### An Act to encourage the destroying of Wolves.

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

When any person producing to a J. P. the head of a wolf with the ears on, entitled to a reward.

1. If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any County in Upper Canada, and makes oath or affirmation, (*as the case may be,*) or otherwise proves to the satisfaction of such Justice, that the wolf was killed within that County, or within one mile of an actual settlement in the County, he shall be entitled to receive from the Treasurer of the County the sum of six dollars as a bounty for the same. 6 W. 4, c. 29, s. 2.

J. P. to give his certificate.

2. In case the Justice of the Peace before whom the head of the wolf is produced, be satisfied of the fact that the wolf was killed as in the preceding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed as in the last section mentioned has been proved to his satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the Treasurer of the County the said bounty of six dollars. 6 W. 4, c. 29, s. 3.



**3.** The Treasurer of the County shall forthwith pay such bounty to the person presenting the certificate, provided the County funds in his hands enable him so to do; and if the said funds do not so enable him, then the Treasurer shall pay the same out of the moneys of the County which next thereafter come into his hands. 6 W. 4, c. 29, s. 4.

Treasurer to pay the reward if in funds.

**4.** The Treasurer of a County shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the County, arising from the building of a Court House and Gaol, and keeping the same in repair, the fees of the Clerk of the Peace, the salary of the Gaoler, and the maintenance of the prisoners, 6 W. 4, c. 29, s. 5.

Other County expenses to be first paid.

**5.** When the funds of any County do not enable the Treasurer thereof to pay the bounty, the certificate therefor, shall be a lawful tender to the full value and amount therein specified, for and towards the discharge of any County rate or assessment to be collected from any person within the County in which the wolf was destroyed, and shall be accepted and taken by the Collector of any Township within the County as equivalent to so much of the current money of Upper Canada, and may be by him paid and delivered over to the County Treasurer, by whom the same shall in like manner be taken and accepted as equivalent to so much of the current money aforesaid. 6 W. 4, c. 29, s. 6.

If not paid certificate may be tendered in discharge of rates.

## C A P . L X I .

### An Act respecting Game Laws of Upper Canada.

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

**1.** No Deer, Moose, Elk, Reindeer or Carriboo, shall be hunted, taken or killed, between the first of February and the first of August in any year. 19 V. c. 94, s. 1.

Time for killing deer.

**2.** No wild Turkey, Grouse, Partridge or Pheasant, shall be hunted, taken or killed, between the first of March and the first of September in any year. 19 V. c. 94, s. 2.

Turkey, grouse, &c.

**3.** No Quail shall be hunted, taken or killed, between the first of March and the first of October in any year. 19 V. c. 94, s. 3.

Quail.

**4.** No Woodcock shall be hunted, taken or killed, between the first of March and the first of July in any year. 19 V. c. 94, s. 4.

Woodcock.

Water-fowl.

**5.** No wild Swan, Goose or Duck of the kinds known as the Mallard, Grey Duck, Black Duck, Wood Duck, or any of the kinds of Duck known as Teal, shall be hunted, taken or killed, between the fifteenth of April and the first of August in any year. 19 V. c. 94, s. 5.

Certain birds not to be trapped, &amp;c.

**6.** No wild Turkey, Grouse, Partridge or Pheasant, Quail or Woodcock, shall be trapped or taken by means of traps, nets, springes or other means of taking such birds other than by shooting, at any time whatever; nor shall any trap, net or snare be made, erected or set, either wholly or in part for the purpose of such trapping or taking. 19 V. c. 94, s. 6.

Penalty for possessing game at unlawful periods.

**7.** No person shall have in possession any of the animals or birds hereinbefore mentioned, within the periods above respectively prohibited, without lawful excuse, the proof whereof to be on the party charged. 19 V. c. 94, s. 7.

Penalties how recovered.

**8.** Every offence against any provision of this Act shall be punished, on conviction before a Justice of the Peace, by a fine not exceeding twenty dollars nor less than one dollar in the discretion of such Justice, with costs, or in default of payment, by imprisonment for a term not exceeding one month; one half of such fine to go to the Municipality, and half to the informer. 19 V. c. 94, s. 8.

Application.

Not to apply to Indians.

**9.** This Act shall not apply to Indians. 19 V. c. 94, s. 10.

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## TITLE 8.

### EDUCATION.

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### CAP. LXII.

An Act respecting the University of Toronto, University College, and Upper Canada College and Royal Grammar School.

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

Royal Charter.

**1.** So much of the Charter granted by His late Majesty King George the Fourth, dated at Westminster, the fifteenth day of March, in the eighth year of His Reign, for the establishment of a College in Upper Canada, called "King's College," and incorporated by the name of "The Chancellor, President and Scholars

Scholars of King's College at York, in the Province of Upper Canada," as is not inconsistent with this Act, shall remain in force. 16 V. c. 89, s. 1,—7 W. 4, c. 16.

UNIVERSITY OF TORONTO.

2. The name of the said College having been, by Act of the Provincial Legislature, changed to the name of "The University of Toronto," the University established by the Charter aforesaid shall continue and be called "The University of Toronto," and shall continue to be a Body Corporate, with the powers vested in Corporate bodies by the Interpretation Act, with power to hold any real property assigned to it under the provisions of any former Act or of this Act, and with such other powers and privileges as are conferred upon it by those portions of the said Charter remaining in force, or by any such former Act, but such powers shall be exercised in accordance with the provisions of this Act; and the Chancellor, and Vice-Chancellor, and the Senate and all other Officers and Servants, and all existing Appointments, By-laws, Rules and Regulations affecting such University, shall continue subject to the provisions of this Act. 16 V. c. 89, s. 2.

Corporate name of University.

General powers.

3. There shall be no Professorship or other Teachership in the said University of Toronto, but its functions shall be limited to the examining of Candidates for Degrees in the several Faculties, or for Scholarships, Prizes, or Certificates of Honor in different branches of knowledge, and to the granting of such Degrees, Scholarships, Prizes and Certificates, after examination, in the manner hereinafter mentioned. 16 V. c. 89, s. 3.

Functions of University defined.

4. The said Corporation of The University of Toronto shall consist of one Chancellor, one Vice-Chancellor, and such number of other Members of the Senate not less than ten as the Governor may from time to time appoint under His Hand and Seal at Arms, and as may be appointed by the Senate under the power hereinafter given. 16 V. c. 89, ss. 4, 8.

Corporation how composed.

5. The Chancellor, Vice-Chancellor and other Members of the Senate for the time being, shall constitute the Senate of the said University. 16 V. c. 89, s. 5.

Senate Chancellor and Vice-Chancellor.

6. The Governor shall continue to be the Visitor of the said University on behalf of Her Majesty, and His visitatorial powers may be exercised by commission under the Great Seal, and the proceedings of such commission, having been first confirmed by the Governor, shall be binding on the said University and its Members and on all others whomsoever. 16 V. c. 89, s. 9.

Governor to be visitor.

7. Whenever a vacancy occurs in the office of Chancellor of the said University, either by death, resignation or otherwise, the

Vacancies in Chancellorship.

the

the Governor may, in the manner aforesaid, nominate a fit and proper person to be the Chancellor. 16 V. c. 89, s. 6.

Office of Vice-Chancellor shall be biennial.

**8.** The office of Vice-Chancellor of the said University shall be biennial, that is to say, the term of office of each Vice-Chancellor shall expire on some day, in the calendar year next but one after that in which he was appointed or elected, and the day on which the term of office is to expire shall be appointed by Statute of the University; and at a meeting of the Senate to be holden on some day within the month next before the expiration of the said term of office, of which meeting notice shall be given in the manner directed by Statute of the University, the Members of the Senate shall elect some one of such Members to be Vice-Chancellor when the term of office of the then Vice-Chancellor expires, and so from time to time biennially. 16 V. c. 89, s. 7.

And Elective.

Vacancies to be filled up by the Senate.

**9.** In case of the death, resignation, or other vacancy in the office of any such Vice-Chancellor before the expiration of his term of office, the Members of the Senate shall, at a meeting to be holden by them for that purpose as soon as conveniently may be, of which notice shall be given in manner aforesaid, elect one other of the said Members of the Senate to be Vice-Chancellor for the remainder of such term. 16 V. c. 89, s. 7.

Election of members of Senate by the remaining members in certain cases.

**10.** In case, by death or otherwise, the Members of the Senate are reduced below the number of ten, exclusive of the Chancellor and Vice-Chancellor for the time being, then if the Governor does not think proper to complete the said number by appointment, the Members of the Senate as soon as conveniently may be, at a meeting to be holden for that purpose, of which notice is to be given in the manner provided by Statute of the University, shall elect one or more fit and proper persons to be additional Members of the Senate, to the end that the number of ten Members of the Senate may be thereby completed, exclusive of the Chancellor and Vice-Chancellor, but no person shall be appointed or elected a Member of the Senate who is not a subject of Her Majesty. 16 V. c. 89, s. 8.

Senate to manage the business of the University.

**11.** The Chancellor, Vice-Chancellor and Members of the Senate for the time being, shall, subject to the provisions of this Act relative to the income and property of the said University, have the management of and superintendence over the affairs and business of the University. 16 V. c. 89, s. 10.

Power to make statutes.

**12.** The said Chancellor, Vice-Chancellor and Members of the Senate may from time to time make and alter any Statutes not being repugnant to the laws of Upper Canada, or to the general objects and provisions of this Act :

1. Touching the examination for Degrees, or for Scholarships, Prizes or Certificates of Honor; and

2. The granting of such Degrees, Scholarships or Certificates; and

3. The fees to be paid by Candidates for examination or upon taking any Degree; and

4. The application of such fees; and

5. Touching the periods of the regular meetings of the Senate and the mode of convening special meetings thereof; and

6. In general for promoting the purposes of the said University and touching all other matters whatsoever regarding the same or the business thereof, or for any purpose for which provision may be required for carrying out this Act according to its intent and spirit in any case not herein provided for. 16 V. c. 89, s. 10.

**13.** All such Statutes shall be reduced into writing, and the Common Seal of the University shall be affixed thereto, and when they have been approved of by the Visitor, they shall be binding upon all persons being Members or Officers of the University and upon all Candidates for degrees, Scholarships, Prizes or Certificates of Honor to be conferred by the said University, and upon all others whom it may concern. 16 V. c. 89, s. 10.

All statutes to be in writing and sealed and approved of by the visitor.

**14.** A certified copy of every such Statute shall be deposited with the Provincial Secretary within ten days after the passing thereof, to be laid before the Visitor of the University for his approval; and no such Statute shall have force or effect until it be approved by the Visitor, and such approval has been signified through the said Secretary. 16 V. c. 89, s. 10.

Copies to be deposited with Provincial Secretary.

**15.** By any such Statute approved as aforesaid power may be given to any Committee, Officers or persons to make Regulations for better carrying out the provisions or object of any Statute of the University, in the manner and to the extent therein prescribed. 16 V. c. 89, s. 10.

Certain powers may be delegated by statute.

**16.** In addition to the power of conferring Degrees in Arts and Faculties vested in the said University, the Chancellor, Vice-Chancellor and Members of the Senate may, after examination, grant Certificates of Honor in such branches of knowledge as they, from time to time, by Statutes to be made in that behalf, determine. 16 V. c. 89, s. 11.

Power to grant certificates of honor.

**17.** All questions which come before the Chancellor, Vice-Chancellor and Members of the Senate, shall be decided by the majority of the Members present; but in case of equality of votes, the maxim *presumitur pro negante* shall prevail. 16 V. c. 89, s. 12.

Majority to decide, &c.

- Quorum.** **18.** No question shall be decided at any meeting unless the Chancellor or Vice-Chancellor, and four other Members of the Senate, or in the absence of the Chancellor and Vice-Chancellor, unless five other members of the Senate, at the least, are present at the time of such decision, nor shall any Meeting be legal unless held at the times or convened in the manner provided for by Statute to be passed as aforesaid. 16 V. c. 89, s. 13.
- Legal meetings of the Senate.**
- Chairman.** **19.** At every Meeting of the Chancellor, Vice-Chancellor and Members of the Senate, the Chancellor, or in his absence the Vice-Chancellor, shall preside as Chairman, or in the absence of both, a Chairman shall be chosen by the Members present or a majority of them. 16 V. c. 89, s. 14.
- Officers.** **20.** The Chancellor, Vice-Chancellor and Members of the Senate for the time being, may, from time to time, by Statute of the University, appoint all Examiners, Officers and Servants of the said University, except the Bursar, and may in like manner remove them or any of them. 16 V. c. 89, s. 15.
- Examination for degrees, &c.** **21.** The said Chancellor, Vice-Chancellor and Members of the Senate, once at least in every year, at a time or times to be fixed by Statute of the University, shall cause to be held an Examination of the Candidates for Degrees, Scholarships, Prizes or Certificates of Honor as aforesaid.
- Candidates to be examined by Examiners.** **22.** At every such Examination the Candidates shall be examined by Examiners appointed for the purpose by the said Chancellor, Vice-Chancellor and Members of the Senate; and the Candidates shall be examined orally or in writing or otherwise, in as many branches of general knowledge as the Chancellor, Vice-Chancellor and Members of the Senate consider the most fitting subjects for such examination.
- For honors.** **23.** Special Examinations may be held for Honors.
- Examination to be public.** **24.** All the foregoing Examinations shall be open and public. 16 V. c. 89, s. 16.
- From what college, &c., students may be examined for degrees in arts.** **25.** In order to extend the benefits of Colleges and Establishments already instituted in this Province for the promotion of Literature, Science and Art, whether incorporated or not incorporated, by connecting them with the said University, all persons shall be admitted as Candidates for the respective Degrees of Bachelor of Arts and Master of Arts, in the said University, on satisfying the Chancellor, Vice-Chancellor and Members of the Senate, by proper Certificates, that such persons have, in any of the Institutions hereinafter mentioned, gone through and completed such course of instruction as the Chancellor, Vice-Chancellor and Members of the Senate by Statutes made as aforesaid from time to time, determine. 16 V. c. 89, s. 17.

**26.** The Institutions in which such course of instruction may be completed shall be all Colleges in Upper or Lower Canada incorporated by Royal Charter or by Act of the Parliament of this Province, or of either of the late Provinces of Upper or Lower Canada, and also such other Institutions, incorporated or unincorporated, now or at any time after this Act takes effect, established for the purposes of education within this Province, as the Governor from time to time prescribes to the Chancellor, Vice-Chancellor and Members of the Senate, under His Hand and Seal at Arms. 16 V. c. 89, s. 17.

Governor may nominate others.

**27.** And for the purpose of granting the Degrees of Bachelor of Medicine and Doctor of Medicine, and for the improvement of Medical Education in all its branches, as well in Medicine as in Surgery, Midwifery and Pharmacy, and for the purpose of granting the Degrees of Bachelor of Laws and Doctor of Laws, respectively, the said Chancellor, Vice-Chancellor and Members of the Senate shall, from time to time, report to the Governor, through the Provincial Secretary, which appear to them to be the Medical Schools and Institutions, or the Law Schools and Institutions, in this Province, whether incorporated or unincorporated, from which, either singly or jointly with other Medical or Law Schools or Institutions in this Province, or in other parts of Her Majesty's Dominions, or in Foreign parts, it may be fit and expedient, to admit Candidates for Degrees in Medicine or in Law, and on approval of such report by the Governor, the Senate shall admit any person to examination as a Candidate for the respective Degrees of Bachelor of Medicine or Doctor of Medicine, Bachelor of Laws or Doctor of Laws, in the said University, on his satisfying the Chancellor, Vice-Chancellor and Members of the Senate, that he has attended in one or more of such Schools or Institutions during such period and that he has gone through and completed such course of instruction as the regulations of the Senate determine. 16 V. c. 89, s. 18.

From what Institutions students may be examined for degrees in law or medicine.

**28.** The Chancellor, Vice-Chancellor and Members of the Senate, may, from time to time, with the approval of the Governor, vary, alter and amend any such reports, by striking out any of the Institutions or Schools included therein, or by adding others thereto; and all Institutions from which, under this or the three last preceding sections Students may be examined for Degrees, shall be said to be affiliated for that purpose to the University. 16 V. c. 89, s. 18.

Affiliated Institutions—what.

**29.** The Chancellor, Vice-Chancellor and Members of the Senate may, after examination, confer the several Degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Doctor of Laws, Bachelor of Medicine and Doctor of Medicine, and may examine for Medical Degrees in the four branches of Medicine, Surgery, Midwifery and Pharmacy; and such reasonable fees shall be charged to the Candidates for Examination,

Power to confer degrees in arts and faculties.

Fees.

for Degrees or for Certificates of Honor as aforesaid, and shall be paid and applied as the Chancellor, Vice-Chancellor and Members of the Senate, by Statute from time to time determine. 16 V. c. 89, s. 19.

Standard of qualification for degrees, &c.

**30.** The regulations of the Senate with respect to the literary and scientific attainments of persons obtaining Degrees or Certificates of Honor, and their Examination, shall, in so far as circumstances will, in the opinion of the Chancellor, Vice-Chancellor and Members of the Senate, permit, be similar to those in force for like purposes in the University of London, to the end that the standard of qualification in the *University of Toronto* may not be inferior to that adopted for a like Degree, Certificate of Honor in the University of London. 16 V. c. 89, s. 20.

Examiners to make a declaration of impartiality.

**31.** Each Examiner may be required to make the following declaration before the Chancellor or Vice-Chancellor:

“ I solemnly declare that I will perform my duty of Examiner without fear, favor, affection or partiality towards any Candidate, and that I will not knowingly allow to any Candidate any advantage which is not equally allowed to all.”  
16 V. c. 89, s. 21.

As to students in the University before the 22nd April, 1853.

**32.** The Chancellor, Vice-Chancellor and Members of the Senate, may make such special Regulations as to them seem just, with regard to the examination of Students who had matriculated in the said University before the twenty-second day of April, one thousand eight hundred and fifty-three, and with regard to the completion by them of the prescribed course of instruction, but in so far only as relates to the first Degree to be taken by any such Student after that day, subsequent to which they shall be subject to the same regulations as other Candidates. 16 V. c. 89, s. 22.

Scholarships, prizes and rewards to be granted.

**33.** The Chancellor, Vice-Chancellor and Members of the Senate, may, according to regulations previously made and published, grant Scholarships, Prizes and Rewards to persons who distinguish themselves at their examination, and such Scholarships shall be of the nature and extent of those next mentioned, but the sum to be expended for such purposes in any one year shall not exceed the sum appropriated for that purpose under the provisions hereinafter made. 16 V. c. 89, s. 23.

Nature of such scholarships.

**34.** To each of such Scholarships an annual stipend shall be attached payable out of the University Income Fund, for the periods and on the conditions fixed by the regulations of the University made by Statute in that behalf. 16 V. c. 89, s. 24.

Title.

**35.** The holder of any Scholarship, granted under this and the two last preceding sections, shall have the title of “ University Scholar ;”



Scholar ;” and every Scholarship in the University of Toronto granted before the twenty-second of April, one thousand eight hundred and fifty-three, and between that day and the day on which this Act comes into force, shall be a University Scholarship in University College hereinafter mentioned, and the holder thereof shall have the said title of “University Scholar.” 16 V. c. 89, s. 24.

**36.** The said Scholarships shall be held to be University Scholarships in any of the affiliated Institutions in Upper Canada, and for the purpose of being awarded according to the proficiency manifested on examination in prescribed subjects, shall be so held by the Chancellor, Vice-Chancellor and Members of the Senate. 15 V. c. 89, s. 24.

Said scholarships to be University scholarships.

**37.** All Statutes of the University heretofore made under any Act of Parliament relating to the said University and which are in force on the day this Act takes effect, shall remain in force, in so far as they are not inconsistent with this Act, until repealed or altered by the Chancellor, Vice-Chancellor and Members of the Senate of the University. 16 V. c. 89, s. 25.

What Acts to remain in force.

**38.** The Senate of the University shall annually report to the Governor, at such time as he may appoint, on the general state, progress and prospect of the University, and upon all matters touching the same, with such suggestions as they think proper to make; and the Senate shall also at all times, when thereunto required by the Governor, inquire into, examine and report upon any subject or matter connected with the University; and copies of such annual or other reports shall be laid before both Houses of the Provincial Parliament at the then next Session thereof. 16 V. c. 89, s. 26.

Senate to make certain reports to the Governor.

Copies to be laid before Parliament.

#### UNIVERSITY COLLEGE.

**39.** The Collegiate Institution heretofore constituted at the City of Toronto, by the name of *University College*, and the body corporate called “The Council of University College,” and the President, Professors, Officers, Servants, and all other existing appointments, and all statutes, by-laws, rules and regulations of such Council, are hereby continued, subject to the provisions of this Act.

College, President, &c., to continue as before.

**40.** The said College shall be under the direction, management and administration of the said Body Corporate called *The Council of University College*, and such Body Corporate shall have perpetual succession and a Common Seal, with power to hold real and personal property, subject to the provisions hereinafter made, and shall be capable of suing and being sued, pleading and being impleaded by the name aforesaid, and shall have other the usual powers of Corporate Bodies, according to the Interpretation

The Council of University College to manage the College, &c.

Interpretation Act, subject to the said provisions. 16 V. c. 89, s. 27.

Members of the Council.

**41.** The said Corporation shall consist of a President, Vice-President, and such Professors as may from time to time be appointed to Chairs in the said University College. 16 V. c. 89, s. 28.

Governor to be visitor, &c.

**42.** The Governor shall be the Visitor of the said College on behalf of the Crown, and his visitatorial powers may be exercised by Commission under the Great Seal, and the proceedings of any Commission so appointed being confirmed by the Governor, shall be binding on the said College and the Council thereof, and on all persons whomsoever. 16 V. c. 89, s. 36.

Meetings of the Council.

**43.** The President, or in his absence the Vice-President, or if both be absent, then the Senior Member of the Council present, shall preside at all Meetings of the said Corporation, and in case of an equal division of votes among the Members present, the rule *præsumitur pro negante* shall prevail; and among Members appointed at the same time, or on the same day the order in which their appointments were made shall be the order of Seniority; and all such Meetings shall be held at the times to be prescribed by the Statutes of the said College. 16 V. c. 89, s. 29.

Quorum.

**44.** Any five Members of the said Council shall be a *quorum* for transacting the business of the Council and doing all things which the Council may lawfully do; and all things done at any Meeting of the Council shall be ordered by the majority of the votes of the Members present thereat, subject to the provision hereinbefore made for the case of an equal division of votes. 16 V. c. 89, s. 30.

Majority to decide.

**45.** The said Council may make Statutes for the good government, discipline, conduct and regulation of the said College, and of the Professors, Teachers, Students, Officers and Servants thereof, for regulating the Fees to be paid by Students or persons attending lectures or receiving instruction in the said College, and the times of regular Meetings of the Council, and generally for the management of the property and business thereof, and for any purpose necessary for carrying this Act into effect according to its intent and spirit in cases for which no provision is made, so that such Statutes be not inconsistent with this Act or the laws of this Province, and the Council may from time to time amend or repeal the same; but no Statute made by the said Council shall have force and effect until it has been submitted to the Visitor of the said College and by him approved; and a certified copy of all such Statutes shall be transmitted to the Provincial Secretary, within ten days from the passing thereof, to be submitted to the said Visitor for his approval. 16 V. c. 89, s. 31.

Council to make statutes for certain purposes.

**46.** There shall be in the said College such Professors, Lecturers and Teachers, and there shall be taught in the said College such Sciences, Arts and Branches of Knowledge, as the Council, by Statutes in that behalf, from time to time determines, such Statutes being consistent with the Statutes of *The University of Toronto*, as regards the prescribed subjects of Examination; but there shall be no Professor or Teacher of Divinity in the said College, and there shall be no Professorship or Teachership of Law, or of any of the branches of Medicine or Surgery, except in so far as the same may form part of a general system of liberal Education. 16 V. c. 89, s. 32.

Council to determine the branches of knowledge to be taught.

**47.** The President and Vice-President, Professors, Lecturers, Teachers, Officers and Servants of the said College shall be appointed by the Governor, after such examination, inquiry and report as he considers necessary, and shall hold office during his pleasure. 16 V. c. 89. s. 33.

President, &c., to be appointed by the Governor.

**48.** No religious test or profession of religious faith shall be required of any Professor, Lecturer, Teacher, Student, Officer or Servant of the said College, nor shall religious observances, according to the forms of any particular religious denomination be imposed on them or any of them; but the Council may make such Regulations as they think expedient touching the moral conduct of the Students and their attendance on public worship in their respective Churches or other places of religious worship, and respecting their religious instruction by their respective Ministers, according to their respective forms of religious faith, and every facility shall be afforded for such purposes. 16 V. c. 89, s. 34.

No religious test, &c., to be required.

**49.** Any person, body politic or corporate may found Professorships, Fellowships, Lectureships, Scholarships, Exhibitions, Prizes and other Rewards, in the said College, by providing a sufficient endowment in land or other property, and surrendering or conveying the same to the Crown for the purposes of the said College, and thereupon suing out Letters Patent from the Crown, instituting, establishing and endowing the same with the property so provided for that purpose as aforesaid. 16 V. c. 89, s. 35.

Professorships may be founded by private parties, and how.

**50.** In such Letters Patent shall be set forth such Rules and Regulations for the appointing to and conferring of such Professorships, Fellowships, Lectureships, Scholarships, Prizes or other Rewards, as the respective Founders thereof, with the approbation of the Crown, think fit to prescribe for that purpose, all which Rules and Regulations the authorities of the said College shall observe and give effect to, as in the said Letters Patent may be directed. 16 V. c. 89, s. 35.

Letters patent shall set forth rules, &c.

**51.** Every endowment of lands or other property of the endowment as aforesaid shall be vested in the Crown for the purposes

Endowment to be vested in the Crown.

purposes for which it was given, and also any property real or personal, given, devised or bequeathed to the said College or for the use thereof.

Certain professorships prohibited.

**52.** No Professorship or Lectureship shall be so founded for the teaching of any subject which under this Act is not to be taught in the said College. 16 V. c. 89, s. 35.

Council to report annually to the Governor.

**53.** The Council of the said College shall annually report to the Governor, at such time as he may appoint, on the general state, progress and prospects of the College, and upon all matters touching the same, with such suggestions as they may think proper to make; and the said Council shall also, at all times when thereunto required by the Governor, inquire into, examine and report upon any subject or matter connected with the said College; and copies of such annual or other reports shall be laid before both Houses of the Provincial Parliament at the then next Session thereof. 16 V. c. 89, s. 37.

Copies to be laid before Parliament.

Terms, &c., kept in the former University of Toronto, to avail to students.

**54.** All terms kept or studies or exercises performed in the University of Toronto as constituted before the twenty-second day of April, one thousand eight hundred and fifty-three, shall be valid and effectual, and shall be deemed to be terms kept, or studies or exercises performed in University College; and the Statutes and Regulations of the said University in force at the time this Act takes effect shall, so far as not inconsistent with this Act, remain in force and apply to University College until repealed or altered by Statutes made by virtue of this Act. 16 V. c. 89, s. 38.

#### UPPER CANADA COLLEGE AND ROYAL GRAMMAR SCHOOL.

Who to control U. C. College.

**55.** The Upper Canada College and Royal Grammar School, and all the affairs and business thereof, shall be under the control, management and direction of the Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, subject to the provisions of this Act. 16 V. c. 89, s. 39.

Governor to be the visitor.

**56.** The Governor shall be the Visitor of the said College and Royal Grammar School, on behalf of Her Majesty, and his visitatorial powers may be exercised by Commission under the Great Seal, the proceedings whereof, having been first confirmed by the Governor in Council, shall be binding upon the said College and Royal Grammar School, and upon the said Senate and all others whomsoever. 16 V. c. 89, s. 40.

Senate of University to make statutes for the government of this Institution.

**57.** The Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, may make Statutes for the good government, conduct and regulation of the said College and Royal Grammar School and of the Principal, Masters, Pupils, Officers and Servants thereof, for regulating the fees to be paid by Pupils receiving instruction in the said College, and

and in cases in which no provision is made by law, may make Statutes generally for the management of the business and affairs thereof, and for any purpose necessary for carrying this Act into effect according to its intent and spirit, such Statutes not being inconsistent with the provisions of this Act or the laws of the Province, and may from time to time amend or repeal the same. 16 V. c. 89, s. 41

**58.** The Chancellor, Vice-Chancellor and Senate, may by any such Statutes empower the Principal to make Regulations for the government of the Masters and Pupils, Officers and Servants, and for the conduct and discipline of the said College and Royal Grammar School, in such matters and to such extent as may be limited in such Statutes, and subject to such control or approval as may be therein mentioned.

And for empowering the Principal to make regulations for the internal management.

**59.** No such Statute shall have force and effect until it has been submitted to the Visitor of the said College and Royal Grammar School, and by him approved; and a certified copy of all such Statutes shall be transmitted to the Provincial Secretary, within ten days from the passing thereof, to be submitted to the said Visitor for his approval. 16 V. c. 89, s. 41.

Statutes to have no force until approved by the Governor.

**60.** There shall be in the College and Royal Grammar School, a Principal, and such Masters, Officers and Servants, as may from time to time be directed by any Statute relating to the said Institution, approved as aforesaid, and the salary and emoluments attached to each such office, shall be from time to time fixed by Statute. 16 V. c. 89, s. 42.

Officers of the College.

**61.** The Principal, Masters, Officers and Servants shall be appointed by the Governor and shall hold Office during his pleasure; but until otherwise ordered by the Governor, the present Principal, Masters, Officers and Servants of the said Institution shall remain in Office, and until otherwise ordered by Statute, the Salaries and Emoluments attached to the several Offices shall be those now attached to the same respectively. 16 V. c. 89, s. 42.

Officers to be appointed by the Governor.

**62.** All Statutes, Rules and Ordinances of the said College and Royal Grammar School in force on the day this Act takes effect, and which are not inconsistent with the provisions hereof, shall be and continue in force, until repealed, altered or amended by some Statute made as aforesaid for that purpose. 16 V. c. 89, s. 43.

Present statutes to remain in force until repealed.

**63.** No religious test or profession of religious faith shall be required of any Principal, Master, Pupil, Officer or servant of the said College, nor shall religious observances, according to the forms of any particular religious denomination, be imposed on them or any of them; but the Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, may, by

No religious test, &c., to be required.

by Statute, make such Regulations as they think expedient touching the moral conduct of the Pupils and their attendance on public worship in their respective Churches or other places of religious worship, and respecting their religious instruction by their respective Ministers, according to their respective forms of religious faith, and every facility shall be afforded for such purposes. 16 V. c. 89, s. 44.

Senate to make annual report to the Governor.

**64.** The Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, shall annually report to the Governor, at such time as he may appoint, on the general state, progress and prospects of the College and Royal Grammar School and upon all matters touching the same, with such suggestions as they may think proper to make; and shall also, at all times when thereunto required by the Governor, inquire into, examine and report upon any subject or matter connected with the said College and Royal Grammar School; and copies of such annual or other reports shall be laid before both Houses of the Provincial Parliament at the then next Session thereof. 16 V. c. 89, s. 45.

Copies to be laid before Parliament.

#### ENDOWMENT AND PROPERTY.

All Institution property vested in the Crown.

**65.** All the property and effects, real and personal, of what nature or kind soever, vested in the Crown when this Act takes effect in trust for the purposes of any of the Institutions in this Act named and provided for, shall continue so vested for the purposes of and subject to the provisions of this Act, and all property, real and personal, given, devised or bequeathed to or for the same purposes, after this Act takes effect shall be vested in the Crown for the purposes hereof, and all such property shall be managed and administered, under the orders of the Governor in Council, by an Officer to be appointed by Commission under the Great Seal of this Province to hold his office during pleasure, and to be called the Bursar of the University and Colleges at Toronto. 16 V. c. 89, s. 46.

#### THE BURSAR.

University may lease to City, not exceeding fifty acres of land, adjacent to the City for a park.

**66.** The Bursar of the University of Toronto may demise at a nominal rent, for a period of nine hundred and ninety-nine years, to the Corporation of the City of Toronto, in trust for the purposes of a Park, as well for the use of the Professors, Students and other Members of the University, as of the public generally, and for no other purpose whatsoever, so much of the land vested in Her Majesty as aforesaid, situate within or adjacent to the limits of the said City, as the said Chancellor, Vice-Chancellor and Members of the Senate of the said University may, by By-law approved of by the Governor in Council, set apart for such purposes, not exceeding in the whole fifty acres, and upon such terms and conditions as have been or may after this Act takes effect, be agreed upon between the said University

University and the Council of the said Corporation. 22 V. c. 110, s. 1.

**67.** So long as the said lease remains in force, the land so demised shall be deemed to be and shall be taken to form a part of the said City of Toronto; and the residue of the lands so vested in Her Majesty as aforesaid, adjacent to the said Park, shall be subject to all the Police Regulations of the said City of Toronto, and to all By-laws of the said City in that behalf. 22 V. c. 110, s. 2.

Land so leased, to be part of the City, and residue of the University—lands adjacent to be subject to its police regulations and By-laws.

**68.** The Salary of the said Bursar shall be fixed by the Governor in Council at such amount not exceeding one thousand six hundred dollars per annum, as may seem meet, and the said Bursar shall be allowed by the Governor in Council such assistance in his office as may be found necessary. 16 V. c. 89, s. 47.

Bursar's salary to be fixed by the Governor.

**69.** The said Bursar shall have a seal of office, and shall have such powers as may from time to time be assigned to him by the Governor in Council, for the management and administration of the said property, the leasing of the same, or making agreements for the sale thereof, and the receiving of the rents, issues and profits thereof or the proceeds of the sale of any part thereof, or of any moneys in any way arising therefrom, and he shall account for and pay over the same in such manner as the Governor from time to time directs. 16 V. c. 89, s. 47.

Bursar to have a seal, &c.

**70.** The Bursar shall give security to the Crown for the due performance of his duties and the faithful accounting for and paying over all moneys which come into his hands as such Bursar, in such amount, with such securities, and in such manner and form as the Governor in Council may direct. 16 V. c. 89, s. 47.

Bursar to give security to the Crown.

**71.** The said Bursar shall, as regards his obligation to account for and pay over the moneys which come into his hands as Bursar be deemed to be an Officer employed in the collection of the Provincial Revenue, and shall, in case of his default, be liable to be dealt with accordingly. 16 V. c. 89, s. 47.

Responsibility of the Bursar.

#### THE BURSAR'S ACCOUNTS.

**72.** At such time in each year as the Governor may appoint, the said Bursar shall make and transmit to him an annual account of the property under the Bursar's management and of his official receipts and expenditure; and a copy of each account shall be laid before each House of the Provincial Parliament at the then next Session thereof: 16 V. c. 89, s. 47.

To transmit annual accounts to the Governor to be laid before Parliament.

What such accounts must show.

And each such Annual Account shall shew, among other things--

1. The number of acres of land originally granted for the endowment of the said University, or of the said Upper Canada College and Royal Grammar School ;
2. The number of acres sold, and at what rate ;
3. The total amount of sales ;
4. The amount received on account thereof, and the amount due ;
5. The amount of Capital invested, and the amount expended to the end of the preceding year ;
6. The amount received, and a detailed account of the amount expended for the preceding year, in salaries, contingent expenses and buildings, specifying the duties of the persons receiving such salaries, and the purposes of such buildings. 16 V. c. 89, s. 47.

#### DEEDS OF CONVEYANCE.

Provision for facilitating the transfer of property sold.

**73.** And in order to facilitate the transfer and conveyance of the property so as aforesaid vested in Her Majesty, the Governor may from time to time issue a Commission, under the Great Seal, to the Bursar of the University and Colleges at Toronto, authorizing the said Bursar under his hand and seal of office, to transfer and convey any of such property to purchasers and others entitled to receive conveyances thereof ; and all such transfers and conveyances may be made according to the form in the Schedule to this Act, or in words to the like effect ; and the same shall to all intents and purposes grant, transfer and convey the lands therein set forth, to the parties therein specified, according to the quality of the estate and the conditions and provisions therein mentioned, in the same manner and with the like effect, as if the same had been directly granted by the Crown under the provisions of this Act ; but nothing herein contained shall prevent the Crown from granting such lands directly. 16 V. c. 89, s. 48.

Transfers to be registered, &c.

**74.** All such transfers and conveyances shall be registered in the Registry Office of the County in which the lands are situate, in like manner and subject to the same provisions of law as conveyances from and to private parties. 16 V. c. 89, s. 48.

#### GENERAL INCOME FUND.

General Income Fund constituted.

**75.** The fees received for tuition, examination, degrees, certificates of honor or otherwise, in the said University of Toronto, in University College, and in Upper Canada College and Royal Grammar School, or such part thereof as may be payable into the general funds thereof, the rents, issues and profits



profits of all such property as aforesaid, and all the interest on the purchase money of any part of such property sold and not wholly paid for, or on moneys arising from the sale of any such property and invested at interest, and all other casual and periodical incomings, including any donations or subscriptions touching which it has not been otherwise ordered by the Donors, shall be deemed Income for the purposes of this Act, and shall form the General Income Fund, and may be expended for the purposes and under the authority of this Act. 16 V. c. 89, s. 49.

**76.** The purchase money of any such property sold, and the principal of any money invested, shall be deemed permanent property, and shall not (except only in the case hereinafter provided for) be expended or diminished in any way, but shall remain as a Permanent Fund for the support of the said Institutions and the purposes of this Act. 16 V. c. 89, s. 49.

Permanent Fund.

**77.** That part of the said General Income Fund which is derived from property heretofore vested in the Corporation of Upper Canada College and Royal Grammar School, or from other property held for the use of, or from fees received in the said College and Grammar School and payable into the general funds thereof, shall be applied to defray the current expenses of the said Institution only, and shall form the special Income Fund thereof, and shall be applied under the direction of the Governor in Council, to defray the current expenses of the said College and Grammar School and those to be incurred in the management of the endowment and funds thereof and the maintenance and repairs of property assigned for its use, and the surplus, if any, after defraying all charges thereon, shall form part of the Permanent Fund aforesaid, and shall be invested in such manner as the Governor in Council may direct; and all moneys forming part of the said Permanent Fund and arising from such surplus as aforesaid, or from property heretofore vested in the said Corporation, shall be permanently appropriated to the support of the said Upper Canada College and Royal Grammar School. 16 V. c. 89, s. 50.

Income Fund of U. C. College and Grammar School.

Permanent fund of the same.

**78.** Out of the remainder of the General Income Fund, (which remainder shall be called the University Income Fund,) after paying the charges of management, the Governor in Council may appropriate yearly, the sum required to defray the current expenses of the said University of Toronto, including Scholarships, Rewards and Prizes, and to defray the current expenses of University College; including in both cases the care, maintenance and ordinary repairs of the property assigned for the use of the said University or College, and with power to the Governor in Council to decide what shall be deemed ordinary repairs as distinguished from permanent improvements. 16 V. c. 89, s. 51.

University Income Fund and charges payable out of it.

In what manner appropriations out of the said funds may be made.

**79.** In making such appropriations for the current expenses of the said University, or of University College, or of Upper Canada Royal College and Grammar School, the Governor in Council may either direct the particular purposes to which the whole or any part of the sum appropriated shall be applied, or place the whole or any part of such sum at the disposal of the Senate of the said University or of the Council of the said College, to be applied under the provisions of Statutes in that behalf, approved as aforesaid.

Sums may be placed at disposal of a committee by statutes of the Council.

**80.** By such Statutes the said Senate or Council may place any sums at the disposal of any Committee, or persons, to be applied by them according to the directions of such Statutes, or in their discretion, to purposes to be therein named. 16 V. c. 89, s. 52.

Surplus how to be appropriated

**81.** Any surplus of the said University Income Fund remaining at the end of any year after defraying all expenses payable out of the same, shall constitute a Fund to be from time to time appropriated by Parliament for Academical Education in Upper Canada. 16 V. c. 89, s. 54.

#### CONTINGENT EXPENSES.

Expenses of Bursar's office how paid.

**82.** The expenses of the Bursar's office and the management of the property aforesaid shall be paid out of the said General Income Fund hereinbefore mentioned, and shall be the first charge thereon, and the Governor in Council shall from time to time determine what share thereof shall be paid out of that portion of the said Fund belonging to Upper Canada College and Royal Grammar School. 16 V. c. 89, s. 55.

Portions of property to be assigned for use of the said Institutions.

**83.** The Governor in Council shall from time to time assign for the use and purposes of the said University, of the said University College, and of Upper Canada College and Royal Grammar School, respectively, such portions of the property vested in the Crown as aforesaid, as may be necessary for the convenient accommodation and business of the said Institutions respectively; and the property so assigned for the use of each shall be deemed to be in the legal possession and under the control of the Senate or Council of such Institution. 16 V. c. 89, s. 56.

#### IMPROVEMENT OF BUILDINGS.

Governor in Council may authorize improvements.

**84.** The Governor in Council may authorize such permanent improvements or additions to the buildings on the said property as may be necessary for the purposes of the said Institutions respectively, and may direct the cost thereof to be paid out of that part of the Permanent Fund aforesaid hereby made applicable to the support of the Institution for the purposes of which the improvement or addition is made. 16 V. c. 89, s. 57.

85. For all the purposes of this Act, and of all accounts to be kept and payments or expenditure to be made under it, the fiscal year shall coincide with the calendar year. 16 V. c. 89, s. 58. Fiscal year.

### SCHEDULE.

To all to whom these presents shall come :

Whereas A. B. of \_\_\_\_\_, is entitled to receive a conveyance of the lands hereinafter mentioned, which lands are part of certain property vested in Her Majesty, in trust for the purposes of the University of Toronto, University College, and Upper Canada College and Royal Grammar School ; And whereas under the provisions of the Statute relating to such University, College and Royal Grammar School, C. D. of \_\_\_\_\_, the Bursar of the said University of, and Colleges at Toronto, has been authorized by a Commission under the Great Seal of this Province to transfer and convey any of the property aforesaid to purchasers and others entitled to receive conveyances thereof : Now these presents witness that the said C. D., as such Bursar, under and by virtue of the said Commission and the Statute, in that behalf and in consideration of the sum of \_\_\_\_\_ paid therefor by the said A. B., hereby grants, transfers and conveys to the said A. B., his heirs and assigns for ever (*or as the case may be*), all that certain parcel or tract of land, being lot, &c. (*as the case may be*), which said land is bounded or may be known as follows, &c. (*describe the land by its boundaries, and insert any reservations, conditions or provisions*). In witness whereof the said C. D., as Bursar aforesaid, has hereunto set his hand and affixed the seal of his office, this day, &c.

Signed, sealed and delivered } C. D.,  
in presence of } *Bursar.* [L.S.]

### C A P . L X I I I .

#### An Act respecting Grammar Schools.

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

1. There shall be one or more Grammar Schools in each County and Union of Counties in Upper Canada to be distinguished by prefixing to the term " County " the name of the City, Town or Village within the limits of which it may be situate. 47 G. 3, c. 6, s. 2,—16 V. c. 186, s. 12. Name of each  
Grammar  
School.

2. The Grammar School of the County or Union of Counties situate at the County Town of any County or Union of Counties in Upper Canada, shall be the Senior Grammar School. Which shall be  
the Senior  
School.

**Grammar**

Grammar School of such County or Union of Counties, and if the Assizes for any of such Counties or Union of Counties are usually held in a City, such City for the purposes of this Act shall be considered a County Town. 16 V. c. 186, s. 13.

Where such School shall be situated.

3. All other Grammar Schools established, on or before the first January, one thousand eight hundred and fifty-four, shall be continued at the places where they are respectively held; but the Board of Trustees of each of the said Schools may change the place of holding such School by a resolution to be passed for that purpose and approved of by the Governor in Council; and the place of holding any Grammar School established since the first January, one thousand eight hundred and fifty-four, may be changed by the County Council of the County within which it is established. 16 V. c. 186, s. 15.

Investment of Grammar School Funds.

4. All moneys arising from the sale of lands at any time set apart for the encouragement of Grammar Schools in Upper Canada, and not specially granted to or vested in or for the benefit of any particular College, Grammar School, or other Seminary or place of Education, or otherwise departed with by the Crown, and all annual grants which have been or may, after this Act takes effect, be made by Parliament, or which may be otherwise available from any other sources for that purpose, shall form a fund to be called *The Upper Canada Grammar School Fund*, and shall be invested in Government or other securities by the direction of the Governor in Council. 16 V. c. 186, s. 1.

Special grant to Senior Schools.

5. Out of the annual income of such Fund, the sum of four hundred dollars shall be appropriated for the teacher of the Senior Grammar School in each County, (unless the average number of scholars be under ten) and if the average number of scholars be under ten, then the sum of two hundred dollars shall be so appropriated. 59 G. 3, c. 4, ss. 2, 11,—16 V. c. 186, s. 1.

Annual income to be distributed.

6. After deducting such yearly sum of four hundred dollars or two hundred dollars appropriated for each senior Grammar School as aforesaid, the Chief Superintendent of Education shall annually apportion the residue of such annual income to the several Counties and Unions of Counties in Upper Canada, according to the ratio of population in each County and Union of Counties as compared with the population of Upper Canada. 16 V. c. 186, s. 1.

Basis.

Defective census provided against.

7. If in case of a defective census, the Superintendent thinks it expedient, he may, with the approbation of the Governor in Council, apportion such residue according to the best evidence which he can obtain of the relative proportions of such population, having respect to an equitable apportionment thereof according to the said ratio of population. 16 V. c. 186, s. 1.

**8.** The sums of money annually apportioned to each County, as aforesaid, shall be payable to the Treasurer of the County entitled to receive it, one half on or before the first day of July, and the other half on or before the thirty-first day of December, in each year, in such manner as may be determined by the Governor; and such moneys shall be expended in the payment of the salaries of Teachers, and for no other purpose. 16 V. c. 186, ss. 3, 4.

Money payable  
half-yearly.

For Teachers' salaries.

**9.** The sums of money apportioned out of the Grammar School Fund to each County, shall be distributed amongst the several Grammar Schools of the County within the restrictions imposed by this Act, and under such rules and regulations as may from time to time be made by the Council of Public Instruction for Upper Canada, and approved by the Governor in Council. 16 V. c. 186, ss. 3, 4.

Share of each  
Grammar  
School.

**10.** In addition to the sums applicable in aid of Grammar Schools as aforesaid, or under the one hundred and twentieth section of the Act respecting Common Schools in Upper Canada, the sum of twenty thousand dollars shall be yearly appropriated out of the Consolidated Revenue Fund of this Province, for the encouragement of superior Education in Upper Canada, and shall be distributed among the several Collegiate Educational Institutions in Upper Canada, or such of them as may be designated by an annual vote of the Provincial Parliament. 19 V. c. 54, s. 18.

Grant for Superior Education.

Distributed by  
Parliament.

**11.** The Council of public instruction shall appoint Inspectors of Grammar Schools, prescribe their duties and fix their remuneration.

Council to appoint Inspectors of Grammar Schools.

**12.** In each County Grammar School provision shall be made for giving, by a Teacher or Teachers of competent ability and good morals, instruction in all the higher branches of a practical English and Commercial Education including the Elements of Natural Philosophy and Mechanics, and also in the Latin and Greek Languages and Mathematics so far as to prepare students for University College or any College affiliated to the University of Toronto, according to a programme of studies and general rules and regulations to be prescribed by the Council of Public Instruction for Upper Canada, and approved by the Governor in Council; And no Grammar School shall be entitled to receive any part of the Grammar School Fund, which is not conducted according to such programme, rules and regulations. 16 V. c. 186, s. 5.

Grammar Schools to prepare pupils for University of Toronto and certain Colleges.

Programme of studies.

Special conditions.

**13.** No person (except a Graduate of some University,) shall be appointed Master of a Grammar School unless he has previously obtained a Certificate of qualification from a Committee of Examiners (one of whom shall be the Head Master of the Normal School,) appointed by the Council of Public Instruction. 16 V. c. 186, s. 11, No. 2.

Qualification of Grammar School Masters.

Heads of Colleges to be Members of C. P. I.

**14.** The President of University College and the President or other Head of each of the Colleges in Upper Canada affiliated to the University of Toronto, shall, for the purposes of this Act, be Members of the Council of Public Instruction.

Council to prescribe rules.

**15.** Such Council shall prepare and prescribe a list of text-books, programme of studies, and general rules and regulations for the organization and government of the County Grammar Schools, to be approved by the Governor in Council, and shall also appoint Inspectors of Grammar Schools, prescribe their duties and fix their remuneration. 16 V. c. 186, s. 6.

#### DUTIES OF MUNICIPAL COUNCILS.

Municipal Councils may raise moneys.

**16.** The Municipal Council of each County, Township, City, Town and Incorporated Village, may, from time to time, levy and collect by assessment such sums as it judges expedient, to purchase the sites of, to rent, build, repair, furnish, warm and keep in order, Grammar School Houses and their appendages, grounds and enclosures, and for procuring apparatus and text-books, and for providing the salary of the Teachers, and for all other necessary expenses of such County Grammar Schools; and all sums so collected shall be paid over to the Treasurer of the County Grammar School for which the assessment is made; And the sums raised by local assessment or subscriptions for the support of Grammar Schools shall be payable each year on or before the fourteenth day of December. 16 V. c. 186, ss. 2, 3.

To whom payable.

When.

Additional Grammar Schools may be established.

Condition.

**17.** The several County Councils may establish additional Grammar Schools within the limits of their Municipality, and appoint Trustees therefor according to the twentieth Section of this Act, but no new Grammar School shall be established until the state of the Grammar School Fund permits the application of a sum equal at the least to two hundred dollars annually to such new School, after deducting for each Senior County Grammar School the sum of four hundred dollars, and for each of the other Grammar Schools within such County, the sum of two hundred dollars annually. 16 V. c. 186, s. 14.

#### CHIEF SUPERINTENDENT.

Chief Superintendent to notify apportionment.

**18.** The Chief Superintendent of Education for Upper Canada shall, on or before the first day of May in each year, notify each County Council, through the Clerk of the Council, of the annual apportionment of Grammar School moneys to such County, and shall give notice of the same to the Minister of Finance. 16 V. c. 186, s. 3.

Chief Superintendent to report annually

**19.** The Chief Superintendent of Education shall make annually to the Governor on or before the first day of July, a report of the actual state of the Grammar Schools throughout  
Upper

Upper Canada, showing the amount of moneys expended in connection with each and from what sources derived, with such suggestions for their improvement as he deems useful and expedient,—he shall see that the County Grammar School Fund apportioned by him, is, in all cases, applied to the purposes hereinbefore prescribed, and that each County Grammar School is conducted according to the rules and regulations legally established, and he shall prepare suitable forms, and give such instructions as he judges necessary and proper for making all reports and conducting all proceedings under this Act, and shall cause the same, with a sufficient number of copies of this Act and, so far as the same relate to Grammar Schools, copies of the general rules and regulations established and approved of as aforesaid, to be printed in a convenient form and transmitted to the parties required to execute the provisions of this Act. 16 V. c. 186, s. 7.

on Grammar Schools.

Superintend the administration of their funds, &c.

Furnish copies of Act, &c.

#### TRUSTEES.

**20.** In each County in which one or more Grammar Schools are established, there shall be a Board of Trustees, consisting of not less than six nor more than eight fit and proper persons, appointed by the County Council in the manner hereinafter provided; of which Board three shall be a *quorum* for the transaction of business. 16 V. c. 186, ss. 9, 10.

Grammar Trustees of Schools.

Quorum.

**21.** The Members of each Board of Trustees for each Grammar School in each County, in office at the time this Act comes into force, shall continue in office as such Trustees until the thirty-first day of January then next, unless a vacancy occurs for which provision is hereinafter made, and on the said thirty-first of January, and annually on the thirty-first of January in each year, two of the Members of each Board of Trustees for the time being shall retire from the said board in rotation according to seniority in office. 16 V. c. 186, s. 9.

Retirement of Trustees.

**22.** The County Council shall fill up any occasional vacancy in the said Board, and the person appointed to fill such vacancy shall hold office for the unexpired part of the term for which the person causing such vacancy had been appointed to serve. 16 V. c. 186, s. 9.

Occasional vacancies supplied.

**23.** The County Council shall, at its first meeting to be held after the first day of January in each year, appoint two Trustees to fill the vacancies caused by the annual retirement of two Trustees as aforesaid; but any retiring Trustee may (with his own consent) be re-appointed, and all Trustees for the time being shall hold office until their successors are appointed as herein provided. 16 V. c. 186, s. 9.

Annual appointments of Trustees.

**24.** The Board of Trustees of each County Grammar School shall be a Corporation by the name of "The Trustees of the County Grammar School," prefixing to the term "County" the

Trustees to be a Corporation.

Powers as such. the name of the City, Town or Village within which such Grammar School is situated ; and shall have and possess all the powers usually enjoyed by Corporations so far as the same are necessary for carrying out the purposes of this Act ; and they shall meet at or near the place where each such School is held, on the first Wednesday in February in each year. 16 V. c. 186, s. 11.

Duties of Trustees.

**25.** It shall be the duty of such Trustees---

Appointing Officers, &c.

1. To appoint annually, or oftener, from amongst themselves, a Chairman, Secretary and Treasurer, and subject to the provisions hereinbefore contained, to fix the times and places of the Board meetings, the mode of calling and conducting such meetings, and of keeping a full and correct account of the proceedings of such meetings ; 16 V. c. 186, s. 11. No. 1.

Charge of School.

2. To take charge of the County Grammar School for which they are appointed Trustees, and the buildings and lands appertaining to it ;

Master and Teachers.

3. To remove, if they see fit, and, in case of vacancies, appoint the Master and other Teachers in such School, and to fix their salaries and prescribe their duties ;

Officers, &c.

4. To appoint such other officers and servants in such School as they may judge expedient, and fix their remuneration ;

Care of School.

5. To do whatever they deem expedient with regard to erecting, repairing, warming, furnishing and keeping in order, the buildings of such School and its appendages, lands and enclosures, belonging thereto and to apply (if necessary) for the requisite sums to be raised by Municipal authority for any such purposes ; 16 V. c. 186, s. 11, No. 2.

To settle Rate bill on parents.

6. To settle the amount to be paid by parents and guardians for each pupil attending such School, and to fix the times of payment, and apply the moneys received therefor as they may judge expedient towards making up the salaries of Teachers, providing the proper apparatus, maps, text-books and registers, and defraying any other necessary expenses of such School ; and they may sue for and recover such amounts, and when collected the same shall be paid over to the Treasurer of the said Board of Trustees ; 16 V. c. 186, s. 11, No. 3.

May sue for the same.

Union with Common Schools.

7. To employ in concurrence with the Trustees of the School Section, or the Board of Common School Trustees in the Township, Village, Town or City in which such Grammar School may be situate, such means as they may judge expedient, for uniting one or more of the Common Schools of such Township, Village, Town or City, or departments of them, with such Grammar School ; but no such union shall take place without ample provision

Conditions.



provision being made for giving instruction to the pupils in the elementary English branches, by duly qualified English Teachers; and the Schools thus united shall be under the management of a Joint Board of Grammar and Common School Trustees, who shall consist of and have the powers of the Trustees of both the Common and Grammar Schools, but when the Trustees of the Common School exceed six in number, six only of their number to be by them selected shall be the Common School portion of such Joint Board; 16 V. c. 186, s. 11, No. 4.

Powers of  
Joint Board.

Trustees limit-  
ed.

8. To see that the pupils of such Grammar School are supplied with proper text-books; that public half yearly examinations of the pupils are held, and due notice given of them; and that such School is conducted in accordance with the legally established regulations; 16 V. c. 186, s. 11, No. 6.

Books and ex-  
aminations.

9. To give the necessary orders upon the County Treasurer for the amount of public money to which such School is entitled, and upon their own Treasurer for any moneys in his hands, for the payment of the salaries of the officers of such School and of any necessary expenses; 16 V. c. 186, s. 11, No. 6.

Orders on  
Treasurers.

10. To prepare and transmit, before the fifteenth day of January, to the Chief Superintendent of Education, an annual report, in accordance with a form of report which shall be provided by him for that purpose, and which Report shall contain a full and accurate account of all matters appertaining to such School. 16 V. c. 186, s. 11, No. 6.

Annual report  
to Chief Super-  
intendent.

26. The Master of every Senior County Grammar School shall make the requisite observations for keeping and shall keep a Meteorological Journal, embracing such observations and kept according to such form as may from time to time be directed by the Council of Public Instruction; and all such Journals or Abstracts of them shall be presented annually by the Chief Superintendent of Education to the Governor with his Annual Report; and if not already done every Senior County Grammar School shall be provided, at the expense of the County, with the following Instruments:

Meteorological  
observations in  
Senior Schools.

One Barometer;

Instruments  
therefor.

One Thermometer for the temperature of the air;

One Daniel's Hygrometer, or other Instrument for showing the Dew-Point;

One rain-guage and measure;

One wind-vane;

And

Duty of Master.

And the Chief Superintendent of Education shall procure these Instruments at the request and expense of the Municipal Council of any County, and shall furnish the Master of the Senior County Grammar School with a Book for registering observations, and with forms for abstracts thereof, and such Master shall transmit the same to the Chief Superintendent, and shall certify that the observations required have been made with due care and regularity. 16 V. c. 186, s. 16.

Existing appointments confirmed.

**27.** All existing appointments of Masters or Teachers of Grammar Schools shall continue in force as if made under this Act until revoked or changed according to the provisions hereof. 16 V. c. 186, s. 17, *at the end.*

#### SPECIAL GRANTS OF SCHOOL SITES.

Conveyance of property for School sites.

**28.** In case any persons residing in Upper Canada, interested in any School established in any City, Town, Village or Township therein, whether as Parents of Children frequenting such Schools, or as contributors to the same, or both, have occasion or are desirous to take a conveyance of real property for the use of such Schools, such persons may elect from among themselves, and appoint any number of Trustees, not exceeding seven nor less than five, to whom and to whose successors, to be appointed in the manner specified in the Deed of Conveyance, the real property requisite for such School may be conveyed; and such Trustees, and their successors in perpetual succession, by the name expressed in such Deed, may take, hold and possess such real property, and commence and maintain any action at law or in equity for the protection thereof, and of their right thereto; but there shall not be held in trust as aforesaid more than ten acres of land at any one time for any one School; and this Section shall not extend to Common Schools. 9 V. c. 17, s. 1.

Trustees.

To have succession.

Not to apply to Common Schools.

Deed to be registered.

**29.** The Trustees shall, within twelve months after the execution of any such Deed, cause the same to be registered in the Office of the Registrar of the County in which the land lies. 9 V. c. 17, s. 2.

Certain cases provided for.

**30.** In case any lands in Upper Canada have been or after the passing of this Act be surrendered, granted, devised or otherwise conveyed to the Crown, or to the Trustees of any County Grammar School, or to any other Trustees, in trust for the purposes of or as a site for any such Grammar School, or for any other Educational Institution established in any County or place therein for the benefit of the inhabitants thereof generally, and in case such lands be found not to afford the most advantageous site for such School or Institution, or there be no School or Institution bearing the precise designation mentioned in the deed of surrender, grant, devise or other conveyance, or in case it may be for the benefit of such School or Institution that such

If site be not suitable.

such lands should be disposed of, and others acquired in their stead for the same purpose, or the proceeds of the sale applied thereto,—the Trustees in whom any such lands are vested in trust as aforesaid, may, (with the consent of the Municipal Council expressed at a legal meeting and certified under the hand of the head and the corporate seal of the Municipality in which such School or Institution has been or is to be established,) surrender and convey such lands to the Crown unconditionally, and such conveyance shall vest the lands absolutely in the Crown, without formal acceptance, by the Crown, the Governor or any other Officer or person for the Crown. 18 V. c. 121, ss. 1, 2.

Such lands may be surrendered to the Crown.

**31.** Any lands surrendered, granted, devised or otherwise conveyed to the Crown for any such purpose as aforesaid, may be sold by order of the Governor in Council, and the proceeds applied to the purchase of other lands to be vested in the Crown for the purposes of the same School or Institution, or in the case of there being no School bearing the precise designation intended as aforesaid by the person who granted or devised the lands to the Trustees from or through whom the lands so sold came to the Crown, then for the purposes of the Grammar School or other Public Educational Institution established for the benefit of the Inhabitants of the Municipality generally, which, in the opinion of the Governor in Council, comes nearest in its purposes and designs to that intended by such person as aforesaid. 18 V. c. 121, s. 1.

Such lands to be sold for benefit of such School.

Or other Educational Institution.

**32.** If such proceeds be applied to the purchase of lands for Grammar School purposes, the title to such Lands may be vested in the Board of Trustees for any Grammar School, by their corporate name; and if there be any surplus of such proceeds after such purchase, or if it be found that no lands are required as a site for, or for other purposes of such School or Institution, then such surplus or proceeds (as the case may be,) may be invested or applied for the purposes of such School or Institution in such manner as the Governor in Council deems most for the advantage thereof. 18 V. c. 121, s. 1.

Lands purchased with proceeds.

**33.** No purchaser of land from the Crown under this Act shall be in any way bound to see to the application of the purchase money. 18 V. c. 121, s. 3.

Purchaser not to see to application.

**34.** Nothing in this Act shall impair the rights of any private party in or upon any lands, in so far as such rights would have existed and could be exercised without this Act. 18 V. c. 121, s. 4.

Private rights protected.

**35.** The Crown may grant to the Trustees of any Grammar School, or of any other Public Educational Institution established for the benefit of the Inhabitants of the Municipality generally, any lands which have been or may, after the passing of this Act, be surrendered, granted, devised or otherwise conveyed to the Crown as aforesaid. 18 V. c. 121, s. 5.

Crown may grant such lands.

## C A P . L X I V .

## An Act respecting Common Schools in Upper Canada

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

## EXISTING ORGANIZATION.

Existing school arrangements continued.

**1.** All Common School Sections or other Common School Divisions, together with all elections and appointments to office, all agreements, contracts, assessments and rate-bills, heretofore duly made in relation to Common Schools and existing when this Act comes into force, shall continue subject to the provisions of this Act. 13, 14 V. c. 48, s. 1.

## ANNUAL ELECTIONS.

School trustees in office when this Act takes effect, continued.

**2.** The Term for which each School Trustee who holds office at the time this Act takes effect, shall continue as if such term had commenced by virtue of an election under this Act ; and on the second Wednesday in January next after this Act takes effect, the Trustee or Trustees whose term of office then expires shall retire from office, but may with his or their own consent be re-elected under the provisions of this Act. 13, 14 V. c. 48, s. 3.

Annual election 2nd Wednesday in January.

**3.** The annual meetings for the election of School Trustees, as hereinafter provided, shall be held in all the Cities, Towns, Townships and Villages of Upper Canada, on the second Wednesday in January, in each year, commencing at the hour of Ten of the clock in the forenoon. 13, 14 V. c. 48, s. 2.

## FIRSTLY.—TOWNSHIP SCHOOL SECTIONS AND TRUSTEES.

Trustees' term of office.

**4.** For each Township School Section there shall be three trustees, each of whom, after the first election of Trustees, shall hold office for three years and until his successor has been elected. 13, 14 V. c. 48, ss. 3, 5.

Term for vacancies.

**5.** Any Trustee elected to fill an occasional vacancy shall hold office only for the unexpired Term of the person in whose place he has been elected. 13, 14 V. c. 48, s. 12, No. 12.

Trustees not to hold certain offices.

**6.** And no Trustee of a School Section shall hold the office of Local Superintendent, or of a Teacher within the Section of which he is a Trustee. 13, 14 V. c. 48, s. 6, No. 3,—16 V. c. 185, s. 14.

Proceedings on formation of a new section.

**7.** Whenever a School Section is formed in any Township, as provided in the thirty-ninth section of this Act, the Clerk of the Township

Township shall give notice to the person appointed to call the first School Meeting for the election of Trustees, of the description and number of such School Section. 13, 14 V. c. 48, s. 4.

8. The person so appointed shall, within twenty days after receiving such notice, prepare a notice in writing, describing such Section, and appointing a time and place for the first School Section Meeting, and shall cause copies of such notice to be posted in at least three public places in the School Section, at least six days before the time of holding the Meeting. 13, 14 V. c. 48, s. 4.

A meeting to be called within 20 days.

9. The freeholders and householders of such School Section then present, shall elect one of their own number to preside over the proceedings of such Meeting, and shall also appoint a Secretary, who shall record all the proceedings of the Meeting. 13, 14 V. c. 48, s. 5.

Chairman and Secretary to be appointed.

10. The Chairman of such Meeting shall decide all questions of order, subject to an appeal to the Meeting, and in case of an equality of votes, shall give the casting vote, but he shall have no vote except as Chairman. 13, 14 V. c. 48, s. 5.

Duties of Chairman—his vote.

11. The Chairman shall take the votes in the manner desired by a majority of the electors present, but he shall at the request of any two electors, grant a poll for recording the names of the voters by the Secretary. 13, 14 V. c. 48, s. 5.

Recording votes.

12. At such first School Section Meeting, the Electors present shall by a majority of votes elect from the freeholders or householders in such Section, three Trustees. 13, 14 V. c. 48, s. 5.

Three Trustees to be elected.

13. The Trustees so elected shall respectively continue in office, as follows :

1. The first person elected shall continue in office for two years to be reckoned from the Annual School Meeting next after his election, and thence until his successor has been elected ;

First trustees' term of office.

2. The second person elected shall continue in office one year to be reckoned from the same period and until his successor has been elected ;

3. The third or last person elected shall continue in office until the next ensuing Annual School Meeting in such Section and until his successor has been elected. 13, 14 V. c. 48, s. 5.

14. A correct copy of the proceedings of such first and of every annual and of every special School Section Meeting, signed by the Chairman and Secretary, shall be forthwith transmitted by the Secretary to the Local Superintendent of Schools. 13, 14 V. c. 48, ss. 5, 12, No. 12.

Proceedings to be sent to Superintendent.

A trustee to be annually elected for such section.

**15.** A Trustee shall be elected to office at each ensuing annual school meeting, in place of the one whose term of office is about to expire; And the same individual, if willing, may be re-elected; but no School Trustee shall be re-elected, except by his own consent, during the four years next after his going out of office. 13, 14 V. c. 48, s. 3.

Proceedings at annual meetings.

**16.** At every annual School Section Meeting in any Township, as authorized and required to be held by the third Section of this Act, the freeholders and householders of such Section present at such Meeting, or a majority of them—

Chairman and Secretary.

1. Shall elect a Chairman and Secretary, who shall perform the duties required of the Chairman and Secretary, by the tenth and eleventh Sections of this Act;

Trustees' financial report.

2. Shall receive and decide upon the report of the Trustees, as required by the twenty-seventh Section of this Act; No. 21.

Election of trustees.

3. Shall elect a Trustee or Trustees, to fill up the vacancy or vacancies in the Trustee Corporation; and

Support of school.

4. Shall decide upon the manner in which the salaries of the Teacher or Teachers, and all other expenses connected with the operation of the School or Schools, shall be provided for. 13, 14 V. c. 48, s. 6.

Challenging voters.

**17.** If any person offering to vote at an annual or other School Section Meeting, is challenged as unqualified by any legal voter in such section, the Chairman presiding at such Meeting shall require the person so offering, to make the following declaration:

Declaration required.

“ I do declare and affirm that I am a freeholder (*or* householder) in this School Section, and that I am legally qualified “ to vote at this Meeting.”

Effect of such declaration.

And every person making such declaration shall be permitted to vote on all questions proposed at such Meeting; but if any person refuses to make such declaration, his vote shall be rejected. 13, 14 V. c. 48, s. 7.

Penalty for false declaration.

**18.** If any person wilfully makes a false declaration of his right to vote, he shall be guilty of a misdemeanor, and be punishable by fine or imprisonment, at the discretion of the Court of Quarter Sessions, or by a penalty of not less than five dollars, or more than ten dollars to be sued for and recovered, with costs, before a Justice of the Peace by the Trustees of the School Section, for its use. 13, 14 V. c. 48, s: 7.

\$5 or \$10, and costs.

How recovered.

Separatists not to vote at com-

**19.** No person subscribing towards the support of a Separate School established under the Act respecting Separate Schools

Schools and belonging to the religious persuasion thereof, and sending a child or children thereto, shall be allowed to vote at the election of any Trustee for a Common School in the City, Town, Village or Township in which such Separate School is established. 16 V. c. 185, s. 4,—18 V. c. 131, s. 16.

mon school meetings.

**20.** The Trustees of each school section shall appoint the place of each annual school meeting of the freeholders and householders of the section, or of a special meeting for the filling up of any vacancy in the Trustee Corporation occasioned by death, removal, or other cause, or of a special meeting for the selection of a new School site, and shall cause notices of the time and place to be posted in three or more public places of such section, at least six days before the time of holding such meeting, and shall specify in such notices the object of such meeting; they may also call and give like notices of any special meeting, for any other school purpose, which they think proper, and each such meeting shall be organized, and its proceedings recorded in the same manner as in the case of a first school meeting. 13, 14 V. c. 48, s. 12, No. 12,—16 V. c. 185, s. 6.

Place of annual meeting to be appointed by trustees.

**21.** In case any annual or other School Section Meeting has not been held for want of the proper notice, each Trustee or other person whose duty it was to give such notice, shall forfeit the sum of five dollars, to be sued for and recovered before a Justice of the Peace by any resident inhabitant in the Section for the use thereof. 13, 14 V. c. 48, s. 9.

Penalty for not calling certain meetings.

**22.** In case from the want of proper notice, any first or annual School Section Meeting, required to be held for the election of Trustees was not held at the proper period, any two freeholders or householders in such Section may, within twenty days after the time at which such meeting should have been held, call a Meeting by giving six days' notice, to be posted in at least three public places in such School Section; and the Meeting thus called shall possess all the powers and perform all the duties of the Meeting in the place of which it is called. 13, 14 V. c. 48, s. 9.

Meetings in default of first or annual meetings.

Powers and duties thereof.

**23.** If any person chosen as Trustee, refuses to serve, he shall forfeit the sum of five dollars; and every person so chosen who has not refused to accept the office and who at any time refuses or neglects to perform its duties, shall forfeit the sum of twenty dollars, to be sued for and recovered before a Justice of the Peace, by the Trustees of the School Section, for its use. 13, 14 V. c. 48, s. 8.

Penalty for refusing to serve as trustee.

**24.** Any person chosen as Trustee may resign with the consent expressed in writing, of his colleagues in office and of the Local Superintendent. 13, 14 V. c. 48, s. 8.

Trustee may resign.

Contested elections.

**25.** Each Local Superintendent of Schools—

Proceedings thereon.

1. Shall, within twenty days after any meeting for the Election of Common School Section Trustees within the limits of his charge, receive and investigate any complaint respecting the mode of conducting the Election, and according to the best of his judgment confirm it, or set it aside and appoint the time and place for a new Election, and may—16 V. c. 185, s. 14.

Other special meetings.

2. In his discretion, at any time for any lawful purpose, appoint the time and place for a Special School Section Meeting. 16 V. c. 185, s. 14.

Trustees to be a corporation.

Want of trustees provided against.

**26.** The Trustees in each School Section shall be a Corporation, under the name of "The Trustees of School Section Number \_\_\_\_\_, in the Township of \_\_\_\_\_, in the County of \_\_\_\_\_;" And no such Corporation shall cease by reason of the want of Trustees, but in case of such want, any two freeholders or householders of the Section may, by giving six days' notice to be posted in at least three public places in the Section, call a Meeting of the freeholders or householders, who shall proceed to elect three Trustees, in the manner prescribed in the ninth, tenth, eleventh, twelfth and thirteenth Sections of this Act, and the Trustees thus elected shall hold and retire from office in the manner prescribed for Trustees. 13, 14 V. c. 48, s. 10.

Duties of trustees.

**27.** It shall be the duty of the Trustees of each school section, and they are hereby empowered: 13, 14 V. c. 48, s. 12.

Secretary-Treasurer.

1. To appoint one of themselves, or some other person, to be Secretary-Treasurer to the Corporation; who shall give such security as may be required by a majority of the Trustees;

His duties.

a. For the correct and safe keeping and forthcoming (when called for) of the papers and moneys belonging to the Corporation;

b. And for the correct keeping of a record of all their proceedings, in a book procured for that purpose;

c. And for the receiving and accounting for all school moneys collected by rate-bill subscription, or otherwise, from the inhabitants of such school section;

d. And for the disbursing of such moneys in the manner directed by the majority of the Trustees;

Collector.

2. To appoint, if they think it expedient, one of themselves or some other person a Collector (who may also be Secretary-Treasurer), to collect the rates imposed by them upon the inhabitants



- inhabitants of their school section, or the sums which the said inhabitants have subscribed; and may pay such Collector, at the rate of not less than five nor more than ten per cent. on the moneys collected by him; and every such Collector shall give security satisfactory to the Trustees, and shall have the same powers by virtue of a warrant, signed by a majority of the Trustees, in collecting the school-rate or subscription, and shall proceed in the same manner as ordinary Collectors of County and Township rates and assessments; 13, 14 V. c. 18, s. 12, No. 2,—16 V. c. 182, s. 21
3. To take possession and have the custody and safe keeping of all Common School property, which has been acquired or given for Common School purposes in such section, and to acquire and hold as a Corporation, by any title whatsoever, any land, moveable property, moneys or income for Common School purposes, and to apply the same according to the terms on which the same were acquired or received; 13, 14 V. c. 48, s. 12, No. 3.
4. To do whatever they may judge expedient with regard to the building, repairing, renting, warming, furnishing and keeping in order the section School house, and its furniture and appendages, and the school lands and enclosures held by them, and for procuring apparatus and text-books for their School; 13, 14 V. c. 48, s. 12, No. 4.
5. And when there is no suitable School house belonging to such section, or when a second school-house is required, then to rent, repair, furnish, warm and keep in order a house, and its appendages, to be used as a School house; 13, 14 V. c. 48, s. 12, No. 4.
6. To establish, if they deem it expedient, with the consent of the local Superintendent of Schools, both a female and male school in the section, each of which Schools shall be subject to the same regulations and obligations as common schools generally; 13, 14 V. c. 48, s. 12, No. 5.
7. To take such steps as they may judge expedient to unite their school with any public grammar school, which may be within or adjacent to the limits of their section; 16 V. c. 185, s. 8.
8. To contract with and employ Teachers for such School section, and determine the amount of their salaries; but no agreement between Trustees and a Teacher in any School Section, made between the first of October in any year and the second Wednesday in January then next, shall be valid or binding on either party after the last mentioned day, unless such agreement has been signed by the two Trustees of such School Section whose period of office extends to one year beyond such second Wednesday; 13, 14 V. c. 48, s. 12, No. 5,—16 V. c. 185, s. 11.

Remuneration.

Security.

Powers equal to municipal collectors.

Possession of school property.

May acquire lands, &amp;c.

Providing school premises.

Renting school houses.

Establishing female school.

Union with grammar school.

Employing teachers.

Certain agreements there-with invalid.

Orders to teachers on School Fund.

9. To give the Teachers employed by them the necessary orders upon the Local Superintendent for the School Fund apportioned and payable to their school section ; but they shall not give such order in behalf of any Teacher who does not, at the time of giving such order, hold a legal certificate of qualification ; 13, 14 V. c. 48, s. 12, No. 6.

Such teacher to have a certificate.

Providing for salaries and expenses as authorized by inhabitants.

10. To provide for the salaries of Teachers and all other expenses of the School, in such manner as may be desired by a majority of the freeholders and householders of such section, at the annual school meeting, or at a special meeting called for that purpose, and to employ all lawful means, to collect the sums required for such salaries and other expenses ; and should the sums thus provided be insufficient to defray all the expenses of such school, the Trustees may assess and cause to be collected an additional rate, in order to pay the balance of the Teacher's salary and other expenses of such school ; 13, 14 V. c. 48, s. 12, No. 7.

Deficiencies to be made up by rate on property.

Rate-bill and collector's warrant.

11. To make out a list of the names of all persons rated by them for the school purposes of such section, and the amount payable by each, and to annex to such list a Warrant directed to the Collector of the School section, for the collection of the several sums mentioned in such list ; and any school-rate imposed by Trustees, according to this Act, may be made payable monthly, quarterly, half-yearly or yearly, as they may think expedient ; 13, 14 V. c. 48, s. 12, No. 8.

How leviable.

May apply to Municipality, or may levy themselves.

12. To apply to the Township Council at or before its meeting in August, or to employ their own lawful authority, as they may judge expedient, for the levying and collecting by rate, according to the valuation of taxable property as expressed in the Assessor's or Collector's Roll, all sums for the support of their School, for the purchase of School sites and the erection of School houses, and for any other School purpose authorized by this Act to be collected from the freeholders and householders of such section, and the Township Clerk or other officer having possession of such roll is hereby required to allow any one of the Trustees or their authorized Collector, to make a copy of such roll, as far as it relates to their school section ; 13, 14 V. c. 48, s. 12, No. 9,—16 V. c. 185, ss. 6, 17.

For what purposes.

Township roll to be furnished.

Exempting indigent persons.

13. In their discretion to exempt from the payment of school-rates, wholly or in part, any indigent persons, and to charge the amount of such exemption upon the other rateable inhabitants of the school section, but the same shall not be deducted from the salary of a Teacher ; 13, 14 V. c. 48, s. 12, No. 10.

Suing non-residents.

14. To sue for and recover by their name of office, the amounts of school-rates or subscriptions due from persons residing without the limits of their school section, who make default in payment ; 13, 14 V. c. 48, s. 12, No. 11.

15. To make a return to the Clerk of the Municipality of the amount of any rate imposed by them for school purposes whenever so imposed, and also, before the end of the then current year, to make a return of the rates on the property of non-residents of their section, (as provided in the one hundred and twenty-seventh section of this Act) and which they have been unable to collect ; 16 V. c. 185, s. 22, 6 *proiso*. Return of uncollected rates.
16. To permit all residents in such section between the ages of five and twenty-one years, to attend the school, so long as they conduct themselves in conformity with the rules of such school, and the fees or rates required to be paid on their behalf, are fully discharged, but such permission shall not extend to the children of persons in whose behalf a separate school has been established, according to the Act respecting the establishment of separate Schools ; 13, 14 V. c. 48, s. 12, No. 13. Residents between ages of 5 and 21 are lawful pupils.  
Exception.
17. To visit from time to time each school under their charge and see that it is conducted according to the authorized regulations, and that each such school is, at all times, duly provided with a Register and Visitor's Book, in the form prepared according to Law ; 13, 14 V. c. 48, s. 12, No. 14,—16 V. c. 185, s. 7. Visiting schools—what for.
18. To see that no unauthorized books are used in the school, and that the pupils are duly supplied with a uniform series of authorized text-books, sanctioned and recommended by the Council of Public Instruction, and to procure annually, for the benefit of their school section, some periodical devoted to education ; 13, 14 V. c. 48, s. 15. Proper text-books in school.
19. To appoint a Librarian, and to take such steps authorized by law as they may judge expedient, for the establishment, safe-keeping, and proper management of a school library in their section, whenever provision has been made and carried into effect for the establishment of school libraries ; 13, 14 V. c. 48, s. 12, No. 17. Establishing library.
20. To exercise all the corporate powers vested in them by this Act, for the fulfilment of any contract or agreement made by them ; and in case they or any of them wilfully neglect or refuse to exercise such powers, the Trustee or Trustees so neglecting or refusing shall be personally responsible for the fulfilment of such contract or agreement ; 13, 14 V. c. 48, s. 12, No. 16. Exercising corporate powers.  
Wilful neglect.  
Personal responsibility.
21. To cause to be prepared and read at the annual meeting of their section, their annual school report for the year then terminating, which report shall include, among other things, a full and detailed account of the receipt and expenditure of all school money received and expended in behalf of such section, for any purpose whatever, during such year, and in case of dispute Reporting to constituents.  
Contents of report.

- Arbitration. dispute the matter shall be referred to arbitration in the manner provided in the twenty-ninth section of this Act; 13, 14 V. c. 48, s. 12, No. 18.
- Half yearly report to local Superintendent. 22. To transmit to the local Superintendent, on or before the thirtieth day of June, and the thirty-first day of December in each year, a correct return of the average attendance of pupils in each of the schools under their charge during the six months then immediately preceding; and in case such Trustees neglect to transmit a verified statement of such average attendance, then such school section shall not be entitled to the apportionment from the school fund for the said six months. 16 V. c. 185, s. 5.
- Penalty for neglect.
- Yearly report to local Superintendent. 23. To ascertain the number of children between the ages of five and sixteen years residing in their section on the thirty-first day of December in each year; and to prepare and transmit annually, on or before the fifteenth day of January, a report to the Local Superintendent, signed by a majority of the Trustees, and made according to a form provided by the Chief Superintendent of Education, and shall specify therein: 13, 14 V. c. 48, s. 12, Nos. 18, 19.
- Contents thereof.
- Time School was open. (1.) The whole time the school in their section was kept by a qualified Teacher during the year ending the thirty-first day of the previous December; 13, 14 V. c. 48, s. 12, No. 19. (1.)
- Moneys received and paid. (2.) The amount of moneys received for the school fund, from local rates or contributions, and from other sources, distinguishing the same; and the manner in which all such moneys were expended; 13, 14 V. c. 48, s. 12, No. 19. (2.)
- Children—resident and attending school. (3.) The whole number of children residing in the school section, over the age of five years, and under the age of sixteen; the number of children and young persons taught in the school in winter and summer, distinguishing the sexes, and those who were over and under sixteen years of age; and the average attendance of pupils in both winter and summer; but the Trustees of the Common School sections within the limits of which one or more separate school sections are established as hereinafter provided, shall not in their return of children of school age residing in their school sections, include the children attending such separate school or schools; 13, 14 V. c. 48, s. 12, No. 19, (3.) and s. 19, Proviso 5.
- Exceptions.
- Branches taught, &c. (4.) The branches of education taught in the school; the numbers of pupils in each branch; the text-books used; the numbers of public school examinations, visits and lectures and by whom made or delivered, and such other information respecting the school premises and library as may be required. 13, 14 V. c. 48, s. 12, No. 19. (4.)

**28.** In case the Trustees of any school section neglect to prepare and forward the aforesaid Annual Report to their local Superintendent by the thirty-first day of January in each year, each of them shall, for each week after such thirty-first day of January, and until such report has been prepared and presented, forfeit the sum of five dollars to be sued for by such local Superintendent, and collected and applied in the manner provided by the twenty-first section of this Act. 16 V. c. 185, s. 10.

Penalty for delaying yearly report.

**29.** In case the account mentioned in the twenty-seventh section, number twenty-one, is not satisfactory to a majority of the freeholders and householders present at such meeting, then a majority of the said freeholders and householders shall appoint an arbitrator, and the Trustees shall appoint another, and the two arbitrators thus appointed shall examine the said account, and their decision respecting it shall be final; or, if the two arbitrators thus appointed cannot agree, they shall select a third, and the decision of the majority of them shall be final; and the sum or sums awarded by them against any person shall be collected by such arbitrators, or if a third has been appointed by a majority of them, in the same manner and under the same regulations as those according to which Trustees are authorized by the twenty-seventh section of this Act to collect school rates; and the sums collected shall be expended in the same manner as other moneys for the common school purposes of the section. 13, 14 V. c. 48, s. 12, No. 18.

Unsatisfactory accounts to be referred to arbitration.

Decision thereon.

Enforcing decision.

**30.** No steps shall be taken by the Trustees of any School Section for procuring a School site on which to erect a new School House, or for changing the site of an established School House, without calling a Special Meeting of the freeholders and householders of their Section to consider the matter; and in case of a difference as to the site of a school house between the majority of the Trustees and a majority of the freeholders and householders at such special meeting, each party shall choose an arbitrator, and the local Superintendent, or in case of his inability to attend, any person appointed by him to act on his behalf, shall be a third arbitrator, and such three arbitrators, or a majority of them, shall finally decide the matter. 16 V. c. 185, s. 6,—13, 14 V. c. 48, s. 11.

New school sites to be authorized by special meeting.

Difference between trustees and people to be referred to arbitration.

Decision thereof final.

**31.** The Trustees of each School Section shall be personally responsible for the amount of any School moneys forfeited by or lost to such School Section in consequence of their neglect of duty during their continuance in office; and the amount thus forfeited or lost shall be collected and applied in the manner provided by the twenty-first section of this Act. 16 V. c. 185, s. 9.

Trustees personally responsible for moneys lost.

**32.** In case a majority of the resident freeholders and householders of each section at a public meeting for that purpose

All the sections of a township may be united

and a township board elected.

By-law required.

Board elected.

Their powers.

purpose separately called by the Trustees of each such section, express a desire that local school sections should be abolished, and that all their schools should be conducted under one system and one management like the schools in Cities and Towns, the Municipal Council of such Township shall comply with the request so expressed, by passing a By-law to give effect thereto; in which event all the Common Schools of such Township shall be managed by one Board of five Trustees, one of which Trustees shall be chosen in and for each ward if the Township be divided into wards, and if not so divided, then the whole number of such Trustees shall be chosen in and for the whole Township, and the election of such Trustees shall be held at the time and in manner prescribed in the third, seventh, eighth and twenty-second sections of this Act; and such Trustees shall be a corporation under the name of "The Board of School Trustees of the township of \_\_\_\_\_, in the County of \_\_\_\_\_", and shall be invested with the same powers and be subject to the same obligations as Trustees in Cities and Towns, by the seventy-ninth section of this Act. 13, 14 V. c. 48, ss. 20, 24.

#### SECONDLY.—DUTIES OF TOWNSHIP COUNCILS.

Assessors to value lands situated in each section.

Undivided lots.

**33.** Whenever the lands or property of any individual or company are situated within the limits of two or more School Sections, each Assessor appointed by any Municipality, shall assess and return on his Roll, separately, the parts of such lands or property within the limits of which Sections, according to the divisions of the School, such lands or property may be situate; but every undivided occupied lot or part of a lot, shall only be liable to be assessed for School purposes in the School Section where the occupant resides. 16 V. c. 185, s. 16.

Assess any section at request of trustees and desired by inhabitants thereof.

**34.** For the purchase of a school site, the erection, repair, rent and furniture of a School house, the purchase of apparatus and text-books for the school, books for the library, and salary of the Teacher, each Township Council shall levy, by assessment, upon the taxable property in any school section, such sum as may be required by the Trustees of such school section in accordance with the desire of the majority of the freeholders and householders expressed at a public meeting called for that purpose, as authorized by the twenty-seventh section of this Act, number 10. 13, 14 V. c. 48, s. 18, No. 1.

Authorizing trustees to borrow money for special purposes.

And provide for repayment

**35.** Each Township Council may grant to the Trustees of any school section, on their application, authority to borrow any sums of money necessary for the purposes above mentioned, in respect to school sites, school houses and their appendages, or for the purchase or erection of a Teacher's residence, and in that event, shall cause to be levied in each year upon the taxable property in the section, a sufficient sum for the payment of the interest on the sum so borrowed, and a sum

sum sufficient to pay off the principal within ten years. 13, 14 V. c. 48, s. 18, No. 1.

**36.** No Township Council shall levy and collect in any School Section during any one year, more than one School Section rate, except for the purchase of a School site or the erection of a School house; and no such Council shall give effect to any application of Trustees for the levying or collecting of rates for school purposes, unless the Trustees of the School Section make the application to such Council at or before its meeting in August of the year in which such application is made. 16 V. c. 185, s. 17.

But not to levy more than one rate, except in certain cases.

Trustees must apply before August.

**37.** Each Township Council may levy such sums as it judges expedient for purchasing books for a Township Library, under such regulations as may be provided in that behalf, and for procuring the site and for the erection and support of a Township Model School; and in such event the members of such Township Council shall be the Trustees of such Model School, and shall possess the powers of Common School Trustees in respect to all matters affecting such Model School. 13, 14, V. c. 48, s. 18, No. 2.

Established Libraries.

And model school.

Council to be trustees.

**38.** The Trustees of any one or more common Schools may at their discretion, and with the consent of such Council, merge their schools into such Model School; and tuition to student-teachers in such Model School shall be free. 13, 14 V. c. 48, s. 18, No. 2.

Common schools may be united.

Free tuition to teachers.

**39.** Each Township Council shall form portions of the Township where no schools have been established, into school sections; and shall appoint a person in each new school section to call the first school section meeting; and shall cause such person to be notified in the manner prescribed in the seventh section of this Act. 13, 14 V. c. 48, s. 18, No. 3.

New sections to be formed.

**40.** In case it clearly appears that all parties to be affected by a proposed alteration in the boundaries of a school section have been duly notified of the intended step or application, the Township Council may alter such boundaries;—But no such alteration in the boundaries of a school section shall take effect before the twenty-fifth day of December next after the alteration has been made. 13, 14, V. c. 48, s. 18, No. 4.

Alteration of existing sections; notice to be given.

When to take effect.

**41.** In case at a Public Meeting of each of two or more sections called by the Trustees for that purpose, a majority of the freeholders and householders of each of the sections to be affected, request to be united, then the Council shall unite such school sections into one. 13, 14 V. c. 48, s. 18, No. 4.

Union of existing sections; meetings to be called.

**42.** The first election in such united section shall be appointed and held in the same manner as is provided for in the seventh

First election in such united sections.

seventh to the twelfth sections of this Act, in respect to a new school section. 13, 14 V. c. 48, s. 18, No. 4.

Share of school fund preserved.

**43.** The several parts of any altered or united school sections shall have respectively the same right to a share of the Common School Fund for the year of the alteration or union, as if they had not been altered or united. 13, 14 V. c. 48, s. 18, No. 4.

Disposal of property.

**44.** In case a school site, or school house, or other school property be no longer required in consequence of the alteration or the union of school sections, the same shall be disposed of by sale or otherwise, in such manner as a majority of the freeholders and householders in the altered or united school sections decide at a public meeting called for that purpose, and the inhabitants transferred from one school section to another, shall be entitled, for the common school purposes of the section to which they are attached, to such a proportion of the proceeds of the sale of such school house or other common school property, as the assessed value of their property bears to that of the other inhabitants of the school section from which they have been so separated; and the residue of such proceeds shall be applied to the erection of a new school house, or to other common school purposes of such altered or united sections. 13, 14 V. c. 48, s. 18, No. 4.

Share in proceeds.

Union sections of two or more townships to be formed, and altered.

**45.** Under the conditions prescribed in the fortieth section of this Act in respect to alterations of other school sections, union school sections consisting of parts of two or more Townships, may be formed and altered by the Reeves and Local Superintendents of the Townships out of parts of which such sections are proposed to be formed, at a meeting appointed for that purpose by any two of such Reeves, of which meeting the other parties authorized to act with them shall be duly notified. 13, 14 V. c. 48, s. 18, No. 4.

Meeting of Reeves and Superintendents.

Such union section to belong to township in which house is situated.

**46.** Each union school section, composed of portions of adjoining Townships, shall, for all purposes of the election of Trustees and of their control, be deemed one school section, and shall be considered, in respect to superintendence and taxation for the erection of a school house, as belonging to the Township in which the school house may be situated. 13, 14 V. c. 48, s. 18, No. 4, at the end.

Such union section may be dissolved by either township council.

Part within limits of township to be taken.

**47.** Each Township Council may, under the restriction imposed by law in regard to the alteration of School Sections, separate such part of any Union School Section as is situated within the limits of its jurisdiction, from the Union of Sections, and may form the part so separated into a distinct School Section, or attach it to one or more existing School Sections or parts of Sections within its jurisdiction, as such Council judge expedient. 16 V. c. 185, s. 17.



**48.** Each Township Council shall cause the Clerk of the Township to furnish the Local Superintendent of Schools with a copy of all the proceedings of the Council relating to the formation or alteration of school sections, all school assessments, and other educational matters. 13, 14 V. c. 18, s. 18, No. 5.

Clerk to furnish information to local superintendent.

**49.** The Township Clerk shall prepare in duplicate, a Map of the Township, shewing the divisions of the Township into School Sections and parts of Union School Sections, and shall furnish one copy of such Map to the County Clerk, for the use of the County Council, and he shall retain the other in the Township Clerk's Office, for the use of the Township Corporation. 16 V. c. 185, s. 25.

Clerk to prepare maps of township shewing section divisions.

### THIRDLY.—DUTIES OF COUNTY MUNICIPAL COUNCIL.

#### TO RAISE NECESSARY FUNDS.

**50.** Each County Council shall cause to be levied yearly upon the several Townships of the County, such sums of money, for the payment of the salaries of legally qualified Common School Teachers, as at least equal (clear of all charges of collection) the amount of school money apportioned by the Chief Superintendent of Education to the several Townships thereof for the year, and notified by him to such Council through the County Clerk; and the sums so levied may be increased at the discretion of the Council, either in aid of the County School Fund, or on the recommendation of one or more Local Superintendents, to give special or additional aid to new or needy School Sections. 13, 14 V. c. 48, s. 27, No. 1.

To raise equivalent to Legislative school grant.

Such equivalent may be increased.

Poor school.

**51.** The sum annually required to be levied in each County, for the salaries of legally qualified Teachers, shall be collected and paid into the hands of the County Treasurer, on or before the Fourteenth day of December in each year; but notwithstanding the non-payment of any part thereof to such Treasurer in due time, no Teacher shall be refused the payment of the sum to which he may be entitled from such year's County School Fund, but the County Treasurer shall pay the local Superintendent's lawful order in behalf of such Teacher, in anticipation of the payment of the County School Assessment; and the County Council shall make the necessary provision to enable the County Treasurer to pay the amount of such order. 13, 14 V. c. 48, s. 27, No. 1.

Such equivalent to be collected by 14th December.

Teachers not to be refused payment.

Provision to be made for such payments.

**52.** Each County Council shall raise by assessment such sums of money as it may judge expedient, for the establishment and maintenance of a County Common School Library. 13, 14 V. c. 48, s. 27, No. 2.

To establish Library.

## TO APPOINT LOCAL SUPERINTENDENT.

To appoint  
local superin-  
tendents.

**53.** Each County Council shall appoint annually a Local Superintendent of Schools for the whole County, or for any one or more Townships in the County, as it may judge expedient; and shall fix (within the limits prescribed by the eighty-eighth section of this Act) and provide for the salary of such Local Superintendent. 13, 14 V. c. 48, s. 27, No. 3.

Salary.

Not more than  
100 schools.

**54.** No Local Superintendent shall have the oversight of more than one hundred Schools. 13, 14 V. c. 48, s. 27, No. 3.

Clerk to report  
appointments  
and proceedings  
to Chief Super-  
intendent.

**55.** The County Clerk shall forthwith notify the Chief Superintendent of Education of the appointment and address of each such Local Superintendent, and of the County Treasurer; and shall likewise furnish him with a copy of all proceedings of the Council relating to school assessments and other educational matters. 13, 14 V. c. 48, s. 27, No. 3.

To secure all  
school moneys.

**56.** Each County Council shall see that sufficient security is given by all officers of the Council to whom school moneys are to be intrusted, and shall also see that no deduction is made from the School Fund by the County Treasurer or sub-Treasurer for the receipt and payment of school moneys. 13, 14 V. c. 48, s. 27, No. 4.

Sub-Treasur-  
ers for town-  
ships may be  
appointed.

**57.** If deemed expedient, the County Council shall appoint one or more sub-Treasurers of school moneys for one or more Townships of the County; in which event each such sub-Treasurer shall be subject to the same responsibilities and obligations in respect to the accounting for school moneys and the payment of lawful orders for such moneys given by any Local Superintendent within the parts of the County for which he is appointed sub-Treasurer, as are imposed by this Act upon each County Treasurer in respect to the paying and accounting for school moneys. 13, 14 V. c. 48, s. 27, No. 4.

Auditors of  
school moneys  
to be appointed.

**58.** Each County Council shall annually, or oftener, appoint Auditors, who shall audit the accounts of the County Treasurer and other officers to whom school moneys have been entrusted, and who shall report to such Council. 13, 14 V. c. 48, s. 27, No. 5.

Clerk to trans-  
mit audited  
accounts to the  
Chief Super-  
intendent.

**59.** The County Clerk shall transmit to the Chief Superintendent of Education, on or before the first day of March in each year, a certified copy of the abstract of the report of the auditors, and shall also give any explanation relating thereto, as far as he is able, which may be required by the Chief Superintendent. 13, 14 V. c. 48, s. 27, No. 5.

FOURTHLY.—COUNCILS AND TRUSTEES IN CITIES, TOWNS AND INCORPORATED VILLAGES, AND THEIR DUTIES.

**60.** The Municipal Council of each City, Town and Village in Upper Canada is hereby invested, within its limits, with the same powers and shall be subject to the same obligations as the Municipal Council of each County and Township by the thirty-fourth, thirty-fifth and the fiftieth, fifty-first, fifty-fifth, fifty-sixth, fifty-eighth and fifty-ninth sections of this Act. 13, 14 V. c. 48, ss. 21, 25. Powers of Councils.

**61.** The Board of School Trustees for every such City, Town and Village respectively, shall appoint the Local Superintendent of Schools for the City, Town and Village. Local superintendent appointed by Board.

CITIES AND TOWNS DIVIDED INTO WARDS.

**62.** For each ward into which any City or Town is divided, there shall be two School Trustees, each of whom after the first election of Trustees, shall continue in office two years, and until his successor has been elected, and one of such Trustees shall retire on the second Wednesday in January yearly in rotation. 13, 14 V. c. 48, s. 22. Two trustees in each ward of a city or town.  
Term of office.

**63.** On the incorporation of any City or Town and the division thereof into Wards, two fit and proper persons shall, at the first election of School Trustees, be elected School Trustees of each such Ward by a majority of the votes of the freeholders and householders thereof; and one of such Trustees, to be determined by lot at the first meeting of Trustees after their election, shall retire from office at the time appointed for the next annual School Election, and the other shall continue in office one year longer and then retire, but each such Trustee shall continue in office until his successor has been elected. 13, 14 V. c. 48, s. 22. First elections in cities and towns.  
Trustees' term of office.

**64.** In every City and Town at the time prescribed by the third section of this Act, an Election shall be held in each ward at the place of the last municipal election, and under the direction of the same Returning Officer, and conducted in the manner as an ordinary municipal ward election; but in case of the default of such Returning Officer, then under the direction of such person as the electors present may choose; and at such election, one fit and proper person to be a Trustee, shall be elected by a majority of the votes of the freeholders and householders in and for each such ward respectively, and such Trustee shall continue in office for two years, and until his successor has been elected. 13, 14 V. c. 48, s. 23. Annual elections in cities and towns.  
Returning officer.  
Election of trustee for each ward.  
Term of office.

TOWNS NOT DIVIDED INTO WARDS, AND VILLAGES.

**65.** In each Town, not divided into Wards, and in each Village, there shall be six School Trustees, two of whom after Six trustees in each village or

town municipality.

after the first election shall retire yearly on the second Wednesday in January. 13, 14 V. c. 48, s. 25,—16 V. c. 185, s. 2.

#### FIRST ELECTION.

First election in a village or town municipality.

**66.** On the incorporation of any such Town or Village, the Returning Officer appointed to hold the first Municipal Election in such Town or Village shall call a meeting for the election of School Trustees, to take place at the time prescribed in the third section of this Act, or in case of his neglect for one month, any two Freeholders in such Town or Village, on giving six days' notice in at least three public places in the Town or Village, may call a meeting for such purpose, and at such meeting six Trustees shall be elected, who shall hold office during the periods hereinafter expressed, and from thence until their successors respectively have been elected. 16 V. c. 185, s. 2,—13, 14 V. c. 48, s. 2.

Notices.

Six trustees to be elected.

Such trustees to be divided into classes.

**67.** The Trustees of every such Town and Village shall be divided by lot into three classes, of two individuals each, to be numbered one, two, three, the first of which classes shall hold office one year, the second two years and the third three years, and until their successors respectively be elected. 13, 14 V. c. 48, s. 25.

Term of office of such trustees.

**68.** The Trustees composing one of such classes, shall retire yearly in rotation, the order of such rotation of the Trustees first elected being determined by lot at the first meeting after their election, and, except the Trustees elected at the first election, the Trustees so to retire shall be those who have held the office for the then next preceding three years, or who have been elected to supply any vacancy in the retiring class. 13, 14 V. c. 48, s. 25.

#### SUBSEQUENT ELECTIONS.

Annual elections in villages and town municipalities.

**69.** A school meeting shall be held annually on the second Wednesday in January, in each such Town and Village, at the place of the then last annual election of Councillors, at which meeting the Freeholders and Householdors of the Town or Village shall elect two persons to be Trustees in the place of the two retiring from office, which Trustees elect shall continue in office three years, and until their successors have been elected. 13, 14 V. c. 48, ss. 23, 25.

Two trustees to be elected.

#### PROVISIONS OF GENERAL APPLICATION.

Challenging voters.

**70.** In case an objection be made to the right of any person to vote at an Election in any City, Town or Village, or upon any other subject connected with School purposes therein, the Returning Officer presiding at the Election shall require the person whose right of voting is objected to, to make the following declaration :

“ I do declare and affirm that I have been rated on the Assessment-Roll of this City (Town or Village, as the case may be) as a Freeholder (or householder, as the case may be) and that I have paid a public School tax in this Ward, (Town or Village, as the case may be,) within the last twelve months, and that I am legally qualified to vote at this Election.”

Declaration of voters.

Whereupon the person making such declaration shall be permitted to vote. 16 V. c. 185, s. 3.

**71.** If any person wilfully makes a false declaration of his right to vote, he shall be guilty of a misdemeanor, and upon conviction, upon the complaint of any other person, shall be punishable by fine and imprisonment in the manner provided for in the eighteenth section of this Act.

Effect of such declaration.

**72.** The Judge of the County Court shall, within twenty days after the election of a Common School Trustee in any City, Town or incorporated Village within his County, receive and investigate any complaint respecting the mode of conducting the election, and confirm it, or set it aside, and appoint the time and place of holding a new election, as he may judge right. 18 V. c. 132, s. 2.

Contested elections in cities, towns and villages.

**73.** If the Returning Officer at any election of a Common School Trustee be convicted before the County Judge of disregarding the requirements of the law, or acting partially in the execution of his office, he shall be fined a sum of not less than twenty dollars, nor more than one hundred dollars, at the discretion of such County Judge. 18 V. c. 132, s. 2.

Penalty on Returning Officer for wrong doing.

\$20 or \$100.

**74.** The expenses of any School election contest shall be paid by the parties concerned in it, as may be decided by the County Judge. 18 V. c. 132, s. 2.

Costs of contested elections.

**75.** Any Trustee elected to fill an occasional vacancy in a Board of School Trustees, shall hold office only for the unexpired term of the person in whose place he is elected to serve. 13, 14 V. c. 48, s. 24, No. 9.

Term for vacancies.

**76.** Any retiring Trustee may be re-elected with his own consent, otherwise he shall be exempted from serving for four years next after leaving office. 13, 14 V. c. 48, s. 3, 25.

Re-election of trustees.

**77.** The School Trustees for each City, Town and Incorporated Village, shall be a corporation under the name of “The Board of School Trustees of the City, Town or Village of \_\_\_\_\_, in the County of \_\_\_\_\_,” and shall succeed to all the corporate rights and powers and be subject to all the corporate obligations and liabilities of the preceding Trustees. 13, 14 V. c. 48, ss. 22, 24, 26.

Trustees to be a corporation.

First meeting.

**78.** The first meeting of the Board may be called by any Trustee to take place in the City, Town or Village Council room. 13, 14 V. c. 48, s. 24, No. 1.

Duties of Board.

**79.** It shall be the duty of the Board of School Trustees of every City, Town and Village respectively, and they are hereby authorized: 13, 14 V. c. 48, s. 24, No. 1.

Chairman.

1. To elect annually, or oftener, from among their own members, a Chairman, who shall have a right to vote at all times, and in case of an equality of votes the question shall be held to be decided in the negative; 13, 14 V. c. 48, s. 24, No. 1,—16 V. c. 185, s. 1.

His vote.

2. To appoint a Secretary, Local Superintendent of Schools, and if requisite one or more Collectors of school rates, which Collector or Collectors may be of their own number; and one of whom may also be Secretary-Treasurer, who shall be subject to the same duties, obligations and penalties as Secretary-Treasurers in School sections; 13, 14 V. c. 48, s. 24, No. 1 (and see s. 12, No. 1),—16 V. c. 185, ss. 1, 21.

Secretary, Superintendent, Collector, Secretary-Treasurer.

Meetings of Board.

3. To appoint the times and places of their meetings, and the mode of calling them; and of conducting and recording their proceedings; and of keeping all their School accounts; 13, 14, V. c. 48, s. 24, No. 1.

Possession of school property.

4. To take possession of all Common School property, and to accept and hold as a Corporation all property acquired or given for Common School purposes in the City, Town or Village, by any title whatsoever;

Management of school property.

5. To manage or dispose of such property, and all moneys or income for Common School purposes;

Proceeds of school property.

6. To apply the same, or the proceeds, to the objects for which they have been given or acquired; 13, 14 V. c. 48, s. 24, No. 2.

Providing school premises.

7. To do whatever they may judge expedient with regard to purchasing or renting school sites and premises; building, repairing, furnishing, warming and keeping in order the school houses and appendages, lands, enclosures and moveable property; for procuring suitable apparatus and text-books and for establishing and maintaining School Libraries; 13, 14 V. c. 48, s. 24, No. 3.

Apparatus, text-books, and library.

Kind of schools.

8. To determine (a) the number, sites, kind and description of schools to be established and maintained in the City, Town or Village; also (b) the Teacher or Teachers to be employed; the terms of employing them; the amount of their remuneration, and the duties which they are to perform; also

Teachers and their salaries.

(c)

(c) the salary of the local Superintendent of Schools appointed by them, and his duties ; Superintendent.

9. To adopt, at their discretion, such measures as they judge expedient, in concurrence with the Trustees of the County Grammar School, for uniting one or more of the Common Schools of the City, Town or Village with such Grammar School ; Union with grammar school.

10. To appoint annually, or oftener, if they judge it expedient, and under such regulations as they think proper, a Committee of not more than three persons for the special charge, oversight, and management of each School within the City, Town or Village ; 13, 14 V. c. 48, s. 24, No. 5. Committee for each school.

11. To prepare from time to time, and lay before the Municipal Council of the City, Town or Village, an estimate of the sums which they think requisite ; 13, 14 V. c. 48, s. 24, No. 6. Estimate for municipal council.

(a). For paying the whole or part of the salaries of Teachers ; Salaries.

(b). For purchasing or renting school premises ; Premises.

(c). For building, renting, repairing, warming, furnishing and keeping in order the school houses and their appendages and grounds ; Building.  
Rents and repairs.

(d). For procuring suitable apparatus and text-books for the schools ; Apparatus and books.

(e). For the establishment and maintenance of school libraries ; and Libraries.

(f). For all other necessary expenses of the schools under their charge ; and the Council of the City, Town or Village, shall provide such sums in the manner desired by the said Board of School Trustees ; Other expenses.  
Council to provide necessary funds.

12. To levy at their discretion any rates upon the parents or guardians of children attending any school under their charge, and to employ the same means for collecting such rates, as Trustees of Common School Sections in Townships ; and all moneys thus collected shall be paid into the hands of the Chamberlain or Treasurer of the City, Town or Village, or of the Secretary-Treasurer, for the Common School purposes of the same, subject to the order of the Board of School Trustees ; 13, 14 V. c. 48, s. 24, No. 7. Rates for children attending school.  
Payable to certain officers.

13. To give orders to Teachers and other school officers and creditors for the sums due to them on the Chamberlain or Treasurer of the City, Town or Village, or on their own Secretary-Treasurer ; 13, 14 V. c. 48, s. 24, No. 8. Orders for sums due to creditors.

Annual and special meetings.

14. To call and give notice of annual and special school meetings of the freeholders and householders of the City, Town or Village, or of any Ward therein, in the manner and under the regulations prescribed in the twentieth section of this Act, for the appointment of annual and special school meetings in the school sections of Townships; 13, 14 V. c. 48, s. 24, No. 9.

Proper School books.

Librarian.

15. To see that all the pupils in the schools are duly supplied with a uniform series of authorized text-books, and to appoint a Librarian, and take charge of the school library or libraries when established; 13, 14 V. c. 28, s. 24, No. 10.

Observance of regulations.

Publication of financial and general report in some newspapers.

16. To see that all the schools under their charge are conducted according to the authorized regulations; and, at the close of each year, to prepare and publish, in one or more of the public papers, or otherwise, for the information of the inhabitants of the City, Town or Village, an annual report of their proceedings, and of the progress and state of the schools under their charge, and of the receipts and expenditure of all school moneys;

Annual report to Chief Superintendent.

17. To prepare and transmit annually, before the fifteenth of January, to the Chief Superintendent of Education, in the form by him provided for that purpose, a report, signed by a majority of the Trustees, containing all the information required in the reports of Common School Trustees, and any additional items of information which may be required; 13, 14 V. c. 48, s. 24, No. 11.

May exercise same powers as section trustees.

18. To exercise as far as they judge expedient, in regard to their City, Town or Village, all the powers vested in the Trustees of each School Section in regard to such School Section. 16 V. c. 185, s. 1.

#### FIFTHLY.—COMMON SCHOOL TEACHERS AND THEIR DUTIES.

Teacher defined.

80. No Teacher shall be deemed a qualified Teacher who does not at the time of his engaging with the Trustees, and applying for payment from the School Fund, hold a certificate of qualification, as in this Act provided. 13, 14 V. c. 48, s. 15.

Teacher not to hold certain offices.

81. No Teacher shall hold the office of School Trustee or of Local Superintendent. 13, 14 V. c. 48, s. 6, No. 3,—16 V. c. 185, s. 14.

Duties of Teachers.

82. It shall be the duty of every Teacher of a Common School: 13, 14 V. c. 48, s. 16.

Teaching according to law and regulations.

1. To teach diligently and faithfully all the branches required to be taught in the School according to the terms of his engagement with the Trustees, and according to the provisions of this Act; 13, 14 V. c. 48, s. 16, No. 1.



2. To keep the daily, weekly and monthly or quarterly registers of the School; 13, 14 V. c. 48, s. 16, No. 2. Register.

3. To maintain proper order and discipline in his School according to the authorized forms and regulations; 13, 14 V. c. 48, s. 16, No. 2. Discipline.

4. To keep a Visitors' Book (which the Trustees shall provide) and enter therein the visits made to his school, and to present such book to each Visitor, and request him to make therein any remarks suggested by his visit; 13, 14 V. c. 48, s. 16, No. 2. Visitor's book.

5. At all times, when desired by them, to give the Trustees and Visitors access to the Registers and Visitors' Book appertaining to the school, and upon his leaving the school, to deliver up the same to the order of the Trustees; 13, 14 V. c. 48, s. 16, No. 5. Access to register's and visitor's book.

6. To have at the end of each quarter, a public examination of his school, of which he shall give due notice to the Trustees of the School, to any School Visitors who reside in or adjacent to such school section, and through the pupils, to their parents and guardians; 13, 14 V. c. 48, s. 16, No. 3. Public quarterly examinations.

7. To furnish to the Chief or Local Superintendent of Schools when desired, any information which it may be in his power to give respecting any thing connected with the operations of his school, or in any wise affecting its interests or character. 13, 14 V. c. 48, s. 16, No. 4. Information to chief or local Superintendent.

83. Any Teacher shall be entitled to be paid at the same rate mentioned in his agreement with the Trustees, even after the expiration of the period of his agreement, until the Trustees pay him the whole of his salary, as Teacher of the School, according to their engagement with him. 13, 14 V. c. 48, s. 17. Protection of Teachers.

84. In case of any difference between Trustees and a Teacher, in regard to his salary, the sum due to him, or any other matter in dispute between them, the same shall be submitted to arbitration, in which case: 13, 14 V. c. 48, s. 17. Difference between teacher and trustees.

1. Each party shall choose an Arbitrator; Arbitration.

2. In case either party in the first instance neglects or refuses to appoint an Arbitrator on his behalf, the party requiring the arbitration may, by a notice in writing to be served upon the party so neglecting or refusing, require the last mentioned party within three days inclusive of the day of the service of such notice, to appoint an Arbitrator on his behalf, and such notice shall name the Arbitrator of the party requiring the arbitration; and in case the party served with such If one neglects to appoint arbitrator.  
Notice to appoint.  
Time given.

Other arbitrator appointed. such notice does not within the three days mentioned therein, name and appoint an arbitrator, then the party requiring the arbitration may appoint the second arbitrator ;

Local superintendent to be an arbitrator.

And 3. The Local Superintendent, or in case of his inability to attend, any person appointed by him to act on his behalf shall be a third Arbitrator, and such three Arbitrators or a majority of them shall finally decide the matter. 13, 14 V. c. 48, s. 17.

Powers of arbitrators to examine.

**85.** The Arbitrators may require the attendance of all or any of the parties interested in the reference, and of their witnesses, with all such books, papers and writings as such Arbitrators may direct them or either of them to produce, and the Arbitrators may administer oaths to such parties and witnesses. 16 V. c. 185, s. 15.

Warrant of arbitrators.

**86.** The said Arbitrators, or any two of them, may issue their warrant to any person named therein, to enforce the collection of any moneys by them awarded to be paid, and the person named in such warrant shall have the same power and authority to enforce the collection of the moneys mentioned in the said warrant, with all reasonable costs, by seizure and sale of the property of the party or corporation against whom the same has issued, as any Bailiff of a Division Court has in enforcing a judgment and execution issued out of such Court. 16 V. c. 185, s. 15.

Equivalent to execution of a Division Court.

No such dispute to be brought into any Court.

**87.** No action shall be brought in any Court of Law or Equity, to enforce any claim or demand between Trustees and Teachers which can be referred to arbitration as aforesaid. 16 V. c. 185, s. 15.

#### SIXTHLY.—DUTIES OF LOCAL SUPERINTENDENTS OF SCHOOLS.

Term of office of local superintendent—salary.

**88.** Each Local Superintendent shall, unless he resigns or is removed from office for neglect of duty, improper conduct, or incompetency, continue in office, until the first day of April of the year following that of his appointment, and he shall be entitled annually, to not less than four dollars per School placed under his charge, together with any additional remuneration or allowance which the Council appointing him may grant, and the County Treasurer shall pay him the same by quarterly instalments. 16 V. c. 185, s. 14,—13, 14 V. c. 48, s. 30.

Vacancies to be filled.

**89.** In the event of any Local Superintendent resigning his office, the Warden of the County within which such Superintendent held office, may appoint a fit and proper person to the office vacated until the next ensuing meeting of the County Council. 16 V. c. 185, s. 14.

**90.** No Local Superintendent shall be a Teacher or Trustee of any Common School while he holds the office of Superintendent. 16 V. c. 185, s. 14.

Superintendent not to hold certain offices.

**91.** It shall be the duty of each Local Superintendent, and he is hereby empowered—

Duties of local superintendent.

1. Unless otherwise instructed by the Chief Superintendent of Education—to apportion among the several school sections their respective portions of the Common School Fund money apportioned to the townships within the limits of his charge as soon as notified by the County Clerk of the amount so apportioned to such townships, and such apportionment among the said school sections shall be according to the rates of the average attendance of pupils at each Common School, (the mean attendance of pupils for each half year being taken) as compared with the whole average number of pupils attending the Common Schools of each such Township; but he shall apportion no money to any school section whose Trustees have neglected to transmit their return of average attendance for the last preceding half year; 13, 14 V. c. 48, s. 31, No. 1,—16 V. c. 185, s. 5.

To apportion school fund.

According to average attendance of pupils.

Not to apportion unless trustees make average return.

2. To give to any qualified Teacher, (but to no other,) on the order of the Trustees of any School section, a Check upon the County Treasurer or Sub-Treasurer, for any sum of Money apportioned and due to such section; but except in the case of a new School section, he shall not give a check upon such order, unless a satisfactory annual School report for the year ending the last day of December preceding has been received from the Trustees; nor unless it appears by such report, that a School had been kept by a qualified Teacher in such section, for at least six months during the year ending at the date of such report; 13, 14 V. c. 48, s. 31, No. 2.

Orders to teachers—and no other.

Conditions &c.,

Annual report.

Six months' school under qualified teachers.

3. To visit each Common School within his jurisdiction, twice in each year, unless oftener required by the County Council or the Board which appointed him, or for the adjustment of disputes; and one of such half yearly visits shall be made between the first of April and the first of October, and the other between the first of October and the first of April; 13, 14 V. c. 48, s. 31, No. 3,—16 V. c. 185, s. 14.

Two visits to each school.

4. To examine at each half yearly visit the state and condition of the School, as respects the progress of the pupils in learning,—the order and discipline observed,—the system of instruction pursued,—the mode of keeping the School Registers,—the average attendance of pupils,—the character and condition of the building and premises,—and to give such advice as he may judge proper; 13, 14 V. c. 48, s. 31, No. 3.

Examination of each school.

5. To deliver in each of his School sections, at least once a year, a public lecture on some subject connected with the objects,

Annual lecture in each section.

objects, principles and means of practical education; and to do all in his power to persuade and animate Parents, Guardians, Trustees and Teachers, to improve the character and efficiency of the Common Schools, and to secure the sound education of the young generally; 13, 14 V. c. 48, s. 31, No. 4.

See to observance of lawful regulations.

6. To see that all the Schools are managed and conducted according to law,—to prevent the use of unauthorized, and to recommend the use of authorized books in each School,—and to acquire and give information as to the manner in which such authorized books can be obtained, and the economy and advantage of using them; 13, 14 V. c. 48, s. 31, No. 5.

Attend certain meetings.

7. To attend the meetings of the Board of Public Instruction, and to meet and confer with the Chief Superintendent of Education at such time and place as he may appoint when making official visits to the County; 13, 14 V. c. 48, s. 31, No. 6.

Arbitrations; to decide disputes.

8. To attend the Arbitrations, and the meetings of Town-Reeves provided for in the twenty-seventh, twenty-ninth and forty-fifth sections of this Act,—to decide upon any questions submitted to him, which arise between interested parties under the operation of this or of any former Act, or if he deems it advisable, to refer any such question to the Chief Superintendent of Education; and any aggrieved or dissatisfied party in any case not otherwise provided for, shall have the right of appeal to the Chief Superintendent of Education; 13, 14 V. c. 48, s. 31, No. 7.

Appeal to the Chief Superintendent.

Suspending teacher's certificate.

9. To suspend the certificate of qualification of any Teacher, granted by the Board of Public Instruction, for any cause which may appear to him to require it, until the next ensuing meeting of the County Board, of which meeting due notice shall be given to the Teacher suspended, and such Board shall dispose of the case as a majority of the members present think proper; and the cancelling or suspension of a Teacher's certificate of qualification shall release his School Trustees from any obligation to continue him in their employment; 13, 14 V. c. 48, s. 31, No. 8.

Effect thereof.

Temporary certificates to teachers.

10. To give any Candidate, on due examination, according to the programme authorized for the examination of Teachers, a certificate of qualification to teach a School within the limits of the charge of the Superintendent until (but no longer than) the next ensuing meeting of the Board of Public Instruction of which such Local Superintendent is a Member; but no such certificate shall be given a second time, or be valid if given a second time, to the same person in the same County; 16 V. c. 185, s. 14.

Observing regulations—giving

11. To act in accordance with the regulations and instructions provided for his guidance, to give any information in his

his power (when desired) to the Chief Superintendent of Education respecting any Common School matter within his jurisdiction,—to furnish the County Auditors, when required, with the Trustees' orders as the authority for his Checks upon the County or Sub-Treasurer for School moneys, and on retiring from office, to deliver copies of his official correspondence, and all school papers in his custody, to the order of the County Council ; 13, 14 V. c. 48, s. 31, No. 9.

ing information to Chief Superintendent and County Auditors.

Retiring from office.

12. To prepare and transmit to the Chief Superintendent of Education, on or before the first day of March, an annual report, in the form provided by the said Chief Superintendent, and which shall state : 13, 14 V. c. 48, s. 31, No. 10.

Annual report to Chief Superintendent.

(a). The whole number of Schools and School Sections or parts of sections in each Township within his jurisdiction ;

Its contents.

(b). The number of pupils taught in each school over the age of five and under the age of sixteen ; the number between the ages of sixteen and twenty-one years ; the whole number of children residing in each section, or part of a section, over the age of five and under the age of sixteen years ;

Number of pupils.

(c). The length of time a school has been kept by a qualified Teacher in each of such sections or parts of sections ; the branches taught ; the number of pupils in each branch, the books used ; and the average attendance of pupils, both male and female, in each half year ;

Time Schools open.

Branches taught.

(d). The amount of moneys received and collected in each section or part of a section—distinguishing the amount apportioned by the Chief Superintendent of Education, the amount received from County assessment, the amount raised by Trustees, and the amount from any other and what sources ; also how such moneys have been expended, or whether any part remains unexpended, and from what causes ; and the annual salary of Teachers, male and female, with and without board ;

Moneys—from what sources.

Teacher's salaries.

(e). The number of school visits made by himself and others during the year ; the number of school lectures delivered ; the whole number of school houses, their sizes, description, furniture and appendages, the number rented, the number erected during the year, of what description, and by what means ;

Visits, lectures, school houses.

(f). The number of qualified Teachers ; their standing, sex, and religious persuasion ; the number, so far as he can ascertain, of private schools ; the number of pupils and subjects taught therein ; the number of libraries, their extent, and how established and supported ; also, any other information which he may possess respecting the educational state, wants and advantages

Teachers, private schools, libraries.

Other information.

advantages in each Township of his charge, and any suggestions which he thinks proper to make with a view to the improvement of schools and diffusion of useful knowledge.

How union sections shall be paid.

**92.** The Local Superintendents of adjoining Townships, shall determine the sums to be paid from the Common School Fund of each Township in support of the Schools of Union School Sections consisting of portions of such Townships; and shall also determine the manner in which such sums shall be paid; but in the event of one person being Local Superintendent of the Townships concerned, he shall act in behalf of such Townships. 16 V. c. 185, s. 14.

Warden to decide in case of a dispute.

**93.** In the event of the Local Superintendents of Townships thus concerned not being able to agree as to the sum to be paid to each such Township, the matter shall be referred to the Warden of the County for final decision. 16 V. c. 185, s. 14.

SEVENTHLY.—CONSTITUTION AND DUTIES OF THE COUNTY  
BOARDS OF PUBLIC INSTRUCTION.

Boards of public instruction constituted.

**94.** Where there is only one County Grammar School in a County, the Board of Trustees for such School and the Local Superintendent or Superintendents of Schools in the County, shall constitute a Board of Public Instruction for the County. 13, 14 V. c. 48, s. 28.

When more than one grammar school.

**95.** Where there is more than one Grammar School in a County, the County Council shall divide the County into as many Circuits as there are County Grammar Schools, and for each such circuit the Trustees of the County Grammar School therein and the Local Superintendent or Superintendents of Schools therein, shall be a Board of Public Instruction for the Circuit. 13, 14 V. c. 48, s. 28.

Quorum of Board.

**96.** At any lawful meeting of the Board of Public Instruction, three members including a Local Superintendent of Schools shall constitute a *quorum* for examining and giving certificates of qualification to Common School Teachers, and five members shall constitute a *quorum* for the transaction of any other business. 13, 14 V. c. 48, s. 28.

County Council to defray expenses.

**97.** The County Council shall provide for the incidental expenses connected with the meeting and proceedings of each Board of Public Instruction. 13, 14 V. c. 48, s. 28.

Duties of Board.

**98.** It shall be the duty of each County and Circuit Board of Public Instruction—and each such Board is hereby empowered:

Quarterly meetings.

1. To meet not less than four times a year, and to determine the time and places of its own meetings, and the order of its proceedings,

proceedings, and the manner of recording them ; 13, 14 V. Proceedings.  
c. 48, s. 29, No. 1.

2. To adopt all lawful means in their power as they may judge expedient to advance the interests and usefulness of Common Schools, to promote the establishment of School Libraries, and to diffuse useful knowledge in the County or Circuit ; 13, 14 V. c. 48, s. 29, No. 4. To promote libraries, &c.

3. To select (if deemed expedient) from a list of text-books recommended or authorized by the Council of Public Instruction, such books as they may think best adapted for use in the Common Schools of the County or Circuit, and to ascertain and recommend the best facilities for procuring such books ; 13, 14 V. c. 48, s. 29, No. 3. Selecting text books.

4. To examine and give certificates of qualification to Teachers of Common Schools, arranging such Teachers into three classes according to their attainments and abilities, as prescribed in a programme of examination and instructions provided for that purpose, and any such certificate may be general, as regards the County, or limited as to time or place, at the pleasure of the majority of the members of the Board of Public Instruction present at such examination ; Examination of teachers.

5. To annul any such certificate as the Board may judge expedient. 13, 14 V. c. 48, s. 29, No. 2. Extent of certificates.

**99.** Every such certificate of qualification shall have the signature of at least one Local Superintendent of Schools, but no such certificate shall be given to any person as a teacher, who does not furnish satisfactory proof of good moral character, or who at the time of applying for such certificate is not a natural-born or naturalized subject of Her Majesty, or who does not produce a certificate of having taken the oath of allegiance to Her Majesty, before a Justice of the Peace for the County in which such person resides. 13, 14 V. c. 48, s. 29, No. 2. Annuling certificates.

#### EIGHTHLY.—SCHOOL VISITORS AND THEIR DUTIES.

**100.** All Clergymen recognized by law, of whatever denomination, all Judges, Members of the Legislature, Magistrates, Members of County Councils and Aldermen, shall be School Visitors in the Townships, Cities, Towns and Villages where they respectively reside ; But persons holding the Commission of the Peace for the County only, shall not be School Visitors within Towns and Cities ; And each Clergyman shall be a School Visitor only in the Township, Town or City where he has pastoral charge. 13, 14 V. c. 48, s. 32. Conditions of certificate.

Their authority  
to visit schools.

**101.** Each of the School Visitors may visit the Public School in the Township, City, Town or Village; and may attend the quarterly examination of Schools, and, at the time of any such visit, may examine the progress of the pupils, and the state and management of the School, and give such advice to the Teacher and pupils, and any others present, as he thinks advisable, in accordance with the regulations and instructions provided in regard to School Visitors. 13, 14 V. c. 48, s. 33.

General meet-  
ing of visitors.

**102.** A general Meeting of the Visitors may be held at any time or place appointed by any two Visitors, on sufficient notice being given to the other Visitors in the Township, City, Town or Village, and the Visitors, thus assembled, may devise such means as they deem expedient for the efficient visitation of the Schools, and for promoting the establishment of Libraries and the diffusion of useful knowledge. 14, 15 V. c. 48, s. 33.

NINTHLY.—THE CHIEF SUPERINTENDENT OF EDUCATION,—  
HIS DUTIES, &c.

A Chief super-  
intendent to be  
appointed.

**103.** The Governor may, from time to time, by Letters Patent under the Great Seal of the Province, appoint a fit and proper person to be Chief Superintendent of Education for Upper Canada, who shall hold office during pleasure, and shall receive a salary of the same amount as the Superintendent of Education in Lower Canada. 13, 14 V. c. 48, s. 34.

His responsi-  
bility.

**104.** The Chief Superintendent shall be responsible to, and subject to the direction of the Governor, communicated through any Department of the Provincial Government. 13, 14 V. c. 48, s. 34.

Allowed  
Clerks.

**105.** The Chief Superintendent shall be allowed two Clerks, who shall receive the same salaries as are attached to similar offices in Lower Canada, and he shall account for the contingent expenses of his office, as provided in respect of other public offices. 13, 14 V. c. 48, s. 34.

Duties of the  
chief superin-  
tendent.

**106.** It shall be the duty of the Chief Superintendent of Education, and he is hereby empowered—

Apportioning  
legislative  
grant.

1. To apportion annually, on or before the first day of May, all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada, and not otherwise appropriated by law to the several Counties, Townships, Cities, Towns and Incorporated Villages according to the ratio of population in each, as compared with the whole population of Upper Canada; but when the census or returns upon which such an apportionment is to be made, are so far defective in respect of any County, Township, City, Town or Village  
as

Basis.



as to render it impracticable for the Chief Superintendent to ascertain therefrom the share of school moneys which ought to be so apportioned, he shall make the apportionment according to the ratio in which by the best evidence in his power, the same can be most fairly and equitably made ; 13, 14 V. c. 48, s. 35, No. 1. Other ratio.

2. To certify to the Minister of Finance, the apportionments made by him, so far as they relate to the several Counties, Cities, Towns and Incorporated Villages in Upper Canada, and to give immediate notice thereof to the Clerk of each County, City, Town and Village interested therein, stating the time when the amount of moneys so apportioned will be payable to the Treasurer of the County, City, Town or Village ; 13, 14 V. c. 48, s. 35, No. 2. To certify to the Minister of Finance and to notify Municipal Clerk.

3. To direct the distribution of the Common School fund of any Township, among the several School Sections and parts of sections entitled to share in the same, according to the length of time in each year, during which a School has been kept open by a legally qualified Teacher in each of such Sections or parts of Sections ; 16 V. c. 185, s. 18. Distribution by local Superintendents.

4. To apportion the moneys provided by the Legislature for the establishment and support of School Libraries ; but no aid shall be given towards the establishment or support of any School Library unless an equal amount be contributed and expended from local sources for the same object ; 13, 14 V. c. 48, s. 35, No. 10. Apportioning library grant.  
Conditions.

5. To prepare suitable forms, and to give such instructions as he may judge necessary and proper, for making all reports and conducting all proceedings under this Act, and to cause the same, with such general regulations as may be approved of by the Council of Public instruction for the better organization and government of Common Schools, to be transmitted to the officers required to execute the provisions of this Act ; 13, 14 V. c. 48, s. 35, No. 3. Preparing forms and regulations.

6. To cause to be printed from time to time, in a convenient form, so many copies of this Act, with the necessary forms, instructions, and regulations to be observed in executing its provisions, as he may deem sufficient for the information of all officers of Common Schools, and to cause the same to be distributed for that purpose ; 13, 14 V. c. 48, s. 35, No. 4. Distributing of Act and forms.

7. To see that all moneys apportioned by him, are applied to the objects for which they were granted ; and for that purpose, and when not otherwise provided for by law to decide upon all matters and complaints submitted to him which involve the expenditure of any part of the School Fund ; Protecting school moneys.  
Deciding complaints.

- Balances of the School Fund. 8. To direct the application of the balances of the School Fund apportioned for any year which may be forfeited according to the provisions of this Act, towards making up the salaries of Teachers in the County to which the same has been apportioned; 13, 14 V. c. 48, s. 35, No. 5.
- Appointing a Deputy and Special Inspectors. 9. To appoint one of his Clerks to be his Deputy, to perform the duties of his office in his absence; and to appoint one or more persons, as he, from time to time, deems necessary, to inspect any school, or examine into and report to him upon any school matter in the County where such person or persons reside; but no allowance or compensation shall be made to such special inspector or inspectors for any services performed by him or them; 13, 14 V. c. 48, s. 35, No. 6.
- Supervision of Normal School. Text books, &c. 10. To take the general Superintendence of the Normal School; and use his best endeavours to provide for and recommend the use of uniform and approved text-books in the Schools generally; 13, 14 V. c. 48, s. 35, No. 7.
- Establishing School Libraries. 11. To employ all lawful means in his power to procure and promote the establishment of School Libraries for general reading, in the several Counties, Townships, Cities, Towns and Villages;
- Plans of school houses. To disseminate useful information. 12. To provide and recommend the adoption of suitable plans of School-houses, with the proper furniture and appendages; and to collect and diffuse among the people of Upper Canada useful information on the subject of education generally; 13, 14, V. c. 48, s. 35, No. 8.
- To submit books and manuscripts to Council of Public Instruction. General regulations. 13. To submit to the Council of Public Instruction all books or manuscripts which, with the view of obtaining the recommendation or sanction of such Council for their introduction as text-books or library books, are placed in his hands; and to prepare and lay before the Council of Public Instruction, for its consideration, such general regulations for the organization and government of Common Schools, and the management of School Libraries as he may deem necessary and proper; 13, 14 V. c. 48, s. 35, No. 9.
- Teachers institutes. 14. To appoint proper persons to conduct County Teachers Institutes, and to furnish such rules and instructions as he may judge advisable in regard to the proceedings of such Institutes, and the best means of promoting and elevating the profession of school teaching and increasing its usefulness; 13, 14 V. c. 48, s. 35, No. 11.
- Responsibility for moneys. 15. To be responsible for all moneys paid through him in behalf of the Normal and Model Schools, and to give such security for the same as the Governor may require;

16. To prepare and transmit all correspondence directed or authorized by the Council of Public Instruction for Upper Canada; 13, 14 V. c. 48, s. 35, No. 12.

Correspondence of Council of Public Instruction.

17. To make annually to the Governor, on or before the first day of July, a report of the actual state of the Normal, Model and Common Schools throughout Upper Canada, showing the amount of moneys expended in connection with each and from what sources derived, with such statements and suggestions for improving the Common Schools and the Common School laws, and promoting education generally as he may deem useful and expedient; 13, 14 V. c. 48, s. 35, No. 13.

Annual report to the Governor.

18. To lay before the Legislature, at each sitting thereof, a correct and full account of the disposition and expenditure of all moneys which come into his hands as Chief Superintendent; and annually on or before the thirtieth of January in each year to make the Report required by the Act for the more efficient Auditing of Public Accounts. 18 V. c. 132, s. 3,—18 V. c. 78, s. 13.

Financial report to the Parliament.

**107.** The Chief Superintendent of Education, on the commendation of the Teachers in the Normal School, may give to any Teacher of Common Schools a certificate of qualification which shall be valid in any part of Upper Canada until revoked; but no such certificate shall be given to any person who has not been a student in the Normal School. 13, 14 V. c. 48, s. 44.

Provincial certificates to normal school students.

**108.** It being highly desirable that uniformity of decision should exist in cases within the cognizance of the Division Courts and tried in such Courts, in which the Superintendents, Trustees, Teachers and others acting under the provisions of this Act are parties, the Judge of any Division Court wherein any such action may be tried may, at the request of either party order the entering of judgment to be delayed for a sufficient time to enable such party to apply to the Chief Superintendent of Education to appeal the case, and after Notice of Appeal has been served as hereinafter provided, no further proceedings shall be had in such case until the matter of the Appeal has been decided by a Superior Court. 16 V. c. 185, s. 24.

Uniformity of decisions in Division Courts.

Judgment of Division Court may be delayed.

**109.** The Chief Superintendent may, within one month after the rendering of Judgment in any such case, appeal from the decision of the Division Court Judge to either of the Superior Courts of Law at Toronto, by serving notice in writing of such appeal upon the Clerk of the Division Court appealed from, which Appeal shall be entitled, "The Chief Superintendent of Education for Upper Canada, Appellant, in the matter between (A. B. and C. D.)." 16 V. c. 185, s. 24.

Chief superintendent may appeal from such Court to Superior Courts of Law.

Title of Appeal.

**110.** The Judge whose decision is appealed from shall thereupon certify under his hand, to the Superior Court appealed to,

Judge to send papers to Superior Court.

to, the summons and statement of claim and other proceedings in the case, together with the evidence and his own Judgment thereon, and all objections made thereto.

Superior Court to give such order as Law and Equity require.

**111.** The matter shall be set down for argument at the next term of such Superior Court, and such Court shall give such Order or direction to the Court below, touching the Judgment to be given in the matter, as law and equity require, and shall also in its discretion, award costs against the Appellant, which costs shall be certified to and form part of the Judgment of the Court below.

Proceedings in Division Court thereon.

**112.** Upon receipt of such Order, direction and certificate, the Judge of the Division Court shall forthwith proceed in accordance therewith.

Costs of appeal.

**113.** All costs awarded against an Appellant, and all costs incurred by him, shall be paid by the Chief Superintendent, and charged as Contingent expenses of his office. 16 V. c. 185, s. 24.

TENTHLY.—CONSTITUTION AND DUTIES OF THE COUNCIL OF PUBLIC INSTRUCTION.

Council of Public Instruction to be appointed.

**114.** The Governor may appoint a Council of Public Instruction for Upper Canada, to consist of not more than nine persons (of whom the Chief Superintendent of Education shall be one) to hold office respectively during pleasure, and such Council shall in the exercise of its duties, be subject to all lawful orders and directions from time to time issued by the Governor. 13, 14 V. c. 48, s. 36.

Subject to orders of the Governor.

Chief superintendent to provide place and call meetings.

**115.** The Chief Superintendent shall provide a place for the meetings of the Council of Public Instruction, and may call a special meeting at any time by giving due notice to the other members. 13, 14 V. c. 48, s. 37.

Expenses of Council.

**116.** The expenses attending the proceedings of the said Council, shall be accounted for by the Chief Superintendent as part of the contingent expenses of the Education Office.

Recording Clerk and his duties.

**117.** The Senior Clerk in the Education Office shall be Recording Clerk to the said Council,—he shall enter all its proceedings in a book kept for that purpose,—and shall, as may be directed, procure the books and stationery for the Normal and Model Schools, and keep all the accounts of the said Council. 13, 14 V. c. 48, s. 37.

Quorum and Casting Vote.

**118.** At any lawful meeting of the Council of Public Instruction, three members shall form a quorum for the transaction of business, and in case of an equality of votes on any question, the Chairman shall be entitled to a second or casting vote. 13, 14 V. c. 48, s. 38, No. 1.

**119.** It shall be the duty of such Council and they are hereby empowered : Duties of Council.

1. To appoint a Chairman, and determine the times of its meetings, and the mode of conducting its proceedings ; 13, 14 V. c. 48, s. 38, No. 1. Chairman—

2. To adopt all needful measures for the permanent establishment and efficiency of the Normal School for Upper Canada, containing one or more Model Schools for the instruction and training of Teachers of Common Schools in the science of Education and the Art of Teaching ; 13, 14 V. c. 48, s. 38, No. 2. Establishment of normal and model schools.

3. To make from time to time the rules and regulations necessary for the management and government of such Normal School ; to prescribe the terms and conditions on which students will be received and instructed therein ; to select the location of such school, and erect or procure and furnish the buildings therefor ; to determine the number and compensation of teachers, and of all others who may be employed therein ; and to do all lawful things which such Council may deem expedient to promote the objects and interests of such school ; 13, 14 V. c. 48, s. 38, No. 3. Regulations for normal and model schools.

4. To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of Schools and Teachers, and for School Libraries throughout Upper Canada ; 13, 14 V. c. 48, s. 38, No. 4. Regulations for common school teachers and libraries.

5. To examine, and at its discretion, recommend or disapprove of text-books for the use of schools, or books for School Libraries. Text and library books.

6. To prescribe such regulations, with the approbation of the Governor in Council as it, from time to time, deems expedient, for granting pensions to superannuated or worn out Teachers of Common Schools ; but no annual allowance to any superannuated or worn out Teacher shall exceed the rate of six dollars for each year that such Teacher has taught a Common School in Upper Canada ; and no Teacher shall be entitled to share in the said fund unless he has contributed to such fund the sum of four dollars or more per annum, for the period of his teaching School, or of his receiving aid from such fund, nor unless he furnishes satisfactory proof to the Council of Public Instruction, of inability, from age or loss of health in teaching, to pursue that profession any longer ; 16 V. c. 185, s. 23. Regulations for granting pensions to superannuated teachers.

7. And to transmit annually, through the Chief Superintendent of Education, to the Governor, to be laid before the Legislature, a true account of the receipt and expenditure of all moneys granted Conditions. Annual report to Governor.

granted for the establishment and support of the Normal School. 13, 14 V. c. 48, s. 38, No. 6.

Appropriation  
of legislative  
school grants.

**120.** Out of the share of the Legislative School Grant coming to Upper Canada, and the additional sums of money from time to time granted in aid of Common Schools or in aid of Common and Grammar Schools in Upper Canada, and not otherwise expressly appropriated by law, the Governor in Council may authorize the expenditure of the following sums annually; 13, 14 V. c. 48, s. 41,—16 V. c. 185, s. 23.

1. UNDER THE REGULATIONS OF THE COUNCIL OF PUBLIC INSTRUCTION.

Salaries \$6000.

A. For the salaries of officers and other contingent expenses of the Normal School, a sum not exceeding \$6,000; 13, 14 V. c. 48, s. 39.

Teachers in  
training at the  
normal school  
\$4000.

B. To facilitate the attendance of Teachers in training at the Normal School, a sum not exceeding \$4,000; 13, 14 V. c. 48, s. 39.

Normal and  
model schools  
\$2,200.

C. In support of the Normal and Model Schools, a sum not exceeding \$2,200; 16 V. c. 185, s. 23.

Model gram-  
mar school  
\$4000.

D. For the establishment and maintenance of a Model Grammar School in connection with the Normal and Model Schools for Upper Canada, including also any expenses which may be incurred in the examination of Candidates for Masterships of Grammar Schools, a sum not exceeding \$4,000; 18 V. c. 132, s. 1, No. 1.

Inspectors of  
grammar  
schools \$1000.

E. For the payment of Inspectors of Grammar Schools, a sum not exceeding \$1,000; 18 V. c. 132, s. 1, No. 2.

Superannuated  
teachers \$4000.

F. For the support of superannuated Common School Teachers, a sum not exceeding \$4,000; 16 V. c. 185, s. 23,—18 V. c. 132, s. 1, No. 6.

2. THROUGH THE CHIEF SUPERINTENDENT OF EDUCATION.

Purchase of  
books, &c.,  
\$2000.

A. In the purchase, from time to time, of Books, Publications, Specimens, Models and Objects, suitable for a Canadian Library and Museum, to be kept in the Normal School Buildings, and to consist of Books, Publications and Objects relating to Education and other departments of Science and Literature, and Specimens, Models and Objects illustrating the Physical Resources and Artificial Productions of Canada, especially in reference to Mineralogy, Zoology, Agriculture and Manufactures, a sum not exceeding \$2,000; 16 V. c. 185, s. 23.

B.

B. In supplying a copy of the Journal of Education to each School Corporation and each local Superintendent of Schools, a sum not exceeding \$1,800 ; 16 V. c. 185, s. 23. Journal of Education \$1800.

C. For the establishment and support of Public School Libraries in connection with the Common and Grammar Schools, a sum not exceeding \$26,000 ; 13, 14 V. c. 48, s. 41,—18 V. c. 132, s. 1, No. 4. Libraries \$26,000.

D. In providing the Grammar and Common Schools with maps and apparatus upon the same terms and in the same manner as books are provided for Public School Libraries, a sum not exceeding \$10,000 ; 18 V. c. 132, s. 1, No. 3. Maps, &c., for grammar schools \$10,000.

E. For the payment of two Assistant Clerks and a Salesman of the Public Library, map and school apparatus depositories, in connection with the department of Public Instruction, a sum not exceeding \$1,400 ; 18 V. c. 132, s. 1, No. 5. Clerks' salaries \$1400.

F. For the encouragement of a Teacher's Institute, a sum not exceeding \$100 in any County or Riding ; 13, 14 V. c. 48, s. 41. Teacher's Institute \$100.

G. In procuring plans and publications for the improvement of School Architecture and practical science in connection with Common Schools, a sum not exceeding \$800 ; 13, 14 V. c. 48, s. 41. School Architecture \$800.

H. In special aid of Common Schools in new and poor Townships, a sum not exceeding \$2,000. 16 V. c. 185, s. 23. Poor townships \$2000.

**121.** The whole of the remainder of the grants in the one hundred and twentieth Section mentioned and not exclusively appropriated, in the foregoing sub-sections, shall be expended in aid of the Common Schools according to the provisions of this Act. 18 V. c. 132, s. 1, No. 7. Residue to be in aid of common schools.

**122.** The amount apportioned in aid of common schools to the several Counties, Cities, Towns and Villages in Upper Canada, before the twenty-fourth of July, one thousand eight hundred and fifty, shall not be lessened by the sums appropriated in the one hundred and twentieth Section as aforesaid, but such sums shall be taken out of any additional amount awarded to Upper Canada out of the said Legislative School Grant or additional Grants, in consideration of the increase of its population in proportion to that of the whole Province. 13, 14 V. c. 48, s. 41. Grants made before 24th July, 1850, not to be lessened.

**123.** The sum of money apportioned annually by the Chief Superintendent of Education to each County, Township, City, Town or Village, in aid of Common Schools therein respectively, shall be payable on or before the first day of July, in each year. Grant payable on 1st July in each year.

Common school fund defined.

year, to the Treasurer of each County, City, Town and Village, in such way as the Governor in Council from time to time directs, and such sum, together with at least an equal sum raised annually by local assessment, shall constitute and be called the Common School Fund of such County, Township, City, Town or Village; and no part of the Salaries of the Chief or Local Superintendents, nor of any other persons except Teachers employed or of any expenses incurred in the execution of this Act, shall be paid out of the said Common School Fund, but such Fund shall wholly and without diminution, be expended in the payment of Teachers' Salaries as herein provided. 13, 14 V. c. 48, ss. 42, 45.

Conditions of receiving share of grant.

**124.** No County, City, Town or Village shall be entitled to a share of the Legislative School Grant without raising by assessment a sum at least equal (clear of all charges for collection) to the share of the said School Grant apportioned to it; and should the Municipal Corporation of any County, City, Town or Village, raise in any one year a less sum than that apportioned to it out of the Legislative School Grant, the Chief Superintendent of education shall deduct a sum equal to the deficiency, from the apportionment to such County, City, Town or Village in the following year. 13, 14 V. c. 48, s. 40.

Case of default to raise sufficient funds.

Schools to be supported by—

**125.** All the School expenses of each Section shall be provided for by any or all of the three following methods:

Subscription.

1. Voluntary subscription;

Rate bill.

2. Rate-bill for each pupil attending the School; or

Rate on property.

3. Rate upon property;

Rate bill limited.

But no rate-bill shall be imposed exceeding twenty-five cents per month for each pupil attending the School. 16 V. c. 185, s. 13.

#### TWELFTHLY.—SPECIAL PROVISIONS.

In case a resident in one section sends his children to another section.

**126.** Any person residing in one School Section, and sending a child or children to the School of a neighboring School Section, shall nevertheless be liable for the payment of all rates assessed for the School purposes of the Section in which he resides, as if he sent his child or children to the School of such Section; and such child or children shall not be returned as attending any other than the School of the Section in which the parents or guardians of such child or children reside; but this clause shall not apply to persons sending children to or supporting separate Schools, or prevent any person, who may be taxed for Common School purposes on property situate in a different School Section from that in which he resides, from sending his children to the School of the Section

Exception as to separate schools.



Section in which such property may be situate on as favorable terms as if he resided in such Section. 16 V. c. 185, s. 12.

**127.** If the Collector appointed by the Trustees of any School Section, be unable to collect that portion of any School rate which has been charged on any parcel of land liable to assessment, by reason of there being no person resident thereon, or no goods and chattels to distrain, the Trustees shall make a return to the Clerk of the Municipality, before the end of the then current year, of all such parcels of land and the uncollected rates thereon, and the Clerk shall make a return to the County Treasurer of all such lands and the arrears of School rates thereon, and such arrears shall be collected and accounted for by such Treasurer in the same manner as the arrears of other taxes; and the Township, Village, Town or City in which such School Section is situate, shall make up the deficiency arising from uncollected rates on lands liable to assessment, out of the General Funds of the Municipality. 16 V. c. 185, s. 22. See s. 27, No. 15 of *this Act*.

Rates on lands of absentees to be returned to Clerk of Municipality.

How collected.

**128.** No person shall use any foreign books in the English branches of education in any Model or Common School, without the express permission of the Council of Public Instruction, and no portion of the Legislative School Grant shall be applied in aid of any Common school in which any book is used that has been disapproved of by the Council of Public Instruction, and public notice given of such disapproval. 13, 14 V. c. 48, ss. 14, 38, No. 5.

Foreign books not to be used without leave of the Council of P. I.

**129.** No person shall require any pupil in any such School to read or study in or from any religious book, or to join in any exercise of devotion or religion objected to by his or her parents or guardians; but within this limitation, pupils shall be allowed to receive such religious instruction as their parents and guardians desire, according to any general regulations provided for the government of Common Schools. 13, 14 V. c. 48, ss. 14, 38, No. 5.

Pupils not to be required to observe religious exercises objected to by parents.

#### THIRTEENTHLY.—PENAL CLAUSES.

**130.** If any Secretary-Treasurer appointed by the School Trustees of any school section or any person having been such Secretary-Treasurer, has in his possession any books, papers, chattels, or moneys, which came into his possession, as such Secretary-Treasurer, and wrongfully withholds or refuses to deliver up, or to account for and pay over the same or any part thereof to the person, and in the manner directed by a majority of the School Trustees for the School Section then in office, such withholding or refusal shall be a misdemeanor. 13, 14 V. c. 48, s. 44.

Penalty on Secretary-Treasurer for refusing to account.

**131.** Upon application to the Judge of the County Court, by a majority of such Trustees, supported by their affidavit

County Judge to have sum-made

mary jurisdiction.

made before some Justice of the Peace, of such wrongful withholding or refusal, such Judge shall make an order that such Secretary-Treasurer or person having been such, do appear before him at a time and place to be appointed in the order. 13, 14 V. c. 48, s. 44.

Order to be served.

**132.** Any Bailiff of a Division Court, upon being required by such Judge, shall serve such order personally on the party complained against, or leave the same with a grown-up person at his residence. 13, 14 V. c. 48, s. 44.

County Judge to hear and determine the case.

**133.** At the time and place so appointed, the Judge, being satisfied that such service has been made, shall, in a summary manner, and whether the party complained of does or does not appear, hear the complaint, and if he is of opinion that the complaint is well founded, such Judge shall order the party complained of to deliver up, account for and pay over the books, papers, chattels or moneys as aforesaid by a certain day to be named by the Judge in the order, together with such reasonable costs incurred in making the application, as the Judge may tax. 13, 14 V. c. 48, s. 44.

Non-compliance with Judge's order.

**134.** In the event of a non-compliance with the terms specified in such order or any or either of them, the Judge shall order the said party to be forthwith arrested by the Sheriff of any County in which he may be found, and to be committed to the Common Gaol of his County, there to remain without bail until such Judge be satisfied that such party has delivered up, accounted for or paid over the books, papers, chattels or moneys in question, in the manner directed by the majority of the Trustees as aforesaid. 13, 14 V. c. 48, s. 44.

Discharge.

**135.** Upon proof of his having so done, such Judge shall make an order for his discharge, and he shall be discharged accordingly. 13, 14 V. c. 48, s. 44.

Other remedy not affected.

**136.** No such proceeding shall impair or affect any other remedy which the said Trustees may have against such Secretary-Treasurer, or person having been such, or his sureties. 13, 14 V. c. 48, s. 44.

Protection of common school fund.

**137.** If any part of the Common School Fund be embezzled or lost through the dishonesty or faithlessness of any party to whom it has been entrusted, and proper security against such loss has not been taken, the person whose duty it was to have exacted such security, shall be personally responsible for the sums so embezzled or lost, and the same may be recovered from him by the party entitled to receive the same by action at law in any Court having jurisdiction to the amount, or by information at the suit of the Crown. 13, 14 V. c. 48, s. 43.

Certain parties personally responsible.

**138.** If any Trustee of a Common School knowingly signs a false report, or if any Teacher of a Common School keeps a false school Register, or makes a false return, with the view of obtaining a larger sum than the just proportion of school moneys coming to such Common School, such Trustee or Teacher shall, for each offence, forfeit to the Common School Fund of the Township, the sum of twenty dollars for which any person whatever may prosecute him before a Justice of the Peace, and for which he may be convicted on the oath of one credible witness other than the prosecutor, and if upon conviction the penalty is not forthwith paid, the same shall, under the warrant of such Justice, be levied with costs by distress and sale of the goods and chattels of the offender, and such penalty when so paid or collected shall by such Justice be paid over to the said Common School Fund; or the said offender may be prosecuted and punished for the misdemeanor. 13, 14 V. c. 48, s. 13.

Penalty for false reports and registers.

Prosecution before a Justice of the Peace.

Proceedings.

**139.** Any person who wilfully disturbs, interrupts or disquiets the proceedings of any school meeting authorized to be held by this Act, or any school established and conducted under its authority, or wilfully interrupts or disquiets any Grammar, Common or other Public School, by rude or indecent behaviour, or by making a noise either within the place where such school is kept or held, or so near thereto as to disturb the order or exercises of such school, shall, for each offence on conviction thereof before a Justice of the Peace, on the oath of one credible witness, forfeit and pay for Common School purposes, to the School Section, City, Town or Village within which the offence was committed, such sum not exceeding twenty dollars, together with the costs of the conviction, as the said Justice may think fit; or the offender may be indicted and punished for any of the offences hereinbefore mentioned as a misdemeanor. 13, 14 V. c. 48, s. 46,--16 V. c. 185, s. 19.

Disturbing schools.

Prosecution before a Justice of the Peace.

**140.** Unless it is in this Act otherwise provided, all fines, penalties and forfeitures recoverable by summary proceeding may be sued for, recovered and enforced with costs by and before any Justice of the Peace having Jurisdiction within the School Section, City, Town or Village in which such fine or penalty has been incurred, and if any such fine or penalty and costs be not forthwith paid, the same shall, by and under the warrant of the convicting Justice, be enforced, levied and collected with costs by distress and sale of the goods and chattels of the offender, and shall be by such Justice paid over to the School Treasurer of the School Section, City, Town or Village, or other party entitled thereto, and in default of such distress, such Justice shall by his warrant cause the offender to be imprisoned for any time not exceeding thirty days, unless the fine and costs, and the reasonable expenses of endeavouring to collect the same, be sooner paid. 16 V. c. 185, s. 19.

How penalties shall be recoverable.

## INTERPRETATION.

Interpretation  
clause.

**141.** The word "Teacher" shall include female as well as male teachers; the word, "County" shall include Unions of Counties, and the word "Townships" shall include Unions of Townships made for Municipal purposes. 13, 14 V. c. 48, s. 48.

## SHORT TITLE TO SCHOOL ACTS.

Short Title.

**142.** In citing or otherwise referring to this Act, it shall be sufficient to designate it as "The Upper Canada Common School Act," and in citing or otherwise referring to this Act, or any other Act or Acts relative to Common Schools, which may, at the time of such citation or reference, be in force in Upper Canada, it shall be sufficient to use the expression, "The Common School Acts of Upper Canada." 16 V. c. 185, s. 28.

## C A P . L X V .

## An Act respecting Separate Schools.

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

## 1.—PROTESTANT AND COLORED PEOPLE.

Conditions on  
which separate  
schools for  
Protestants or  
Colored people  
may be  
established.

**1.** Upon the application in writing of twelve or more heads of families resident in any Township, City, Town or Incorporated Village, being Protestants, the Municipal Council of the said Township or the Board of School Trustees of any such City, Town or Incorporated Village, shall authorize the establishment therein of one or more separate schools for Protestants; and upon the application in writing of twelve or more heads of families resident in any Township, City, Town or Incorporated Village, being colored people, the Council of such Township or the Board of School Trustees of any such City, Town or Incorporated Village, shall authorize the establishment therein, of one or more separate schools for colored people, and in every such case, such Council or Board, as the case may be, shall prescribe the limits of the section or sections of such schools. 13, 14 V. c. 48, s. 19.

Limits.

Three trustees.

Election same  
as in common  
schools.

**2.** There shall be three Trustees for each separate school, and the first meeting for the election of such Trustees, shall be held and conducted in the manner and according to the rules provided in the sixth to the eleventh sections of the Act respecting Common Schools for holding the first school meeting in a new school section. 13, 14 V. c. 48, s. 19.

Commence-  
ment and regu-  
lations.

**3.** Each such separate school shall go into operation at the same time as is provided in the case of altered school sections,  
of

of Common Schools, and shall, with respect to the persons for whom any school has been established, be under the same regulations as Common Schools generally. 14, 15 V. c. 111, s. 1.

4. None but colored people shall vote at the election of Trustees of any separate school established for colored people and none but the parties petitioning for the establishment of, or sending children to a separate Protestant school, shall vote at the election of Trustees of such school. 13, 14 V. c. 48, s. 19. Voters defined.

5. In any City or Town the persons who make application, according to the provisions of the first section of this Act, may have a separate School in each Ward, or in two or more wards united, as the said persons may judge expedient. 14, 15 V. c. 111, s. 1. Union of wards in cities and towns.

6. No Protestant separate school shall be allowed in any school section, except when the Teacher of the Common School in such section is a Roman Catholic. 13, 14 V. c. 48, s. 19. Special conditions.

7. In all Cities, Towns, Incorporated Villages and Township Common School Sections in which such Separate Schools exist, each Protestant or colored person (as the case may be) sending children to any such School or supporting the same by subscribing thereto annually an amount equal to the sum at which such person, if such Separate School did not exist, must have been rated in order to the obtaining the annual Legislative Common School Grant, shall be exempt from the payment of all rates imposed for the support of the Common Schools of such City, Town, Incorporated Village and School Section respectively, and of all rates imposed for the purpose of obtaining such Common School Grant. 16 V. c. 185, s. 4. Exemption from common school rates.

8. The exemption from the payment of school rates, as herein provided, shall not extend beyond the period during which such persons send children to or subscribe as aforesaid for the support of such Separate School; nor shall such exemption extend to school rates or taxes imposed or to be imposed to pay for school houses, the erection of which was undertaken or entered into before the establishment of such Separate School. 16 V. c. 185, s. 4. Such exemption conditional.

9. Such Separate Schools shall not share in any school money raised by Local Municipal Assessment. 16 V. c. 185, s. 4. Not to share in municipal assessment.

10. Each such separate school shall share in such Legislative Common School Grant according to the yearly average number of pupils attending such Separate School, as compared with the average number of pupils attending the Common Schools Share of legislative school grant determined.

Schools in each such City, Town, Incorporated Village or Township; the mean attendance of pupils for winter and summer being taken. 16 V. c. 185, s. 4.

Certificate of teacher.

**11.** A Certificate of qualification, signed by the majority of the Trustees of such Separate School, shall be sufficient for any Teacher of such School. 16 V. c. 185, s. 4.

Half-yearly returns to the local superintendent.

**12.** The Trustees of each such Separate School shall, on or before the thirtieth day of June, and thirty-first day of December of each year, transmit to the Local Superintendent of Schools a correct return of the names of all Protestant or colored persons (as the case may be), who have sent children to, or subscribed as aforesaid for the support of such Separate School during the then last preceding six months, and the names of the children sent, and the amounts subscribed by them respectively, together with the average attendance of pupils in such Separate School during such period. 16 V. c. 185, s. 4.

Local superintendent to clerk and trustees.

**13.** The Local Superintendent shall, upon the receipt of such return, forthwith make a return to the Clerk of the Municipality and to the Trustees of the Common School Section or Municipality in which such Separate School is established, stating the names of all the persons who, being Protestants or colored persons (as the case may be), contribute or send children to such Separate School. 16 V. c. 185, s. 4.

Clerks and trustees to exempt from rates supporters of separate schools.

**14.** Except for any rate for building school houses undertaken before the establishment of such Separate School, the Clerk shall not include in the Collector's Roll for the general or other school rate, and the Trustees or Board of Trustees shall not include in their school rolls, any person whose name appears upon such last mentioned return. 16 V. c. 185, s. 4.

Clerk to allow use of assessor's roll.

**15.** The Clerk or other Officer of the Municipality within which such Separate School is established, having possession of the Assessor's or Collector's Roll of the said Municipality, shall allow any one of the said Trustees, or their authorized Collector, to make a copy of such Roll as far as it relates to their School Section. 16 V. c. 185, s. 4.

Certain Act to apply.

**16.** The provisions of the one hundred and thirty-eighth section of the Act respecting Common Schools shall apply to the Trustees and Teachers of such Separate Schools. 16 V. c. 185, s. 4.

Separate school trustees to have same power as common school trustees.

**17.** The Trustees of each such Separate School shall be a body corporate under the name of the Trustees of the Separate School of \_\_\_\_\_, (as the case may be) in the Township, City or Town (as the case may be) of \_\_\_\_\_, and shall have the same power to impose, levy and collect school rates or subscriptions, upon and from persons \_\_\_\_\_

persons sending children to, or subscribing towards the support of the Separate School, as the Trustees of a Common School Section have to impose, levy and collect school rates or subscriptions from persons having property in the section, or sending children to or subscribing towards the support of the Common School of such section. 16 V. c. 185, s. 4.

## 2.—ROMAN CATHOLIC SEPARATE SCHOOLS.

**18.** Any number of persons, not less than five, being heads of families and freeholders or householders, resident within any School Section of any Township or within any Ward of any City or Town, and being Roman Catholics, may convene a public meeting of persons desiring to establish a Separate School for Roman Catholics in such School Section or Ward, for the election of Trustees for the management of the same. 18 V. c. 131, s. 2.

Conditions.  
Five heads of families to call meeting.

**19.** A majority of the persons present, not less than ten in number, being freeholders or householders, and being Roman Catholics, may, at any such meeting, elect three persons resident within such Section to act as Trustees for the management of such Separate School, and any person, being a British subject, may be elected as a Trustee whether he be a freeholder or householder, or not. 18 V. c. 131, s. 3.

Meeting of ten persons may elect three trustees.

To be British subjects.

**20.** A notice in writing addressed to the Reeve, or to the Chairman of the Board of Common School Trustees, in the Township, City or Town in which such section is situate, may be given by all persons whether they were present at such meeting or not, who are freeholders or householders, residents within such sections, and Roman Catholics and favorable to the establishment of such separate school, declaring that they desire to establish a Separate School in such School Section, and designating by their names, professions and places of abode the persons elected in the manner aforesaid as Trustees for the management thereof. 18 V. c. 131, s. 4.

Written notice to certain officers.

Contents of notice.

**21.** Every such notice shall be delivered to the proper officer by one of the Trustees so elected, and it shall be the duty of the officer receiving the same to endorse thereon the date of the receipt thereof, and to deliver a copy of the same, so endorsed and duly certified by him, to such Trustee. 18 V. c. 131, s. 5.

Endorsement to be made on such notice.

**22.** From the day of the delivery and receipt of every such notice, the Trustees therein named shall be a body Corporate under the name of "The Trustees of the Roman Catholic Separate School for the Section Number \_\_\_\_\_, in the Township (City or Town, as the case may be,) in the County of \_\_\_\_\_." 18 V. c. 131, s. 6.

Thereafter, trustees to be a corporation.

Union of wards  
in cities and  
towns.

Notice in a  
newspaper.

Effect thereof.

**23.** When such Separate Schools are established in more than one Ward of any City or Town, the Trustees of such Separate Schools may, if they think fit, form a union of such Separate Schools, and, from the day of the notice in any public newspaper published in such City or Town announcing such union, the Trustees of the several Wards shall together form a body Corporate under the title of "The Board of Trustees of the Roman Catholic United Separate Schools for the City (or Town) of \_\_\_\_\_, in the County of \_\_\_\_\_." 18 V. c. 131, s. 7.

Separate school  
trustees to have  
same power as  
common school  
trustees.

**24.** The Trustees of such Separate Schools forming a body Corporate under this Act, shall have the same power to impose, levy and collect School rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of such Schools, and all other powers in respect of Separate Schools, as the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools. 18 V. c. 131, s. 8.

And be subject  
to same penal-  
ties.

Also teachers.

**25.** The Trustees of such separate School shall perform the same duties and shall be subject to the same penalties as Trustees of Common Schools; and Teachers of Separate Schools shall be liable to the same penalties as Teachers of Common Schools. 18 V. c. 131, s. 8.

All trustees to  
be elected an-  
nually.

Re-election.

**26.** The Trustees of such separate School shall remain in office until the second Wednesday of the month of January next following their election, on which day in each year a Meeting shall be held in each such section or ward, commencing at the hour of ten of the clock in the forenoon, for the election of three Trustees for Separate Schools theretofore established; but no Trustee shall be re-elected at any such meeting without his consent, unless after the expiration of four years from the time when he went out of office. 18 V. c. 131, s. 9.

Children from  
other sections.

**27.** The Trustees of such Separate Schools shall allow children from other School Sections, whose parents or lawful guardians are Roman Catholics, to be received into any Separate School under their management, at the request of such parents or guardians; and no children attending such School shall be included in the return, hereafter required to be made to the Chief Superintendent of Education, unless they are Roman Catholics. 18 V. c. 131, s. 10.

Certificates of  
teachers.

School funds.

**28.** A majority of the Trustees of such Separate Schools in any Township or Village or of the Board of Trustees in any Town or Village, shall have power to grant certificates of qualification to Teachers of Separate Schools under their management, and to dispose of all School Funds of every description coming into their hands for School purposes. 18 V. c. 131, s. 11.



**29.** Every person paying rates, whether as proprietor or tenant, who, on or before the first day of February of any year, gives to the Clerk of the Municipality in which any Separate School is situated, notice that he is a Roman Catholic and a supporter of such Separate School, shall be exempted from the payment of all rates imposed for the year then next following for the support of Common Schools and of Common School Libraries, within the Ward or School Section wherein such separate School is established. 18 V. c. 131, s. 12.

Exemption  
from common  
school rates.

**30.** Every Clerk of a Municipality, upon receiving any such notice, shall deliver a certificate to the person giving such notice to the effect that the same has been given, and shewing the date of such notice. 18 V. c. 131, s. 12.

Certificate of  
clerk.

**31.** Any person who fraudulently gives any such notice, or wilfully makes any false statement therein, shall not thereby secure any exemption from rates, and shall be liable to a penalty of forty dollars recoverable, with costs, before any Justice of the Peace at the suit of the Municipality interested. 18 V. c. 131, s. 12.

Fraudulent  
notice.

**32.** Nothing in the last three preceding sections contained shall exempt any person from paying any rate for the support of Common Schools or Common School Libraries, or for the erection of a School house or School houses, imposed before the establishment of such Separate School. 18 V. c. 131, s. 12.

Exception as  
to present  
rates.

**33.** Every such Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, according to the average number of pupils attending such School during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township: 18 V. c. 131, s. 13.

Share in legis-  
lative school  
grant.

Basis.

1. But no such Separate School shall be entitled to a share in any such fund unless the average number of pupils so attending the same be fifteen or more, (periods of epidemic or contagious diseases excepted);

Average must  
be 15.

2. Nothing herein contained shall entitle any such Separate School within any City, Town, Village or Township to any part or portion of School moneys arising or accruing from local assessment for Common School purposes within the City, Town, Village or Township, or the County or Union of Counties within which the City, Town, Village or Township is situate.

Not to share in  
municipal  
assessment.

Half-yearly returns to the chief superintendent.

**34.** The Trustees of each such Separate School shall, on or before the thirtieth day of June and the thirty-first day of December in each year, transmit to the Chief Superintendent of Education for Upper Canada a correct statement, verified by at least one of such Trustees under oath made before a Justice of the Peace for the County within which the Separate School is situate, of the names of the children attending such School, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open, and the Chief Superintendent shall thereupon determine the proportion which the Trustees of such Separate School are entitled to receive out of such Legislative grant, and shall pay over the amount thereof to such Trustees. 18 V. c. 131, s. 14.

Amount of grant determined.

Special conditions.

**35.** The election of Trustees for any such Separate School shall become void unless a Separate School be established under their management within two months from the election of such Trustees. 18 V. c. 131, s. 15.

Separatists not to vote at common school meetings.

**36.** No person subscribing towards the support of a Separate School established as herein provided either for Roman Catholics, Protestants, or colored people, or sending children thereto, shall be allowed to vote at the election of any Trustee for a Common School in the City, Town, Village or Township in which such Separate School is situate. 16 V. c. 185, s. 4,— 18 V. c. 131, s. 16.

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## T I T L E 9 .

### RELIGIOUS AND BENEVOLENT INSTITUTIONS.

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#### C A P . L X V I .

#### An Act respecting Tithes in Upper Canada.

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

**1.** No tithes shall be claimed, demanded or received by any ecclesiastical Parson, Rector or Vicar of the Protestant Church within Upper Canada. 2 G. 4, c. 32.

No Parson or Rector to be entitled to tithes.

C A P . L X V I I .

An Act respecting Companies for the establishment of Cemeteries in Upper Canada.

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

1. Any number of persons, not less than twenty may, in Upper Canada, form themselves into a Company for the purpose of establishing one or more public Cemeteries near to, but without the limits of any Town or City. 13, 14 V. c. 76, s. 1. Not less than twenty persons may form a cemetery company.

2. When any number of persons, 1. Not less than twenty, subscribe stock to an amount adequate to the purchase of the ground required for such a Cemetery, and 2. Execute an Instrument according to the form in the next section contained, and 3. Pay to the Treasurer of the intended Company twenty-five per cent. of the capital stock intended to be raised, and 4. Register such Instrument at full length, together with a receipt from the Treasurer for the first instalment of twenty-five per cent., with the Registrar of the County in which the ground is situate,—5. The Company shall thenceforth become and be a body corporate by the name designated in the Instrument so registered, and may take, hold and convey the land to be used exclusively as a Cemetery or place for the burial of the dead. 13, 14 V. c. 76, s. 2. After certain formalities they shall be a body corporate.

3. The Instrument referred to may be in the form following :

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, We, the undersigned, Stockholders, met at \_\_\_\_\_, in the County of \_\_\_\_\_, in the Province of Canada, and resolved to form ourselves into a Cemetery Company, to be called \_\_\_\_\_, according to the provisions of an Act of Parliament, intituled, *An Act, &c. (insert the title of this Act)*; And we do hereby agree that the Capital Stock of the said Company shall be \_\_\_\_\_ dollars, to be divided into shares of \_\_\_\_\_ dollars each, entitling the holder to one hundred superficial feet; And we, the undersigned Stockholders, do hereby agree to accept and take the number of shares set by us opposite our respective signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said Act, and of the Rules, Regulations and By-laws of the Company, to be made in that behalf. Form of instrument of association.

NAME.	NO. OF SHARES.	AMOUNT.
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**4.** The Company shall, by walls or other sufficient fences of the height of eight feet at least, enclose every part of the Cemetery sold by them. 13, 14 V. c. 76, s. 12.

**5.** The Company shall also, out of the moneys received by virtue of this Act, keep the Cemetery, and the buildings and fences thereof, in complete repair and in good order and condition. 13, 14 V. c. 76, s. 13.

**6.** The Company shall make all proper and necessary sewers and drains in and about the Cemetery for draining it and keeping it dry; and they may from time to time, as occasion requires, cause any such sewer or drain to open into an existing sewer with the consent in writing of the persons having the management of the street or road, and with the like consent of the owner or occupier of the land through which or part of which the opening is intended to be made, doing as little damage as possible to the street, road or land wherein the same is made, and restoring it to the same or as good condition as it was in before being disturbed. 13, 14 V. c. 76, s. 14.

**7.** If the Company at any time causes or suffers to be brought to or to flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond or watering place, any offensive matter from the Cemetery, whereby the water is fouled, the Company shall forfeit for every such offence fifty dollars. 13, 14 V. c. 76, s. 15.

**8.** This penalty, with full costs of suit, may, by a civil action in any Court of competent jurisdiction, be recovered by any person having a right to use the water; but the penalty and costs shall not be recoverable unless sued for during the continuance of the offence, or within six months after it has ceased. 13, 14 V. c. 76, s. 16.

**9.** In addition to the penalty of fifty dollars (and whether the same has been recovered or not), any person having a right to use the water may sue the Company in a civil action for any damage specially sustained by him by reason of the water being fouled; or if no special damage be alleged, then, for the sum of ten dollars for every day during which the offensive matter has continued to be brought or to flow after the expiration of twenty-four hours from the time when notice of the offence was by such person served upon the Company. 13, 14 V. c. 76, s. 17.

**10.** No body shall be buried in a vault or otherwise under any chapel or other building in the Cemetery, nor within fifteen feet of the outer wall of any such chapel or building. 13, 14 V. c. 76, s. 11.

**11.** The Company shall make regulations to ensure all burials within the Cemetery being conducted in a decent and solemn manner. 13, 14 V. c. 76, s. 10.

**12.** The Company shall furnish graves for strangers and for the poor of all denominations, free of charge, on the certificate in the latter case of a Minister or Clergyman of the denomination to which the deceased belonged, that the relatives of the deceased are poor and cannot afford to purchase a lot in the Cemetery. 13, 14 V. c. 76, s. 7.

Graves to be furnished gratis for Strangers and Poor.

**13.** The real estate of the Company and the lots or plots when conveyed by the Company to individual proprietors for burial sites, shall be exempt from taxation of any kind, and shall not be liable to be seized or sold on execution, or attached, or applied to the payment of debts under any bankrupt or insolvent law. 13, 14 V. c. 76, s. 6. *Part.*

Real Estate of Company exempt from taxation.

**14.** When a lot has been sold by the Company, for a burial site, the conveyance shall not require to be registered for any purpose whatever, and shall not be affected by any Registry Act, nor shall any judgment, mortgage or incumbrance subsist on any lot so conveyed. 13, 14 V. c. 76, s. 8.

Lots conveyed need not be registered.

**15.** The Deeds from the Company shall be in the following form :

Know all men by these presents, That the Cemetery, in consideration of \_\_\_\_\_ dollars, paid to them by \_\_\_\_\_, of \_\_\_\_\_, the receipt whereof is hereby acknowledged, do grant unto the said \_\_\_\_\_, his heirs and assigns, \_\_\_\_\_ Lot of Land in the Cemetery of the said Company, called \_\_\_\_\_, and situate in the County of \_\_\_\_\_, which Lot is delineated and laid down on the map of the said Cemetery, and is therein designated by the name of \_\_\_\_\_, containing by admeasurement \_\_\_\_\_ superficial feet ; to have and to hold the hereinabove named premises, &c. 13, 14 V. c. 76, s. 8.

Deed to be in the following form.

**16.** All lots or plots of ground in the Cemetery, when numbered and conveyed by the Company, as burial sites or lots, shall be indivisible, but may afterwards be held and owned in undivided shares. 13, 14 V. c. 76, s. 6. *Part.*

Lots to be indivisible, but may be held in undivided Shares.

**17.** One half of the proceeds of all sales of burial sites, made by the Company, shall be first applied to the payment of the purchase money of the land acquired by the Company, and the residue to preserving, improving and embellishing the land as a Cemetery or burial ground, and to the incidental expenses of the Company ; and after payment of the purchase money, the proceeds of all future sales shall be applied to the preservation, improvement and embellishment of the Cemetery, and to the incidental expenses thereof, and to no other purpose whatever ; and no dividend or profit of any kind shall be paid by the Company to any member thereof. 13, 14 V. c. 76, s. 6. *Part.*

Application of Proceeds of Sales.

No dividend allowed.

Lots to be not less than 100 superficial feet.

**18.** Every proprietor of a lot in the Cemetery, containing not less than one hundred superficial feet, and who has paid twenty-five per cent. or more, of the price of the lot, shall be deemed a shareholder in the Company, and every such lot shall be deemed a share in the Company. 13, 14 V. c. 76, s. 4.

Shareholders paying \$8 on shares, eligible as directors.

**19.** Every shareholder who has paid to the Company, not less than eight dollars in all on his share or shares, shall be eligible as a Director. 13, 14 V. c. 76, s. 4.

No proprietor of less than 100 superficial feet shall be a member or entitled to vote.

**20.** The Company may sell a lot of any size, but no proprietor of a lot containing less than one hundred superficial feet shall thereby become a member of the Company or have any vote in the management of the affairs thereof. 13, 14 V. c. 76, s. 4.

Property to be managed by nine directors; a majority to be a quorum.

**21.** The affairs and property of the Company shall be managed by nine Directors, a majority of whom shall form a quorum. 13, 14 V. c. 76, s. 3.

Directors to be elected by ballot.

**22.** The first Directors shall be chosen by ballot from among the subscribers to the Registered Instrument, and thereafter the Directors shall be annually elected by the shareholders on the third Monday in January in every year. 13, 14 V. c. 76, s. 3.

Number of votes regulated by the shares—no shareholder to vote unless \$2 is paid on each share.

**23.** Upon every election of Directors, including the first, every shareholder shall be entitled to one vote for every share he holds or is possessed of up to ten, and one vote for every five shares above ten; but no shareholder shall vote unless he has paid at least two dollars upon each share on which he votes. 13, 14 V. c. 76, s. 3.

Election of President.

**24.** The Directors, or a majority of them, shall, at their first meeting, elect one of their number to be President of the Company, and the President, if present, (or if he be not present, then some Director chosen for the occasion) shall preside at every meeting of the Directors, and shall not vote except in case of an equality of votes when he shall have a casting vote. 13, 14 V. c. 76, s. 5.

By-laws.

**25.** The Directors may pass By-laws for the laying out, selling, and managing of the ground,—for regulating the erection of tombs, monuments, or grave-stones therein, and for empowering the President to execute conveyances of plots to shareholders. 13, 14 V. c. 76, s. 5.

Register to be kept.

**26.** The Directors shall record in a book, kept for the purpose, all their By-laws and proceedings, and every person shall have access to such book for the purpose of searching and making extracts therefrom without payment of any fee. 13, 14 V. c. 76, s. 5.

**27.** The Directors may also call for instalments on the sums subscribed for, and may appoint a time for the payment thereof; and if the same be not then paid, the right of the subscriber, and every instalment formerly paid, shall be forfeited, and he shall be held not to have subscribed, unless the Directors think it expedient to remit the forfeiture, which they may do if the instalments be paid with interest within one year after the day when they ought to have been paid. 13, 14 V. c. 76, s. 18.

Directors may call for instalments.

**28.** The Directors shall be personally liable for any judgment recovered against the Company. 13, 14 V. c. 76, s. 6.

Directors liable for judgments recovered against the company.

**29.** Any person who, 1—wilfully destroys, mutilates, defaces, injures or removes any tomb, monument, grave-stone or other structure placed in a Cemetery, or any fence, railing or other work for the protection or ornament of a Cemetery or of any tomb, monument, grave-stone or other structure aforesaid or of any Cemetery lot within a Cemetery, or 2—wilfully destroys, cuts, breaks or injures any tree, shrub or plant, in a Cemetery, or 3—plays at any game or sport, in a Cemetery, or 4—discharges fire arms (save at a military funeral) in a Cemetery, or 5—who wilfully and unlawfully disturbs persons assembled for the purpose of burying a body therein, or 6—who commits a nuisance in a Cemetery, shall be guilty of a misdemeanor, and shall, upon conviction thereof before a Justice of the Peace, or other Court of competent jurisdiction, be punished by a fine of not less than four dollars nor more than forty dollars, according to the nature of the offence. 13, 14 V. c. 76, s. 9.

Penalty on persons defacing tomb stones, &c.

**30.** The offender shall also be liable in an action of trespass, in the name of the Company, to pay all damages occasioned by his unlawful act; and the money, when recovered, shall be applied under the direction of the Directors for the reparation and reconstruction of the property destroyed, and members of the Company shall be competent witnesses in the suit. 13, 14 V. c. 76, s. 9.

Application of penalties.

## C A P . L X V I I I .

### An Act respecting Conveyances to Trustees for Burial Places.

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

**1.** Whenever any of the inhabitants of a Township or locality in Upper Canada, to the number of ten or more, desire to take a conveyance of land for a burying ground not to belong exclusively to any particular denomination of Christians, such

When lands for burial grounds may be vested in trustees.

such persons may appoint Trustees, to whom, and their successors to be appointed in such manner as may be specified in the Deed of conveyance, the land may be conveyed; and such Trustees, and their successors in perpetual succession, by the name expressed in the Deed, may take, hold and possess the land, in trust for the uses and purposes limited in the Deed, and may maintain and defend suits in law or equity for the protection thereof, and of their property therein. 13, 14 V. c. 77.

Not exceeding ten acres for one township or locality.

2. But there shall not be held in trust under any such conveyance for the purposes aforesaid, more than ten acres of land for the inhabitants of any one township or locality. 13 14 V. c. 77.

## C A P. L X I X .

An Act respecting the property of Religious Institutions in Upper Canada.

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

When lands may be vested in trustees for churches, church yards, burial grounds, &c.

1. When any Religious Society or Congregation of Christians in Upper Canada, desire to take a conveyance of land for the site of a church, chapel, meeting-house, burial ground or residence for the Minister, or when any Religious Congregation or Society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents, Anabaptists, Quakers, Mennonists, Tunkers or Moravians, desire to take a conveyance of lands for the support of Public Worship and the propagation of christian knowledge, such Society or Congregation may appoint Trustees to whom, and their successors to be appointed in such manner as may be specified in the deed of conveyance, the land requisite for all or any of the purposes aforesaid may be conveyed; and such Trustees and their successors, in perpetual succession, by the name expressed in the deed, may take, hold and possess the land, and maintain and defend actions in law or equity for the protection thereof and of their property therein. 9 G. 4, c. 2,--3 V. c. 73, s. 2,--S V. c. 15, s. 1.

Conveyances to trustees to be registered within 12 months.

2. But such Trustees shall, within twelve months after the execution of the deed of conveyance, cause the deed to be registered in the office of the Registrar of the county in which the land is situate, or otherwise the same shall be void. 9 G. 4, c. 2, s. 3,--S V. c. 15, s. 2.

When trustees may mortgage lands so held.

3. When a debt has been or may be hereafter contracted for the building, repairing, extending or improving of a church, meeting-house or chapel on land held by Trustees for the benefit of



of any Religious Society in Upper Canada, or for the purchase of the land on which the same has been or is intended to be erected, the Trustees, or a majority of them, may, from time to time, secure the debt or any part thereof, by a mortgage upon the land, church, meeting-house or chapel; or may borrow money to pay the debt or part thereof, and may secure the re-payment of the loan and interest by a like mortgage upon such terms as may be agreed upon. 13, 14 V. c. 78 s. 1.

4. The Grantees in Trust named in any Letters Patent from the Crown, or the Survivors or Survivor of them, or the Trustees for the time being appointed in manner prescribed in the Letters Patent, whereby lands are granted for the use of a Congregation or Religious Body, and any other Trustees for the time being entitled by law to hold lands in trust for the use of a Congregation or Religious Body, may lease, for any term not exceeding twenty-one years, lands so held by them for the use of a Congregation or Religious Body, at such rent and upon such terms as the Trustees or a majority of them deem reasonable.

Trustees may lease lands for 21 years.

5. In such lease they may covenant or agree for the renewal thereof at the expiration of any or every term of twenty-one years, for a further term of twenty-one years or a less period, at such rent and on such terms as may then by the trustees for the time being be agreed upon with the lessee, his heirs, executors, administrators or assigns, or may covenant or agree for the payment to the lessee, his executors, administrators or assigns, of the value of any buildings or other improvements which may, at the expiration of any term, be on the demised premises; and the mode of ascertaining the amount of such rent or the value of such improvements may also be specified in the original lease. 18 V. c. 119, s. 1.

And renew such leases, &c., or may bind their successors to pay for improvements.

6. But the Trustees shall not so lease without the consent of the Congregation or Religious Body for whose use they hold the land in trust, and such consent shall be signified by the votes of a majority of the Members present at a meeting of the Congregation or Body duly called for the purpose, nor shall the Trustees lease any land which at the time of making the lease is necessary for the purpose of erecting a Church or place of Worship or other Building thereon, or for a Burial Ground, for the Congregation for whose use the land is held. 18 V. c. 119, s. 4.

Land not to be leased without consent of congregation.

7. The Trustees for the time being entitled by law to hold land in trust for a Congregation or Religious Body, may, in their own names or by any name by which they hold the land, sue or distrain for rent in arrear, and may take all such means for the recovery thereof as landlords in other cases are entitled to take. 18 V. c. 119, s. 3.

Trustees may sue or distrain for rent in arrear—and in what name.

How land in trust may be sold when no longer required by the congregation.

8. When land held by Trustees for the use of a Congregation or Religious Body, becomes unnecessary to be retained for such use, and it is deemed advantageous to sell the land, the Trustees for the time being may give public notice of an intended sale, specifying the premises to be sold and the time and terms of sale; and after publication of the notice for four successive weeks, in a weekly paper published in or near the place where the lands are situated, they may sell the land at public auction according to the notice, but the Trustees shall not be obliged to complete or carry a sale into effect if in their judgment an adequate price is not offered for the land.

May be by public or private sale.

9. The Trustees may thereafter sell the land either by public or private sale; but a less sum shall not be accepted at private sale than was offered at public sale.

Private sales to be approved of by the Court of Chancery.

10. Before a deed is executed in pursuance of a public or private sale, the Congregation or Religious Body for whose use the lands are held, shall be duly notified thereof, and the sanction of the Court of Chancery obtained for the execution of the deed. 18 V. c. 119, s. 5,—12 V. c. 91, s. 2.

Trustees to prepare and shew statements annually.

11. Trustees selling or leasing land under the authority of this Act shall, on the first Monday in July in every year, have ready and open for the inspection of the Congregation or Religious Body which they represent, or of any Member thereof, a detailed statement shewing all Rents which accrued during the preceding year, and all sums of money whatever in their hands for the use and benefit of the Congregation or Religious Body, which were in any manner derived from the lands under their control or subject to their management, and also shewing the application of any portion of the money, which has been expended on behalf of the Congregation or Body. 18 V. c. 119, s. 6.

Trustees may be called upon to account by Court of Chancery.

12. The Court of Chancery may in a summary manner, on complaint upon oath by three Members of a Congregation or Religious Body, of any misfeasance or misconduct on the part of Trustees in the performance of duties authorized by this Act, call upon the Trustees to give in an account; and may enforce the rendering of such account, the discharge of any duties, and the payment of any money, so that the Congregation or Religious Body may have the benefit thereof; and the Court may compel the Trustees, in case of any misconduct, to pay the expense of the application, or may award costs to the Trustees in case the application be made on grounds which the Court considers insufficient or frivolous or vexatious. 18 V. c. 119, s. 7.

The provisions of s. 1 shall extend to the R. C. Church.

13. All the rights and privileges conferred upon any religious society or congregation of Christians in the first section of this Act mentioned, shall extend in every respect to the Roman Catholic Church to be exercised according to the government of the said Church. 3 V. c. 73, s. 3.

## C A P . L X X .

## An Act respecting the Building Fund, the Lunatic Asylum and other Public Buildings.

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

**1.** All moneys which by any Act or Law are directed to be applied or reserved for Upper Canada purposes not otherwise specially appropriated by law, shall be paid into and form part of "the Upper Canada Building Fund" under the authority of this Act. 13, 14 V. c. 68, s. 3,—20 V. c. 8, s. 1.

Certain moneys applied to the U. C. Building Fund.

**2.** The moneys aforesaid shall be paid over to the Receiver General and shall be applied by him : 13, 14 V. c. 68, s. 3.

How such fund to be applied.

Firstly—To the payment of the interest on Debentures issued on account of the Lunatic Asylum and outstanding, and also of the interest on any Debentures issued under any Act of Parliament for the purpose of raising money to complete the said Asylum, or to defray the expense of procuring a site for or of erecting any other Public Building in Upper Canada, for any Institution of general importance to the inhabitants of that portion of the Province ; 13, 14 V. c. 68, s. 3.

In payment of the interest upon debentures issued to raise moneys for the Lunatic Asylum.

Secondly—To the formation of a Sinking Fund of not less than six thousand dollars per annum, towards paying off the principal of such Debentures as aforesaid ; 13, 14 V. c. 68, s. 3.

In forming a fund for payment of the principal.

Thirdly—Towards the support of the Lunatic Asylum and of any other such Institution as aforesaid, in the manner directed by Parliament. 13, 14 V. c. 68, s. 3.

In supporting the Asylum.

**3.** All moneys forming part of the said Upper Canada Building Fund, and not required for the Public Service, shall, until so required, be invested by the Receiver General, under instructions from the Governor in Council, in Public Provincial Securities, and the interest on such securities shall form part of the said Fund. 20 V. c. 8, s. 2.

How sums not immediately required to be invested.

**4.** Such securities, or as many of them as necessary, may be disposed of by the Receiver General, from time to time, under instructions from the Governor in Council, and the proceeds thereof shall be applied to meet any lawful payments out of the said Fund. 20 V. c. 8, s. 2.

When and how securities therefore may be reconverted into money.

## C A P. L X X I.

## An Act respecting the Provincial Lunatic Asylum at Toronto.

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

Asylum and property vested in the Crown.

**1.** The Provincial Lunatic Asylum in Toronto, and all the property real and personal, and all effects belonging to it, shall be vested in the Crown. 16 V. c. 188, s. 2.

Financial business and affairs to be managed by a Bursar, who shall give security.

**2.** The financial business and affairs of the said Institution shall be managed by an officer to be appointed by the Governor during pleasure, and to be called "The Bursar of the Provincial Lunatic Asylum," who shall give Bonds in such sum as the Governor directs for the due performance of the duties of his Office. 16 V. c. 188, s. 3.

And report periodically.

**3.** The Bursar shall report the state of the income and expenditure in the following manner :

1. To the Inspectors of Lunatic Asylums at each visit ;

2. Monthly, to the Medical Superintendent ;

3. Quarterly, to the Governor ; and

4. Annually to each House of the Provincial Parliament, within ten days after the opening of each Session thereof. 16 V. c. 188, s. 3,—20 V. c. 28, s. 16.

Medical Superintendent to be appointed ; his special duties.

**4.** The Governor may appoint during pleasure a Medical Superintendent who shall reside in the Asylum, and who shall—

1. Direct and control the medical and moral treatment of the patients ;

2. Hire and discharge from time to time the Keepers and Servants ;

3. Watch over the internal management, and maintain the discipline and due observance of the By-Laws of the Institution ;

4. Report the condition thereof to the Visiting Inspectors at each visit, and annually to the Governor, and to each House of the Provincial Parliament within ten days after the opening of each Session thereof. 16 V. c. 188, s. 4.

**5.** No person shall be received into the Institution as a Lunatic without a Certificate from three Medical Licentiates, signed and verified by the Reeve of the Township or Incorporated Village, or the Mayor of the City or Incorporated Town from which the Lunatic may be sent, and in the absence of the Reeve or Mayor, by the Deputy or other person for the time being authorized to act in the place of the Reeve or Mayor. 16 V. c. 188, s. 7.

No Lunatic to be received without certificate of three Medical Licentiates, verified by Reeve or Mayor.

**6.** Such Certificate shall state that the subscribing Medical Licentiates at the same time and in the presence of each other, examined the patient, and after due inquiry into all necessary facts relating to his case, found him to be a Lunatic. 16 V. c. 188, s. 7.

Contents of the certificate.

**7.** Such Certificate shall be sufficient authority to any person to convey the Lunatic to the said Asylum, and to the authorities of the Asylum to detain him therein so long as he continues to be insane. 16 V. c. 188, s. 7.

Effect of certificate.

**8.** In case any Lunatic sent to the Asylum be under the age of twenty-one years, and has a Father or Mother able to pay for his maintenance, or has a Guardian or Committee, the Bursar and Medical Superintendent shall send a copy of the Certificate hereinbefore mentioned, attested under their hands, to the Father or Mother, Guardian or Committee, as the case may be, of such Lunatic, to which copy the Medical Superintendent and Bursar, shall subscribe a certificate of the admission of such Lunatic and of the amount per quarter which will become due for him to the Asylum by the By-laws thereof. 16 V. c. 188, s. 8.

When father, mother or guardian of Lunatic under 21 is able to pay for his maintenance, duty of Bursar and Superintendent to send certificate.

**9.** The Bursar, conjointly with the Medical Superintendent, shall, on the first day of each of the months of January, April, July and October, and during the time the Lunatic remains in the Asylum, demand from the Father or Mother, Guardian or Committee, as the case may be, of such Lunatic, such sum as may be due for such Lunatic to the Asylum, which sum shall be forthwith paid on such demand. 16 V. c. 188, s. 9.

Bursar and superintendent may demand amount due for lunatic on each quarter day.

**10.** On the first of the said quarter days after the admission of the Lunatic, such demand shall be for a sum proportionate to the broken period elapsed since the admission of the Lunatic, and on the discharge of the Lunatic a like demand shall be made for the sum due for the broken period since the then last quarter day. 16 V. c. 188, s. 9.

And for broken periods upon admission or discharge.

**11.** In case of refusal or neglect to pay the dues the Bursar may apply upon Affidavit, to the Judge of the County Court in which such Father or Mother, Guardian or Committee may reside, and the Judge, on the return of a Rule to shew cause, which he shall make upon the proper party, being satisfied

Mode of enforcing the claim if not paid forthwith.

that the Father or Mother of the Lunatic is able to pay for his maintenance as aforesaid, or that such Guardian or Committee is able to pay for the same out of property in his possession belonging to such Lunatic, the Bursar shall be entitled to an order for the payment of the amount then due and the costs, and a Writ of Execution may issue thereon in like manner as upon a judgment of such Court for the amount. 16 V. c. 188, s. 9.

Hearing of the case.

**12.** The Judge, after hearing the parties and their witnesses under oath, either orally or in writing by Affidavit, may make the order herein referred to, or, if he thinks fit, direct an issue to be made up and tried before a Jury previous to making such order. 16 V. c. 188, s. 9.

If a lunatic in the Asylum be possessed of property, and the sum due for his maintenance be not paid, the Bursar may take possession.

**13.** If any Lunatic upon or at any time after his admission into the Asylum, possesses or becomes possessed of or entitled to any real or personal property whereby the expenses of his maintenance in the Asylum can be paid, and he has no Guardian or Committee lawfully appointed to take the care or management of the same for the benefit of the Lunatic, then if any such demand as aforesaid for the sum due for the maintenance of the Lunatic in the Asylum be not paid on demand, or if there be no one of whom it can be demanded, and such property is, in the opinion of the Bursar, more than sufficient to maintain the family (if any) of such Lunatic, the Bursar may take possession of such property, or so much thereof as he thinks necessary to pay or to secure the payment of the sum due or to become due, for the support and maintenance of the Lunatic in the Asylum, and he shall have full power over and be competent to manage and appropriate, take or recover possession of, lease, mortgage, sell and convey all or any part of such property in the name of such Lunatic, or as his Committee under this Act, as fully and effectually to all intents and purposes as such Lunatic could or might do, if of full age and of sound and disposing mind. 16 V. c. 188, s. 10.

The Bursar to report to the County Judge before sale.

**14.** Before any sale and conveyance of any real property of such Lunatic, the Bursar shall report the case with the terms of the proposed sale to the County Judge of the County within which the property is situate for his approval, and such sale and conveyance so approved, shall be valid and binding upon the Lunatic and his heirs. 16 V. c. 188, s. 10.

The Bursar to account for the effects of lunatics.

**15.** The Bursar shall be liable to render an account as to the manner in which he has managed the property and effects of such Lunatic in the same way and subject to the same responsibilities as any Trustee, Guardian or Committee duly appointed for a similar purpose may be called upon to account. 16 V. c. 188, s. 10.

**16.** In cases mentioned in the next three preceding sections, if doubt or opposition arises as to the right of property, the Bursar or the person claiming the property, may apply to the Judge of the County Court in which such property may be, to cause an inquisition to be held before such County Judge and to try and determine the right of property, either by himself, or by a jury when required by either party, but not otherwise, and which such Judge shall accordingly do. 16 V. c. 188, s. 11.

Inquisition in case of doubt as to property.

**17.** The Governor may fix the salaries of the Medical Superintendent not to exceed two thousand dollars and of the Bursar not to exceed one thousand two hundred dollars, and the same shall be payable out of any funds appropriated to the support of the said Asylum. 16 V. c. 188, s. 12.

Governor to fix salaries within certain amounts.

**18.** The word "County" in this Act, shall include any Union of Counties for Municipal purposes; the word "Father" shall include any husband of the mother of a Lunatic, and the word "Mother" shall include any wife of the father of a Lunatic; provided, in either case, that the birth of such Lunatic be legitimate. 16 V. c. 188, s. 13.

Interpretation.

## T I T L E 1 0 .

### DOMESTIC RELATIONS, RIGHTS AND REMEDIES.

## C A P . L X X I I .

### An Act respecting Marriages in Upper Canada.

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

**1.** The Ministers and Clergymen of every church and religious denomination in Upper Canada, duly ordained or appointed according to the rites and ceremonies of the Churches or Denominations to which they respectively belong, and resident in Upper Canada, may, by virtue of such ordination or appointment, and according to the rites and usages of such Churches or Denominations respectively, solemnize the ceremony of Marriage between any two persons not under a legal disqualification to contract such marriage. 20 V. c. 66, s. 1,—11 G. 4, c. 36, s. 3.

Ministers of any denomination may solemnize marriage.

**2.** But no Minister or Clergyman shall celebrate the ceremony of marriage between any two persons, unless duly authorized so

No Minister to solemnize marriage.

riage unless authorized by license or after publication of Bans.

to do by license under the hand and seal of the Governor, or, if not so authorized, then unless the intention of the two persons to intermarry be proclaimed openly and in an audible voice, in the Church, Chapel, Meeting-house or place of public worship of the Congregation or Religious Community with which the Minister or Clergyman is connected, on three several Sundays, immediately before the service begins or immediately after it ends, or at some intermediate part of the service, together with the number of such proclamation, as being the first, second or third time of asking. 3S G. 3, c. 4, s. 4,—11 G. 4, c. 36, s. 5.

No valid objection that it was not in a church or chapel, &c.

**3.** It shall not be a valid objection to the legality of a marriage, that the same was not solemnized in a consecrated Church or Chapel, or within any particular hours. 33 G. 3, c. 5, s. 6.

Ministers marrying must give certificate if required.

**4.** Every Clergyman or Minister who celebrates a marriage in Upper Canada, shall, if required at the time of the marriage by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to License or after publication of bans; and the Clergyman or Minister may demand twenty-five cents for the certificate, from the person requiring it. 20 V. c. 66, s. 2.

Fee for certificate.

Ministers to enter marriages in a book, &c.

To make a yearly return to the Registrar.

**5.** Every Clergyman or Minister shall, immediately after he has solemnized a marriage, enter in a book, to be kept by him for the purpose, a true record of the marriage; and shall on or before the first day of February in every year, return a certified list of all marriages by him solemnized during the year ending on the thirty-first day of December next preceding, to the Registrar of the County in which the marriages have taken place, and shall, at the time of making the return, pay or transmit to the Registrar one dollar as his fee thereon. 20 V. c. 66, s. 3.

Form of record.

**6.** Such record and list shall respectively specify all the particulars, and the list shall be in the form following namely:



Return of Marriages solemnized by \_\_\_\_\_, a Minister of \_\_\_\_\_, for the year ending \_\_\_\_\_ the \_\_\_\_\_ day of January, A. D. 18 \_\_\_\_\_.

BRIDEGROOM.				BRIDE.			WITNESS.		DATE OF MARRIAGE.		
His Name.	Age if known.	Residence.	Place of Birth, if known.	Names of Parents, if known.	Her Name.	Age if known.	Residence.	Place of Birth, if known.		Names of Parents, if known.	Name.

I do hereby certify that the foregoing is a true and correct statement of all Marriages solemnized before (as the case may be), for the year ending on the 31st day of December next preceding the date hereof.

(Signed,) A. B.

(Minister or Clerk, as the case may be.)

Registrar's  
Fees for copies.

**7.** On receipt by the Registrar of any such list, he shall file the same among the papers of his office, and record the same in a book to be kept by him for the purpose; and in case of the death or absence of the witnesses to a marriage, such register or a certified copy shall be sufficient evidence of the marriage, and the Registrar shall give a certified copy of a marriage record to any person demanding the same, on payment of fifty cents. 20 V. c. 66, s. 3.

Minister's fees.

**8.** Every Clergyman or Minister, before solemnizing a marriage, may demand from either of the parties thereto, the sum of two dollars, to enable him to pay the sum to be paid or transmitted by him to the Registrar, and to remunerate the Clergyman or Minister for the trouble and expense attendant on preparing and transmitting such certified list to the Registrar. 20 V. c. 66, s. 3.

Parties may  
give what additional remuneration they think fit.

**9.** But nothing in this Act shall prevent the payment to the Clergyman or Minister of any further remuneration the parties choose to make. 20 V. c. 66, s. 3.

In case of death or removal, Minister's Successor to make return to the Registrar.

**10.** In case of the death or removal of a Minister or Clergyman before making his annual return, his successor or any other person having the legal custody of the book referred to in the fifth section, shall return to the Registrar a certified copy of all marriages therein recorded, and the Registrar shall record the same as if the return had been made by the Minister or Clergyman who celebrated the marriages. 20 V. c. 66, s. 4.

Quakers' marriages declared valid.

**11.** Every marriage duly solemnized between members of the Religious Society of Friends, commonly called Quakers, according to the rites and usages thereof, shall be valid; and the duty imposed by this Act upon a Minister and Clergyman, shall, with regard to such marriage, be performed by the Clerk or Secretary of the Society or of the Meeting at which the marriage is solemnized. 20 V. c. 66, s. 7.

Fines for neglecting to return certified list.

**12.** Every Clergyman, Minister, Clerk, Secretary or other person, who in any year refuses or neglects to return the certified list required of him by this Act, on or before the first day of February, shall forfeit for every day's delay after that day, the sum of four dollars, which sum shall be recoverable with costs before any Magistrate of the County in which the person resides, and shall be applied according to law. 20 V. c. 66, s. 37.

Clerks of the Peace to furnish books and printed forms at the expense of the County.

**13.** The Clerk of the Peace of every County shall, at the expense of the County, from time to time on demand, furnish all Clergymen or Ministers and others in the County required by this Act to make returns, with the books to be kept, and with printed blank forms for the lists to be returned; and such books shall have columns and headings printed on every page according to the form given in the sixth section; and the books

books and forms shall be of such size and form as to admit of the necessary entries being conveniently made therein. 20 V. c. 66, s. 8.

**14.** The book by whomsoever furnished shall be the property of the Church or Denomination to which the Clergyman or Minister, Clerk or Secretary belongs at the time of the first marriage which he records therein. 20 V. c. 66, s. 3. Said books &c., to be property of the church to which Clergyman belongs.

#### MARRIAGE LICENSE FUND.

**15.** The portion of the Marriage License Fund arising in Upper Canada, shall be at the disposal of the Legislature, for public purposes of interest in Upper Canada. 13, 14 V. c. 70. Marriage license fund.

### C A P . L X X I I I .

An Act respecting certain separate rights of property of Married Women.

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

**1.** Every woman, who has married since the Fourth day of May, one thousand eight hundred and fifty-nine, or who marries after this Act takes effect, without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her real and personal property, whether belonging to her before marriage, or acquired by her by inheritance, devise, bequest or gift, or as next of kin to an intestate or in any other way after marriage, free from the debts and obligations of her husband and from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried, any law, usage or custom to the contrary notwithstanding; but this clause shall not extend to any property received by a married woman from her husband during coverture. 22 V. c. 34, s. 1, (1859.) A married woman may hold her property free from the debts or control of her husband.

**2.** Every woman who, on or before the said Fourth day of May one thousand eight hundred and fifty-nine, married without any marriage contract or settlement, shall and may, from and after the said Fourth day of May, one thousand eight hundred and fifty-nine, notwithstanding her coverture, have, hold and enjoy all her real estate not then, that is on the said Fourth day of May, taken possession of by the husband, by himself or his tenants, and all her personal property not then reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after marriage, free from his debts and obligations contracted after the said Fourth day of May, one thousand eight hundred and fifty-nine, and from Proviso. A woman married before 4th May, 1859, may hold property not reduced to possession of her husband.

from his control or disposition without her consent, in as full and ample a manner as if she were sole and unmarried; any law, usage or custom to the contrary notwithstanding. 22 V. c. 34, s. 2, (1859.)

This Act not to prevent seizure in execution in certain cases.

**3.** Nothing herein contain shall be construed to protect the property of a married woman from seizure and sale on any execution against her husband for her torts; and in such case, execution shall first be levied on her separate property. *Ibid.* s. 3.

Not to affect tenancy by curtesy.

**4.** No conveyance or other act of a wife in respect of her real estate shall deprive her husband of any estate he may become entitled to as tenant by the curtesy. *Ibid.* s. 4.

Order of protection required as to earnings.

**5.** No married woman shall be entitled to her earnings during coverture without an order of protection under the provisions hereinafter contained. *Ibid.* s. 5.

In what cases a married woman may obtain an order of protection for her earnings.

**6.** Any married woman having a decree for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him for cruelty or other cause which by law justifies her leaving him and renders him liable for her support, or any married woman whose husband is a lunatic with or without lucid intervals, or any married woman whose husband is undergoing sentence of imprisonment in the provincial penitentiary, or in any gaol for a criminal offence, or any married woman whose husband from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this Province, or any married woman who is deserted or abandoned by her husband, may obtain an order of protection entitling her, notwithstanding her coverture, to have and enjoy all her earnings and those of her minor children, and any acquisitions therefrom free from the debts and obligations of her husband and from his control or dispositions, and without his consent, in as full and ample a manner, as if she continued sole and unmarried, any law, usage or custom to the contrary notwithstanding. *Ibid.* s. 6.

Purport and effect of such order.

**7.** The unmarried woman may at any time apply, or the husband or any of the husband's creditors may, at any time on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge be made, the same may be registered or filed like the original order. *Ibid.* s. 7.

How and by whom an order discharging protection may be obtained.

Either order may be in duplicate.

By whom to be made in cities and towns.

Registration.

**8.** Either order may issue in duplicate, and when the married woman resides in a City or Town where there is a Recorder or Police Magistrate, the order for protection or any order discharging the same shall be made by the Recorder or Police Magistrate, and shall be registered in the Registry office of the County. *Ibid.* s. 8.

**9.** When the married woman does not reside in a City or Town where there is a Recorder or Police Magistrate, the order shall be made by the Judge or one of the Judges, or the acting or Deputy Judge of the Division Courts or a Division Court of the County in which the married woman resides, and instead of being registered, shall be filed for public inspection with the Clerk of the Division Court of the Division within which the married woman resides. 22 V. c. 34, s. 9, (1859.)

By whom made when not in such city or town.

**10.** The hearing of an application for an order of protection, or for an order discharging the same, may be public or private, at the discretion of the Judge, Recorder or Police Magistrate. *Ibid.* s. 10.

Hearing may be public or private.

**11.** The order for protection shall have no effect until it is registered or filed, and the Registrar or Clerk shall immediately on receiving the order, endorse thereon the day of registering or filing the same; and a certificate of the registering or filing and date, signed by the Registrar or Clerk for the time being, shall be *primâ facie* evidence of such registering or filing and date; and a copy of the order which is registered or filed, certified under the hand of the Registrar or Clerk to be a true copy thereof, shall be sufficient *primâ facie* evidence of the order without proof of the signature of the Registrar or Clerk, and without further proof of the order itself, or of the making or validity thereof. *Ibid.* s. 11.

Order not to have effect until registered.

Evidence of order, &c.

**12.** The order for discharging an order of protection shall not in any case be retroactive, but shall take effect from the time it is made, and the order for protection shall protect the earnings of the married woman and her children until an order be made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use, whatever during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of herself and her minor children. *Ibid.* s. 12.

From what time the order discharging protection shall take effect.

**13.** Any estate or interest to which a husband may, by virtue of his marriage, be entitled in the real property of his wife, whether acquired before or after the fourth day of May, one thousand eight hundred and fifty nine, or after this Act takes effect, shall not during her life be subject to the debts of the husband, but this provision shall not affect the right which any person, by or under any judgment or execution obtained against the husband, had obtained in respect of any such estate or interest acquired by a husband before the said Fourth day of May, one thousand eight hundred and fifty-nine. *Ibid.* s. 13,

Estate to which a husband is entitled in the property of his wife, not subject to his debts during her life.

**14.** Every married woman having separate property, whether real or personal, not settled by any ante-nuptial contract, shall be liable upon any separate contract made or debt incurred by her before marriage, such marriage being since the said Fourth day of May, one thousand eight hundred and fifty-nine, or after this

Separate property of wife to be liable for her debts before marriage.

this Act takes effect, to the extent and value of such separate property, in the same manner as if she were sole and unmarried. 22 V. c. 34, s. 14, (1859.)

Liability of husband for such debts limited.

**15.** Every husband who since the said Fourth day of May or hereafter takes any interest in the separate, real or personal property of his wife, under any contract or settlement on marriage, shall be liable upon the contracts made or debts incurred by her before marriage, to the extent or value of such interest only, and no more. *Ibid.* s. 15.

Married woman may devise or bequeath her separate property, &c.

**16.** From and after the said Fourth day of May, one thousand eight hundred and fifty-nine, and hereafter, every married woman may, by devise or bequest executed in the presence of two or more witnesses, neither of whom is her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was or be acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she may see fit, in the same manner as if she were sole and unmarried; but her husband shall not be deprived by such devise or bequest of any right he may have acquired as tenant by the curtesy. *Ibid.* s. 16.

Separate personal property of wife dying intestate, how to be distributed.

**17.** The separate personal property of a married woman dying intestate shall be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is to be distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass or be distributed as if this Act had not been passed. *Ibid.* s. 18.

As to actions, &c., against wife for debts contracted before marriage.

**18.** In any action or proceeding at law or in equity, by or against a married woman, upon any contract made or debt incurred by her before marriage, her husband shall be made a party if residing within the Province, but if absent therefrom, the action or proceeding may go on for or against her alone; and in the declaration, bill or statement of the cause of action, it shall be alleged that such cause of action accrued before marriage, and also that such married woman has separate estate; and the judgment or decree therein, if against such married woman, shall be to recover of her separate estate only, unless in any action or proceeding against her, in which her husband has been joined as a party, any false plea or answer has been pleaded or put in by him, when the judgment or decree shall be, in addition, to recover against him the costs occasioned by such false plea or answer, as in ordinary cases. *Ibid.* s. 19.

Judgment or decree in such cases.

Act not to affect marriage settlements, &c.

**19.** Nothing in this Act contained shall be construed to prevent any ante-nuptial settlement or contract being made in the same manner and with the same effect as such contract or settlement might be made if this Act had not been passed; but notwithstanding any such contract or settlement, any separate, real

As to property not

real or personal property of a married woman, acquired either before or after marriage, and not coming under or being affected by such contract or settlement, shall be subject to the provisions of this Act, in the same manner as if no such contract or settlement had been made; and as to such property, and her personal earnings and any acquisitions therefrom, such woman shall be considered as having married without any marriage contract or settlement. 22 V. c. 34, s. 20, (1859.)

coming within  
the contract.

20. This Act shall apply and be construed retrospectively to the fourth May, one thousand eight hundred and fifty-nine, as well as prospectively, so as to give full operation and effect thereto as from the time of the passing of the 22 V. c. 34, (1859.)

## C A P . L X X I V .

### An Act respecting the appointment of Guardians and the Custody of Infants.

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

#### APPOINTMENT AND DUTIES OF THE GUARDIANS.

1. The right of appointing guardians of infants (such infants not having a father living or any legal guardian authorized by law to take the care of their persons and the charge of their estates), shall belong exclusively to the Surrogate Court for the County within which any such infants reside, and letters of guardianship granted by a Surrogate Court shall have force and effect in all parts of Upper Canada, and an official certificate of the grant may be obtained as in the case of letters of administration, and a return of every appointment and removal of a guardian shall be made by Registrars respectively to the Surrogate Clerk in like manner as in case of grants of probate or administration. 22 V. c. 93, s. 63,—S. G. 4, c. 6, s. 4.

To what Court  
the right of  
appointing  
guardians shall  
belong.

2. In all matters and applications touching or relating to the appointment, control or removal of guardians of any such infants and the security to be given by such guardians and otherwise, the several Surrogate Courts, shall have the like powers, jurisdiction and authority for the examination of witnesses, the production of deeds and writings, and generally for the enforcing of all orders, decrees and judgments made or given by such Surrogate Courts in respect to the appointment, control and removal of guardians as aforesaid, as are given to them by the Surrogate Courts' Act in matters testamentary; and such orders, decrees and judgments may be appealed from to the Court of Chancery in the manner provided for appeals to such Court in matters testamentary. 22 V. c. 93, s. 62.

In matters of  
guardianship,  
Courts to have  
same powers  
for examina-  
tion of witness-  
es and enforce-  
ing decrees,  
&c., as in tes-  
tamentary  
matters.

3. Upon the written application of any such infant, or the friend or friends of such infant, residing within the jurisdiction of the Surrogate

When Judges  
of Probate and  
Surrogate  
Courts may

appoint guardians.

Surrogate Court to which application may be made, and after proof of twenty days' public notice of the application and of notice thereof to the mother of such infant, or that such infant has no mother living in Upper Canada, the Judge of such Court may appoint some suitable and discreet person or persons to be guardian or guardians of such infant. 8 G. 4, c. 6, s. 1.

Such guardians to give security by bond.

Condition of bond.

1. The Judge shall take from the guardian or guardians so appointed a Bond in the name of the infant, in such penal sum and with such securities as the Judge directs and approves, having regard to the circumstances of the case, and such bond shall be conditioned that the said guardian or guardians will faithfully perform the said trust, and that he or they, the said Guardian or Guardians, or his or their respective executors or administrators, will, when the said ward becomes of the full age of twenty-one years, or whenever the said guardianship shall be determined, or sooner if thereto required by the said Surrogate Court, render to his or their said ward, or to his or her executors or administrators, a true and just account of all goods, moneys, interest, rents, profits or property of such ward, which come into the hands of such guardian or guardians, and will thereupon without delay deliver and pay over to the said ward, or to his or her executors or administrators, the property or the sum or balance of money, which may be in the hands of the said guardian or guardians belonging to such ward, deducting therefrom and retaining a reasonable sum for the expenses and charges of the said guardian or guardians, and such Bond shall be recorded by the Registrar of the Court in the Books of his Office. 8 G. 4, c. 6, s. 1.

Bond to be recorded.

#### AUTHORITY OF GUARDIANS.

Guardians' authority.

5. The guardian or guardians of any infant so appointed, shall, during the continuance of his or their guardianship, have authority to act for and in behalf of the said ward :

To appear in actions at law.

1. And may appear in any Court and prosecute or defend any action in his or her name ;

To manage real and personal estate, &c.

2. And shall have the charge and management of his or her estate, real and personal, and the care of his or her person and education ;

Bind ward an apprentice.

3. And in case the infant be under the age of fourteen years may with the approbation of two of Her Majesty's Justices of the Peace, and the consent of such ward, or in case the infant be not under the age of fourteen years, then with the consent of the ward only may place and bind him or her an apprentice to any lawful trade, profession or employment ; such apprenticeship, in case of males, not extending beyond the age of twenty-one years, and in case of females, not beyond the age of eighteen years,

Limitation of apprenticeship.



or the marriage of the ward within that age. 8 G. 4, c. 6, s. 2.  
See 14, 15 V. c. 11, s. 1.

REMOVAL OF GUARDIANS.

6. The Judge by whom any guardian or guardians have been appointed may, upon reasonable complaint made and sustained, or cause shewn to his satisfaction, remove such guardian or guardians from his or their said guardianship, and if it be judged necessary, may appoint another guardian or guardians of the said infant. 8 G. 4, c. 6, s. 3.

How guardians may be removed.

7. The practice and procedure under this Act, shall, except where otherwise provided for by Rules or Orders under the Surrogate Courts Act, conform, as nearly as the circumstances of the case will admit, to the practice and procedure prescribed by the said Surrogate Courts Act, and all the powers given by the several sections of that Act, to the Judges appointed or to be appointed as contained in the eighteenth and nineteenth sections, may from time to time be exercised by them, for the purpose of simplifying and expediting the proceedings, and for fixing and regulating the fees to be taken by Officers and by Attorneys and Counsel respectively for business and proceedings done and taken under this Act in the several Surrogate Courts. 22 V. c. 93, s. 64.

Procedure under this Act in testamentary matters, &c.

CUSTODY OF INFANTS.

8. Any of the Superior Courts of Law or Equity in Upper Canada, or any Judge of any of such Courts, upon hearing the petition of the mother of any infant, being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father, may, if such Court or Judge sees fit, make order for the access of the petitioner to such infant, at such times and subject to such regulations as such Court or Judge thinks convenient and just, and if such infant be within the age of twelve years, may make order for the delivery of such infant to the petitioner, to remain in the care and custody of the petitioner until such infant attains the age of twelve years, subject to such regulations as such Court or Judge may direct, and such Court or Judge may also make order for the maintenance of such infant by payment by the father thereof, or by payment out of any estate to which such infant may be entitled, of such sum or sums of money from time to time, as, according to the pecuniary circumstances of such father or the value of such estate, such Court or Judge thinks just and reasonable. 18 V. c. 126, s. 1.

Court or Judge may make order for allowing the mother access to any infant in the sole custody of the father or other person, or for its delivery if under 12 years, and also order for its maintenance.

9. The Court or Judge as aforesaid may enforce the attendance of any person before such Court or Judge, to testify on oath respecting the matter of such petition by order or rule made

Court or Judge in any such case may compel the attendance

ance of witnesses.

made for that purpose, and on the service of a copy thereof and the payment of expenses as a witness, in the same manner as in a suit or action in the said Courts respectively, or may receive affidavits respecting the matters in such petition. 18 V. c. 126, s. 2.

Orders enforceable by process of contempt.

**10.** All orders made by the Court or a Judge by virtue of this Act, shall be enforceable by process of contempt by the Court or Judge by which or by whom such order has been made. 18 V. c. 126, s. 3.

Order not to be made in favour of mother guilty of adultery.

**11.** No order directing that the mother shall have the custody of or access to an infant shall be made by virtue of this Act, in favor of a mother, against whom adultery has been established by judgment in an action for criminal conversation, at the suit of her husband against any person. 18 V. c. 126, s. 4.

## C A P . L X X V .

### An Act respecting Master and Servant.

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

#### 1. SLAVERY PROHIBITED.

Slavery prohibited.

**1.** The Governor shall not grant a license for the importation of any Negro or other person to be subjected to the condition of a Slave, or to a bounden involuntary service for life, into any part of Upper Canada; nor shall any Negro, or other person, who comes or is brought into Upper Canada, be subject to the condition of a Slave, or to such service as aforesaid, within the same. 33 G. 3, c. 7, s. 1.

No voluntary contract of service or indentures to be binding longer than nine years.

**2.** No voluntary contract of service or indentures entered into by any parties within Upper Canada, shall be binding on them, or either of them, for a longer time than a term of nine years, from the day of the date of such contract. 33 G. 3, c. 7, s. 1.

#### 2. MASTER AND SERVANT.

Verbal as well as written agreements between master and servant to be binding.

**3.** All agreements or bargains, verbal or written, between Masters and Journeymen, or skilled Labourers, in any Trade, Calling or Craft, or between Masters and Servants or Labourers, for the performance of any duties or service of whatsoever nature, shall, whether the performance has been entered upon or not, be binding on each party for the due fulfilment thereof; but a verbal agreement shall not exceed the term of one year. 10, 11 V. c. 23, s. 1,—18 V. c. 136, ss. 1, 2.

4. If after any such engagement has been entered into, and during the period of such engagement, whether such employment has been commenced or not, the person who thereby undertook to perform any service or work, refuses to go to work, or (without permission or discharge) leaves the employ of the party whom he has engaged to serve, or refuses to obey the lawful commands of the person under whose direction such services are to be performed, or neglects the service, or injures the property of his employer, the offender shall (upon the complaint of such employer, or any person in charge under him) be liable to punishment for such offence as hereinafter provided. 10, 11 V. c. 23, s. 2,—18 V. c. 136, s. 2.

Persons leaving the employ of their master or refusing to work, &c., after entering into an engagement and contrary thereto, shall be liable to punishment.

5. If any tavern keeper, boarding-house keeper, or other person, induces or persuades any servants or labourers to confederate for demanding extravagant or high wages, and prevents their hiring, then upon due proof of the offence, such tavern keeper shall forfeit his license in addition to any fine, and such tavern keeper, boarding house keeper or other person shall be subject to fine or imprisonment, as hereinafter provided. 10, 11 V. c. 23, s. 3.

Tavern keepers inducing servants to confederate for demanding higher wages to be also subject to fine, &c.

6. No tavern keeper or boarding-house keeper shall keep the wearing apparel of any servant or labourer in pledge for any expenses incurred to a greater amount than six dollars, and on the payment or tender of such sum, or of any less sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer; but this is not to apply to other property of the servant or labourer. 10, 11 V. c. 23, s. 4.

Tavern keepers, &c., not to keep wearing apparel or servant in pledge for any amount above \$6.

#### SUMMARY PROCEEDINGS BEFORE JUSTICES.

7. Any one or more of Her Majesty's Justices of the Peace may receive the complaints upon oath of parties complaining of any contravention of the preceding provisions of this Act, and may cause all parties concerned to appear before him or them, and shall hear and determine the complaint in a summary and expeditious manner, and punish parties found guilty of the offence alleged by fine or imprisonment, allowing such costs as may be legal and just.

Duties of Justices of the Peace on receiving complaints against parties for contravention of this Act.

8. All fines imposed under this Act shall be paid to the Treasurer of the County, Town or City in which the conviction has been had, to be applied to the general uses of such County, Town or City respectively.

How fines to be disposed of.

9. No Justice or Justices shall impose any fine exceeding twenty dollars, and no imprisonment shall exceed one month, nor be less than one day. 10, 11 V. c. 23, s. 5.

Limit of fines or imprisonment.

10. In every case of a summary conviction under this Act where the sum forfeited, or imposed as a penalty by the Justice, is

Justices of the Peace may

is

commit offenders to jail if the fine imposed be not paid.

is not paid either immediately after the conviction or within such period as the Justice at the time of conviction appoints, the convicting Justice may commit the offender to the Common Jail of the county where such conviction has been had, there to be imprisoned for the time limited by such conviction. 10 11, V. c. 23, s. 6.

Persons contravening the preceding sections may be punished in any County in which they may be found.

**11.** Any person offending against the preceding provisions of this Act may be prosecuted, convicted and punished in any county in which he may be found, and the offence shall be deemed to have been committed in such county, whether such county be or be not that in which his employer resides, or in which the contract of service was entered into. 10, 11 V. c. 23, s. 7.

Justices of the Peace may likewise hear complaints by the servants against the employer for misusage, non-payment of wages, &c, and may determine the same.

**12.** Any one or more of such Justices, upon oath of any such servant or labourer against his master or employer concerning any misusage, refusal of necessary provisions, cruelty, ill-treatment or non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in the summons, and he or they or some other Justice or Justices shall, upon proof on oath, of the personal service of such summons, examine into the matter of the complaint, whether the master or employer appears or not, and upon due proof of the cause of complaint, the Justice or Justices may discharge such servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due, not exceeding the sum of forty dollars, and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable, with costs, and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and of the distress. 10, 11 V. c. 23, s. 8.

#### APPEALS TO QUARTER SESSIONS.

Appeals to Quarter Sessions.

**13.** Any person who thinks himself aggrieved by any such conviction or order for the payment of wages, or by any order of dismissal from service or employment, or any order or decision of any justice or justices under this Act, may appeal in the same manner as provided in the Act respecting appeals in cases of summary convictions, and in case of the dismissal of the appeal or the affirmance of the conviction, order, or decision, the Court appealed to shall order and adjudge the offender to be punished according to the conviction; or shall enforce the order for payment of wages or of dismissal, as the case may be, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect. 10, 11 V. c. 23, s. 9.

## C A P . L X X V I .

## An Act respecting Apprentices and Minors.

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

**1.** When a Minor over the age of sixteen years, who has no parent or legal guardian, or who does not reside with his parent or guardian, enters into an engagement written or verbal to perform any service or work, he shall be liable upon the same and shall have the benefit thereof as if he had been of legal age. 14, 15 V. c. 11, s. 14.

Minors may bind themselves to labour in certain cases.

**2.** A parent, guardian or other person having the care or charge of a Minor not under the age of fourteen years, may, with the consent of the Minor, put and bind him as an apprentice, by Indenture, to any master-mechanic, farmer or other person carrying on a trade or calling, for a term not to extend beyond the minority of the Apprentice. 14, 15 V. c. 11, s. 1. See 8 G 4, c. 6, s. 2.

Power of parents, &c., to bind minors as apprentices.

**3.** When the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two justices of the peace, may bind the child as an apprentice to any person mentioned in the last section until the child attains the age of twenty-one years in the case of a male, and eighteen in the case of a female ; and an indenture to that effect, under the hand and seal of the mother and countersigned by such justices, shall be valid ; but no child, having attained the age of fourteen years, shall be so apprenticed, unless he, or she consents. 39 G. 3, c. 3, ss. 1, 2, 4.

The like power given to the mother when the father abandons his infant children.

**4.** In a City or Town, the Mayor, Recorder, or Police Magistrate, and in a County, the Chairman of and at the Court of General Quarter Sessions of the Peace may, in Court, put and bind for the like period, to any person mentioned in the several sections of this Act, with the consent of such person and of the Minor, any Minor who is an orphan, or has been deserted by his or her parents or guardian, or whose parents or guardian have been for the time committed to a common gaol or house of correction, or any Minor who is dependent upon a public charity for support ; and such Apprentice and the Master of such Apprentice shall be held in the same manner as if the Apprentice had been bound by his or her parent. 14, 15 V. c. 11, s. 2.

Power of the mayor or chief magistrate to bind orphans, &c., as apprentices.

**5.** If the Master of the Apprentice dies, the Apprentice shall, by Act of Law, be transferred to the person, (if any), who continues the establishment of the deceased ; and such person shall hold the Apprentice upon the same terms as the deceased if alive would have done. 14, 15 V. c. 11, s. 3.

If the master dies, apprentice to be transferred to his successor in the business.

Apprentices may be transferred.

**6.** A Master may transfer his Apprentice to any person who is competent to receive or take an Apprentice, and who carries on the same kind of business. 14, 15 V. c. 11, s. 3.

Duties of masters towards apprentices.

**7.** Every Master shall provide to his Apprentice, during the term of his Apprenticeship, suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the Indenture, and shall also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling. 14, 15 V. c. 11, s. 4.

Duty of apprentices.

**8.** Every Apprentice shall, during the term of his Apprenticeship, faithfully serve his Master, shall obey all his lawful and reasonable commands, and shall not absent himself from his service, day or night, without his consent. 14, 15 V. c. 11, s. 5.

Justices may hear and determine complaints by apprentices against their masters.

**9.** Any Justice of the Peace, Mayor, or Police Magistrate, on complaint made before him on oath by an Apprentice against his Master for refusing him necessary provisions, or for misusage, cruelty or ill-treatment, shall summon the Master to appear before him to answer the complaint, and shall thereupon, hear and determine the complaint, and on conviction shall levy on the offender a fine not exceeding twenty dollars, and issue a warrant of distress to collect the same and the costs, and in default of satisfaction of the distress, shall imprison the offender in any common gaol for a term not exceeding one month, unless the fine and costs be sooner paid. 14, 15 V. c. 11, s. 6.

And by masters against their apprentices.

**10** Any Justice, Mayor, or Police Magistrate, shall also, on complaint of a Master against his Apprentice for refusing to obey his commands, or for waste or damage to property, or for any other improper conduct, cause the Apprentice to come before him, and shall hear and determine the complaint, and on conviction, order such Apprentice to be imprisoned in a common gaol or house of correction for a term not exceeding one month. 14, 15 V. c. 11, s. 6.

Liability of apprentice deserting his master's service.

**11.** In case an Apprentice absents himself from his Master's service or employment before the time of his Apprenticeship expires, he may at any time thereafter, if found in Upper Canada, be compelled to serve his Master for so long a time as he so absented himself, unless he makes satisfaction to his Master for the loss sustained by such absence. 14, 15 V. c. 11, s. 7.

How complaints may be heard.

**12.** In case an Apprentice refuses to serve as above required, or to make such satisfaction to his Master or to obey the lawful commands of his Master, or in any other way refuses or neglects to perform his duty to his Master, and if the Master, or his overseer or agent, complains on oath to a Justice of the Peace,

Peace, Mayor, or Police Magistrate, either in the County, City or Town where the Master resides, or in any County, City or Town where the absconding Apprentice is found, such Justice, Mayor, or Police Magistrate shall, by Warrant under his hand and seal, cause the Apprentice to be apprehended and brought before him, or before some other Justice of the Peace; and such Justice upon hearing the complaint, shall determine what satisfaction shall be made by the Apprentice to his Master; And in case the Apprentice does not give or make such satisfaction immediately, or in case the satisfaction be of such a nature as not to admit of immediate performance if he does not give sufficient security to make such satisfaction, then the Justice, Mayor, or Police Magistrate shall commit the Apprentice to the common gaol, or House or Correction of the County, City or Town, for any time not exceeding three months; but such imprisonment shall not release the Apprentice from his obligation to make up the lost time to his Master. 14, 15 V. c. 11, s. 7.

Commitment of apprentice in certain cases, &c.

**13.** Where the Apprentice has not left Upper Canada, or having left it, has returned thereto, the Master shall not proceed against him under this Act, except within three years next after the expiration of the term for which the Apprentice contracted to serve, or next after his return, as the case may be. 14, 15 V. c. 11, s. 7.

Limitation of proceedings against absconding apprentice.

**14.** Any person who knowingly harbors or employs an absconding Apprentice, shall pay to the Master of the Apprentice the full value of the Apprentice's labor, and such value shall be what the Master would have received from the labor and service of the Apprentice if he had continued faithfully in his Master's service, and the Master may recover the same in any Court having jurisdiction where the Apprentice has been employed, or where the Master resides. 14, 15 V. c. 11, s. 8.

Penalty for employing or harbouring absconding apprentices.

**15.** If an Apprentice become insane, or be convicted of a felony, or be sentenced to the Provincial Penitentiary, or absconds, his Master may, within one month then next ensuing, but not afterwards avoid the Indenture of Apprenticeship, from the time he gives notice in writing of his intention to do so to the other parties to the indenture, either by serving them with the notice or a copy thereof, or by inserting the same in the *Canada Gazette*, or in a newspaper of the County or City where the Master's establishment is situated. 14, 15 V. c. 11, s. 9.

Indenture may be avoided if apprentice becomes insane.

**16.** Either party may appeal from the decision of a Justice, Mayor, or Police Magistrate under this Act in manner provided for by the Act respecting appeals in cases of summary conviction. 14, 15 V. c. 11, s. 10.

Either party may appeal.

**17.** The Court of Quarter Sessions shall have a concurrent primary jurisdiction over offences committed against this Act. 14, 15 V. c. 11, s. 11.

Act not to affect jurisdiction of Quarter Sessions.

Additional powers given to that Court.

**18.** When that Court is called upon to adjudicate in any matter arising under this Act, it shall, in addition to the other powers of the Court, have power, in any case where it appears necessary for the full administration of justice, to annul the Apprenticeship, and to compel the parties to the indenture of Apprenticeship to deliver the same up to be cancelled, and the Court may make such further order as the circumstances require. 14, 15 V. c. 11, s. 11.

Application of fines.

**19.** All fines imposed and collected under this Act shall be paid to the Chamberlain of the City, or to the Treasurer of the County or Town respectively, where the offence was committed. 14, 15 V. c. 11, s. 12.

#### INTERPRETATION.

Meaning of the word "master."

**20.** The word "Master," when it occurs in this Act, shall include any person or number of persons, male or female, carrying on business singly or in co-partnership, and any body corporate. 14, 15 V. c. 11, s. 13,—12 V. c. 10, s. 5, No. 8.

### C A P . L X X V I I .

An Act respecting the action of seduction, and the support of illegitimate Children.

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

#### SEDUCTION.

Action when maintainable by father or mother.

**1.** The father, or in case of his death, the mother of any unmarried female who has been seduced, and for whose seduction the father or mother could sustain an action in case such unmarried female were at the time dwelling under his or her protection, may maintain an action for the seduction, notwithstanding such unmarried female was, at the time of her seduction, serving or residing with another person, upon hire or otherwise. 7 W. 4, c. 8, s. 1.

Proof of service dispensed with.

**2.** Upon the trial of any action for seduction brought by the father or mother, it shall not be necessary to give proof of any act of service performed by the person seduced, but the same shall in all cases be presumed, and no proof shall be received to the contrary ; but in case the father or mother of the female seduced had before the seduction, abandoned her, and refused to provide for and retain her as an inmate, then any other person who might at Common Law, have maintained an action for such seduction, may maintain such action. 7 W. 4, c. 8, s. 2.

When action maintainable by relatives, or masters.

By whom maintainable if

**3.** Any person, other than the father or mother, who by reason of the relation of master, or otherwise, would have been entitled



entitled at Common Law, to maintain an action for the seduction of an unmarried female, may still maintain such action, if the father or mother be not resident in Upper Canada at the time of the birth of the child which may be born in consequence of such seduction, or being resident therein, does not bring an action for the seduction within six months from the birth of such child. 7 W. 4, c. 8, s. 3.

parents absent.

#### SUPPORT OF ILLEGITIMATE CHILDREN.

4. Any person who furnishes food, clothing, lodging, or other necessaries, to any child born not in lawful wedlock, may maintain an action for the value thereof against the father of such child, if the child was a minor at the time the necessaries were furnished, and was not then residing with his or her reputed father and maintained by him as a member of his family. 7 W. 4, c. 8, s. 4.

The father of an illegitimate child liable for necessaries.

5. Where the person suing for the value of such necessaries is the mother of such child, or a person to whom the mother has become accountable for such necessaries, the fact of the defendant being the father of such child shall be proved by other testimony than that of the mother. 7 W. 4, c. 8, s. 4.

When proof other than that of the mother requisite.

6. No action shall be sustained under the two last sections, unless it be shewn upon the trial thereof, that while the mother of the child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of Her Majesty's Justices of the Peace for the County or City in which she resides declaring that the person who may be afterwards charged in such action is really the father of such child, nor unless she deposited such affidavit, within the time aforesaid, in the office of the Clerk of the Peace of the County, or Clerk of the Council of the City, as the case may be. 7 W. 4, c. 8, s. 4.

No action maintainable unless the mother makes affidavit before the birth of the child, or within six months after.

7. Such affidavit shall not be evidence of the fact of the defendant being the father of such child.

Such affidavit not to be evidence.

8. This Act shall not take away or abridge any right of action or remedy which, without this Act, might have been maintained against the father of an illegitimate child. 7 W. 4, c. 8, s. 5.

Other remedies not to be affected.

## C A P . L X X V I I I .

An Act respecting Remedies for and against executors and administrators and respecting the Limitation of certain actions.

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

RIGHTS AND LIABILITIES OF EXECUTORS, &C.

Executors of any person deceased may maintain actions for injuries done to real estate in testator's lifetime.

**1.** In case of an injury to the real estate of any person committed within six months next prior to his decease, his executors or administrators may maintain an action of trespass or of trespass on the case therefor, according to the nature of the injury if brought within one year after his decease, and the damages when recovered shall be part of his personal estate. 7 W. 4, c. 3, s. 2.

To be brought within six months.

**2.** In case any deceased person, within six months next previous to his decease, committed a wrong to another person in respect of such other person's real or personal property, the person so wronged may, within six months after the executors or administrators of the person who committed the wrong, have taken upon themselves the administration of his estate and effects, maintain an action therefor of trespass or of trespass on the case according to the nature of the wrong against such executors or administrators, and the damages recovered in such action shall be payable in like order of administration as the simple contract debts of the deceased person. 7 W. 4, c. 3, s. 2.

Executors and administrators of a lessor may distrain for rent.

**3.** The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done if living. 7 W. 4, c. 3, s. 27.

Such arrearages of rent may be distrained for within six months after determination of the lease.

**4.** Such arrearages may be distrained for at any time within six months after the determination of the term or lease, and during the continuance of the possession of the tenant from whom the arrears became due; and the powers and provisions contained in the several Statutes relating to distresses for rent shall be applicable to the distresses so made as aforesaid. 7 W. 4, c. 3, s. 28.

Action of debt on simple contract maintainable against Executors.

**5.** An action of debt on simple contract shall be maintainable in any Court of common law against any executor or administrator. 7 W. 4, c. 3, s. 11.

6. In case any one or more joint contractors, obligors or partners, die, the person interested in the contract, obligation or promise, entered into by such joint contractors, obligors or partners, may proceed by action against the representatives of the deceased contractor, obligor or partner, in the same manner as if the contract, obligation or promise, had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise, still living, and an action pending against such person, but the property and effects of stockholders in chartered Banks or the Members of other Incorporated Companies, shall not be liable to a greater extent than they would have been if this section had not been passed. 1 V. c. 7, ss. 1, 2.

Representatives of deceased joint contractors liable although the other joint contractor be living.

7. Actions of debt for rent, upon an indenture of demise,—actions of covenant or debt, upon a bond or other specialty,—actions of debt, or *scire facias* upon a recognizance,—actions of debt upon an award where the submission is not by specialty, or for an escape, or for money levied on a *fieri facias*,—and actions for penalties, damages, or sums of money given to the party aggrieved by any Statute, shall be commenced and sued within the time and limitation hereinafter expressed, and not after, that is to say: The said actions of debt for rent upon an indenture of demise or covenant, or of debt upon a bond or other specialty, and actions of debt, or *scire facias* upon a recognizance, within twenty years after the cause of such actions arose; the said actions by the party aggrieved, within two years after the cause of such actions arose, and the said other actions, within six years after the cause of such actions arose; but nothing herein contained shall extend to any action given by any Statute, where the time for bringing such action is by the Statute specially limited. 7 W. 4, c. 3, s. 3.

Limitation of time for commencement of particular actions.

Actions of debt on demise, &c.

Other actions.

8. In case any person entitled to any such action, or to such *scire facias*, be at the time of any such cause of action accruing, within the age of twenty-one years, *feme covert*, *non compos mentis*, or without the limits of Upper Canada, then such person may bring any such action, within such time after coming to or being of full age, discover, of sound memory, or returned to Upper Canada, as other persons having no such impediment should, according to the provisions of this Act, have done; and if any person against whom any such cause of action accrues, be at such time without the limits of Upper Canada, the person entitled to such cause of action may bring the action within such times as are before limited, after the return of the absent person to Upper Canada. 7 W. 4, c. 3, s. 4.

In case of disabilities.

9. In case any acknowledgment by writing signed by the principal party or his agent, be made, by any person liable by virtue of any indenture, specialty or recognizance, or in case any acknowledgment be made by any such person by part payment, or part satisfaction, on account of any principal or interest due  
on

Effect of Written acknowledgment or part payment.

on any such indenture, specialty or recognizance, the person entitled to an action in respect to such liability, may bring his action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person entitled to such action be at the time of such acknowledgment, under any disability, as aforesaid, or the party making the acknowledgment be, at the time of making the same, without Upper Canada, then within twenty years after such disability has ceased, as aforesaid, or the party has returned, as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, specialty or recognizance, may, by way of replication, in answer to a plea of this Statute, state such acknowledgment, and that such action has been brought within the time aforesaid. 7 W. 4, c. 3, s. 4.

Acknowledgment may be replied.

In case judgment be reversed for error, &c., new action may be replied.

**10.** If in any of the actions hereinbefore mentioned, judgment be given for the plaintiff, and the same be reversed for error in a Court of Error or Appeal, or if a verdict passes for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff that he take nothing by his writ or action, or if in any of the said actions the defendant being outlawed, reverses the outlawry, the plaintiff, his executors or administrators, as the case requires, may commence a new suit or action, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or the outlawry reversed, and not after. 7 W. 4, c. 3, s. 5.

## C A P . L X X I X .

### An Act to prevent Accidents from Machinery.

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

Guards, &c., to be erected about machinery of steam-boats, mills, &c., to prevent accidents to passengers and others.

**1.** The owners of every steam-boat, steam-car and steam-carriage, and of every mill or building, in which machinery is used, shall erect good and substantial guards round such machinery so as to prevent passengers and other persons on board of, or entering or being in the same, respectively, from coming in contact with the machinery used therein or attached thereto. 1 V. c. 18, s. 1.

Collectors of Customs authorized to examine steam-boats, steam-cars and steam-carriages, and to require the erection of necessary guards.

**2.** The Collector of Customs of every Port in Upper Canada, or his Deputy, shall enter into or upon every steam-boat, steam-car and steam-carriage, arriving at his port or station, and carefully examine whether there are proper guards round the machinery of the same, so as to secure the safety of persons when such machinery is in operation, and if there be not proper guards or if they be not properly and substantially erected, he or his Deputy shall notify the same to the master or person in

in charge of such steam-boat, steam-car or steam-carriage, and direct him to make such proper guards or to make them in a proper and substantial manner. 1 V. c. 18, s. 2.

**3.** It shall be the duty of every Justice of the Peace in the County or City in which he resides and usually acts as a Justice of the Peace, to enter into or upon all buildings wherein machinery is erected, and to inspect and examine the machinery thereof or attached thereto; and if upon such examination he finds that there are not proper guards erected or that the guards used in and about such machinery are insufficient, such Justice shall notify the same to the owner or occupier of such building, and shall direct the necessary guards to be erected. 1 V. c. 18, s. 3.

Justices of the Peace, &c., to enter mills, &c., and to examine, &c.

**4.** In case upon the inspection of any steam-boat, steam-car or steam-carriage, or of any building wherein or whereto machinery is used or attached, as aforesaid, it appears to the Collector or Justice respectively inspecting the same, that the guards erected or to be erected in compliance with this Act are sufficiently safe and substantial, such Collector or Justice shall deliver to the person in charge of such steam-boat, steam-carriage or car, and to the proprietor or occupier of such building, as aforesaid, a certificate to that effect; and if such safe guards are at all times kept in good and sufficient repair, such certificate shall for six months from the date thereof, be a good and sufficient protection to the masters and owners and occupiers of such steam-boat, steam-carriage or car, and building, respectively, as aforesaid, against any penalty to be incurred under the provisions of this Act. 1 V. c. 18, s. 5.

Collector or Justice to deliver certificate of sufficiency of guards, &c.

Certificate to afford protection for six months.

**5.** In case the master, or person in charge of any steam-boat, steam-car or steam-carriage, or the owner or occupier of any building wherein machinery has been erected, as aforesaid, neglects or refuses to comply with the directions of such Collector or Deputy-Collector, or Justice of the Peace, (as the case may be,) and be convicted before one Justice of the Peace, he shall forfeit and pay for every such offence a sum not exceeding four dollars and the costs of conviction; and in default of payment of such sum and costs the offender shall, by a warrant under the hand and seal of such Justice, be sent to the Common Gaol of the County or City within which the offence was committed, for any period not exceeding thirty days. 1 V. c. 18, s. 4.

Penalty in case of neglect to erect guards by owners or masters, &c.

## TITLE 11.

## REAL ESTATE.

## CAP. LXXX.

An Act respecting claims to Lands in Upper Canada for which no Patents have issued.

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

## HEIR, DEVISEE, AND ASSIGNEE COMMISSION.

Commissioners to be appointed for the purposes of this Act.

**1.** The present Heir, Devisee and Assignee Commission and the Commissioners appointed thereby shall continue subject to the provisions of this Act, and the Governor may, from time to time, issue Commissions under the Great Seal, to the Chief Justice of Her Majesty's Court of Queen's Bench for Upper Canada, the Chancellor of Upper Canada, the Chief Justice of the Court of Common Pleas, the Puisné Justices of the said Court of Queen's Bench and Common Pleas, and the Vice-Chancellors, and to such and so many other persons as he may think fit. 8 V. c. 8, s. 2,—14, 15 V. c. 12.

## SITTINGS.

Quorum fixed.

**2.** Any three of such Commissioners, the said Chief Justice of the Court of Queen's Bench, the Chancellor for Upper Canada, the Chief Justice of the said Court of Common Pleas, or one of the said Puisné Justices of the said Court of Queen's Bench or Common Pleas, or one of the said Vice-Chancellors, being one, shall be a quorum, and whenever such Commissioners are empowered or directed to do or perform any act, such act may be done or performed by a *Quorum* of such Commissioners. 14, 15 V. c. 12.

Acts of single Commissioner, how performed.

**3.** Any Act herein authorized or directed to be performed by one Commissioner may be so performed either in or out of the period appointed for the sittings of the Commissioners. 8 V. c. 8, s. 2.

Sittings when and where to be holden.

**4.** The sittings of the said Commissioners shall be holden at the City of Toronto, on the first Monday in January and the first Monday in July in each year, and on the thirteen days next ensuing the said days respectively, Sundays and Holidays excepted. 8 V. c. 8, s. 2.

5. When the said Commissioners have good reason to believe that there will not be sufficient business to require their daily attendance throughout the term appointed for their sittings, they may adjourn for any time within such term that may be consistent with the despatch of the business brought before them. 8 V. c. 8, s. 2.

Adjournment  
in case of want  
of business.

## CLERK.

6. The said Commissioners may appoint a fit person to be their Clerk. 8 V. c. 8, s. 2.

Clerk to be ap-  
pointed.

## JURISDICTION.

7. Such Commissioners or any three of them constituting a quorum as aforesaid, may ascertain, determine and declare, in all cases brought before them under this Act, who is the party to whom the Patent ought to issue for the Lands to which such claims respectively relate. 8 V. c. 8, s. 2.

Power of Com-  
missioners.

## CLAIMS.

8. Every person claiming any Lands within Upper Canada for which no Patent hath issued, as being the Heir, Devisee or Assignee, of the original nominee of the Crown, or as having derived a title or claim to such Lands from or through any such Heir, Devisee or Assignee, may bring his claim before the said Commissioners at their sittings, either personally or by his agent or attorney, and produce before the said Commissioners all such documents, proofs and evidence as he may have to adduce in support of such claim; and such evidence may be given *vivâ voce* before the said Commissioners, or by written affidavits or affirmations, sworn or affirmed before any one of the said Commissioners, or before any person specially appointed to receive the same by the said Commissioners, or before the Judge of any County Court, or any Clerk of the Peace or any Commissioner for taking affidavits in the Courts of Queen's Bench or Common Pleas in Upper Canada, each of whom may receive and administer the same. 8 V. c. 8, s. 3.

What claims  
may be brought  
before the  
Commission-  
ers.

And what evi-  
dence.

What docu-  
ments may be  
received in  
evidence.

9. All certificates of the Commissioner of Crown Lands or of the Clerk of the Executive Council, or copies certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners. 8 V. c. 8, s. 3.

Certified copies  
of certain do-  
cuments.

10. The said Commissioners may summon before them, by summons under the hand of any one of them, either the claimant or any party interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the

Power to com-  
mand the at-  
tendance of  
witness, par-  
ties, &c., for  
examination.

Mode of examination, production of documents, &c.

the production of which the ends of Justice may be better attained; and may require such claimant or party, or such witness to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross-interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appear requisite. 8 V. c. 8, s. 4.

Commissions may be issued to examine witnesses not in Upper Canada.

**11.** The said Commissioners may cause such interrogatories or cross-interrogatories as they deem requisite to be served upon and answered by any such claimant, party or witness, or any witness whose deposition may be produced in evidence before them, and may cause Commissions to be issued for the examination of any witness not resident in Upper Canada, and for requiring such witness to produce such books, papers or other documents as he may have in his possession, and may at their discretion delay the proceedings in the case until such evidence and answers have been adduced and given. 8 V. c. 8, s. 4.

Penalty on any party or witness neglecting to appear or to answer, &c.

**12.** If any claimant, party or person duly summoned to give evidence, or to produce any book, paper or document, or to answer any interrogatories or cross-interrogatories before the said Commissioners, or before any person commissioned by them to receive the same within this Province, wilfully neglects to appear at the time and place appointed in the summons, or appearing, refuses to answer any lawful question, or to produce any document in his possession, he shall forfeit the sum of one hundred dollars to the party at whose instance he has been so summoned or required to answer or to produce such document; and if the claimant, or any party interested in the case makes default in answering any interrogatory or cross-interrogatory which he may be duly required to answer, such default shall be taken *pro confessis* as if his answer had been such as would be most adverse to his own claim or interest. 8 V. c. 8, s. 4.

Interrogatories not answered by a party to be taken *pro confessis*.

Affidavit to be made by any claimant before his claim shall be received.

**13.** The said Commissioners shall not receive or proceed upon any claim until the party by whom, or on whose behalf the same is made (or if such party consist of more than one person, then until some one of such persons) has made and produces before the said Commissioners, an affidavit or affirmation in writing signed by him, that such claim is just and well founded to the best of his knowledge and belief, and that he is not aware of any adverse claim, or if he be aware of any adverse claim, that he has at least one month before the making of such affidavit or affirmation, caused to be served on the party having or supposed to have such adverse claim, notice in writing of his claim and of his intention to bring the same before the said Commissioners and of the time when it is intended to be so brought, and a copy of such notice shall be annexed to the affidavit or affirmation. 8 V. c. 8, s. 5.



**14.** The said Commissioners shall not proceed upon any such claim as aforesaid, unless a notice specifying such claim and the name or names of the party claiming, together with the number of the lot of which the lands claimed consists or forms part, and of the concession and the name of the Township in which the same lies, has been put up in some conspicuous place in the office of the Clerk of the Peace of the County in which the lands are situate, during at least thirty days before the claim comes to be heard before the said Commissioners, nor unless a certificate to that effect from such Clerk of the Peace be produced to the said Commissioners. 8 V. c. 8, s. 6.

Certain public notice to be given before a claim is made and received.

**15.** The Clerk of the Peace of each County in Upper Canada shall, once in every three months, make a list of the claims so put up, in his office, specifying therein the particulars of such claims in the manner in which they are hereinbefore required to be specified in the notice to be put up, and shall affix such list in some conspicuous part of the Court House or place in which the Courts of General Quarter Sessions are held for the County, and shall cause the said list to be publicly read and proclaimed at each such Session by the Crier in open Court, immediately after the delivery of the charge to the Grand Jury; and for each such certificate the Clerk of the Peace may demand and receive the sum of fifty cents, and no more. 8 V. c. 8, s. 6.

Duty of the Clerk of the Peace with regard to such notices.

Fee to him.

**16.** The said Commissioners may defer, delay, or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they may deem expedient for the attainment of the ends of justice. 8 V. c. 8, s. 7.

Delay may be granted by the Commissioners.

**17.** After the said Commissioners have fully examined any such claim, they may either reject or allow the same as in their judgment the justice and equity of the case requires without regard to legal forms or to the strict letter of the law or legal rules of evidence, and shall report their decision to the Governor in Council and such report shall be final and conclusive (except in the case hereinafter mentioned,) and the Governor in Council shall direct Her Majesty's Letters Patent under the Great Seal of the Province to issue, for granting the lands in question to the party who has been determined by the decision of the Commissioners to be entitled to the same as representing the original Nominee of the Crown. 8 V. c. 8, s. 8.

Commissioners to decide on the claim and report to the Governor in Council.

Patent to issue on such report.

**18.** Such Letters Patent shall have the same and no other effect or operation with regard to any charge, incumbrance, lien, matter or thing, upon or affecting the lands so granted, as Letters Patent issuing for the same in favor of the original Nominee of the Crown would have had, save only as establishing the claim of the party in whose favor they may be granted, to the lands

The effect of the patent with regard to charges or incumbrances on the lands.

lands to which they relate, as the Heir, Devisee or Assignee of, or as otherwise representing the original Nominee. 8 V. c. 8, s. 8.

Report and patent not to affect any claim to any lands but those mentioned therein.

**19.** Neither the decision of the Commissioners on any claim, nor the issuing of the Letters Patent on such decision, shall extend to or in any way affect any claim of the said party, or of any other party, to any lands other than those to which such decision expressly relates and which are mentioned and described in the report and Letters Patent, but such claim to other lands shall continue and remain as if such decision and report had not been made. 8 V. c. 8, s. 8.

Patent not to issue for one month after the report is received.

**20.** No Letters Patent shall issue on any decision and report of the said Commissioners until after the expiration of one month, from the time such report has been transmitted to and marked as received by the Clerk of the Executive Council. 8 V. c. 8, s. 9.

Patent may be stayed if the report has been obtained by surprise, &c.

**21.** If, before the expiration of such month, a *Quorum* of the said Commissioners, from any representation made to them, find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the Letters Patent should be stayed, then such *Quorum* of the said Commissioners, although not then the regular period of their sitting, may report accordingly to the Governor in Council, and the issuing of the Letters Patent shall be thereupon stayed, until the Commissioners again report upon the case, and the said Commissioners may rehear the case, or let in any new claim and receive or insist upon any new evidence as to them may appear expedient to enable them to do justice in the case, and may thereafter decide and report thereon as if no prior decision and report had been made, and with like effect. 8 V. c. 8, s. 9.

Commissioners may rehear the case.

The costs occasioned by such re-hearing to be in the discretion of the Commissioners.

**22.** If under the circumstances of any such case it appears to the said Commissioners fair and right so to do, they may allow to the party in whose favor the first decision and report was made, such costs against the party at whose instance the case has been again taken into consideration as they may deem just and reasonable, or they may, in case of fraud or wilful wrong in the conduct of such party, award costs in like manner against him to the party in whose favor the subsequent decision and report may be made. 8 V. c. 8, s. 9.

Purchasers of unpatented lands sold for taxes may claim patents before the Commissioners.

**23.** In case any land for which no Patent has issued, be at any time described as granted in any Schedule furnished by the Surveyor General or the Commissioner of Crown Lands to the Treasurer of any County in Upper Canada, under the provisions of any law concerning the collection of local taxes or assessments, and be afterwards sold by the Sheriff for arrears of such local taxes or assessments,

assessments, and in case the period allowed by Law for the redemption of such lands has expired, the purchaser, or the Heir, Devisee or Assignee of the purchaser may claim the same before the Commissioners aforesaid, and such purchaser shall thereupon, for all the purposes of this Act, be considered as an Assignee of the original Nominee of the Crown, and his claim shall be acted on and dealt with accordingly. 8 V. c. 8, s. 10.

**24.** In case the original Nominee of the Crown, or any person through whom any party obtaining Letters Patent for any Lands under this Act derived his claim, had before the allowance of such claim and before the issue of such Letters Patent, granted any mortgage, incumbrance or lien on such Lands, by any instrument by which the same would have been validly granted, if the Letters Patent had issued in favor of the Grantor before the date of such instrument, the same may be registered in the Office of the Registrar for the County in which the lands lie, subject to the same conditions, and with the same effect and no other, and shall in law and equity have the same force and effect and no other, as if Letters Patent for the said Land, had, before the execution of such instrument, been issued in favor of such Grantor. 8 V. c. 8, s. 11.

Effect of mortgages, &c., granted before the issue of the Letters Patent.

**25.** All proceedings commenced or pending in any case before the Commissioners under any former Act, in office when this Act takes effect or afterwards appointed, may with the like effect, be continued and completed by and before the Commissioners under this Act, and any decision and report of any Commissioners given and made before this Act takes effect, shall remain good and valid, and may be acted upon as to the issuing of Letters Patent, as if it had been given and made under the authority of this Act, and in like manner shall be subject to the provisions hereof in case it appears to any *Quorum* of the Commissioners under this Act, that it was erroneous or was obtained by surprise, and in case they so report before the expiration of thirty days from the time the report of the Commissioners under such former Act was made. 8 V. c. 8, s. 12.

Unfinished proceedings before the former Commissioners may be continued before those appointed under this Act.

**26.** The Commissioners for the time being may from time to time make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as may be required in the conduct of such proceedings, as to them appear expedient for the better attainment of the purposes of justice. 8 V. c. 8, s. 14.

Rules and forms of proceedings to be established by the Commissioners.

**27.** In all cases under this Act in which any witness duly appears to give evidence before the Commissioners, or before any person appointed by them to examine or to receive the testimony or deposition of such witness, the said Commissioners may

Costs may be allowed to witness.

Recovery of  
such costs.

may order and direct the party at whose instance such witness has been summoned, or his testimony or depositions have been taken, to allow to such witness for his loss of time and expenses, such sum as the said Commissioners may deem equitable, which order the party shall obey, or in default, the sum shall be recoverable from him by action in any Court having jurisdiction in civil cases to a like amount, due regard being had to the limits of the local jurisdiction of such Court. 8 V. c. 8, s. 15.

28. The Clerk of the said Commissioners for the following services respectively, shall be entitled to demand and recover from the persons requiring such services the following fees, that is to say :

Fees on pro-  
ceedings under  
this Act, to the  
Clerk of the  
Commission-  
ers.

1. For filing each petition, twenty cents ;
2. For setting down any claim for hearing, fifty cents ;
3. On the hearing of any claim, one dollar ;
4. For making up a report on the same, two dollars ;
5. For each certificate of the allowance of any claim, twenty-five cents ;
6. For a copy of the order respecting any claim, twenty-five cents ;
7. For each summons for the attendance of any witness or witnesses, forty cents ;
8. For each commission for the examination of witnesses, two dollars ;
9. For any certified copy of any paper or document in his custody, twenty-five cents for the certificate, and at the rate of ten cents, for each one hundred words in such copy ,

Unenumerated  
services.

10. And such reasonable fees for any service not herein specially mentioned or included therein, as the said Commissioners may from time to time allow him, as a fair and just compensation for the labour by him performed, and no more ; and the person, not being one of the Commissioners who takes any affidavit or affirmation under this Act, shall be entitled to demand and recover from the party requiring him to take the same, the sum of twenty-five cents, and no more ; and all such fees as aforesaid may be required to be paid before the service for which they are granted is performed, or if not so required, may be recovered in the manner hereinbefore appointed with regard to the sum allowed to a witness ; 8 V. c. 8, s. 16.

Fees to persons  
appointed to re-  
ceive affidavits.

Recovery of  
such fees.

11. Also the following fees to belong to and to be paid over to the Receiver General in aid of the fund to provide for the accommodation of the Superior Courts of Law and Equity :

	\$	cts.
On every claim entered and received.....	0	50
On every claim allowed.....	0	50

22 V. c. 31. (1859.)

**29.** The copy of any order, report or decision, made by the said Commissioners under this Act, certified by their Clerk and countersigned by one of the said Commissioners, shall be received in any civil suit or action in any Court in this Province, as evidence of the making of such order, report or decision, in the manner and form and according to the tenor thereof as set forth in such copy.

Certified copies of proceedings and orders of the Commissioners to be received in evidence.

**30.** It shall not be necessary in such suit or action to prove the signatures of such Clerk or Commissioner, if the party intending to produce the same, has given due notice of such intention to an adverse party according to the course and practice of the Court, unless such adverse party has afterwards in like manner signified his intention to dispute such signatures, or either of them, in which case it shall be requisite to prove the same, and the costs attending such proof may, in the discretion of the Court, be allowed to the party making such proof, whatever be the result of the suit or action. 8 V. c. 8, s. 17.

In what cases only it shall be necessary to prove the certificate.

Costs.

**31.** In the construction of this Act, the said Commissioner or Commissioners shall be styled and known as the Heir, Devisee and Assignee Commissioner or Commissioners as the case may be ; and the words " Heir, Devisee, or Assignee," shall be understood to include the Heirs, Devisees, or Assignees of any Heir, Devisee, or Assignee, to any degree ; and the word " Lands," shall be understood to mean any lot or lots, piece or parcel of Land, of what extent soever, to which a claim may be made under this Act, unless it be otherwise specially provided, or there be something in the subject or context repugnant to or inconsistent with such construction. 8 V. c. 8, s. 18.

Interpretation clause.

Heir, Devisee.

Assignee.

Lands.

**32.** Any person whose right to obtain a Patent for Lands has been established by any Commissioners under this or any former " Heir, Devisee and Assignee Act," may, by an instrument in writing, assign, transfer and convey his right and interest to, or in such land, and such assignment, as well as all subsequent assignments, may be registered, agreeably to the provisions of the *Consolidated Statute of Canada respecting the sale and management of the Public Lands* ; and the last Assignee shall be entitled to a Patent upon proving compliance with all the conditions to which the original location was subject. 14, 15 V. c. 56, s. 4.

Rights to obtain a patent, assignable in certain cases.

Proof may be required by Commissioner of Crown Lands in case of application by the representatives.

**33.** In any application for a Patent by the Heir, Assignee or Devisee of the original Nominee of the Crown, the Commissioner of Crown Lands may receive proof in such manner as he may direct and require in support of the claim for a Patent when the original Nominee is dead, and upon being satisfied that the claim has been equitably and justly established, he may report the same to the Governor in Council, and if approved, the Patent may issue to the party named in the Order in Council founded on such report, or to his assignee, without the intervention of the said Commissioners; but nothing in this clause contained shall limit the right of the party claiming a Patent, to make application at any time to the said Commissioners. 16 V. c. 159, s. 26.

## C A P . L X X X I .

### An Act to prevent trespasses to Public and Indian Lands.

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

#### CROWN LANDS.

Entry on Crown Lands not to be made without special license.

**1.** No body corporate and no servant or agent of such body, shall enter into or upon, have, hold, use or enjoy, for any purpose whatever, any land belonging to Her Majesty, without having the license of Her Majesty, for such purpose, signified under the hand and seal of the Governor, or being expressly authorized by Statute. 6 W. 4, c. 3, s. 1,—7 W. 4. c. 14, s. 17.

Commissioners may be appointed to enquire concerning trespasses committed upon Crown Lands.

**2.** The Governor may from time to time appoint two or more Commissioners, under the Great Seal, to inquire into any complaint made to them, or any one of them, against any person for illegally possessing himself of any land in Upper Canada, surveyed or unsurveyed, for which no grant, lease, ticket either of location or purchase, or letter of license of occupation, has been issued, either under the Great Seal or by or from the proper Department of the Provincial Government in that behalf, whether such land be Crown or Clergy Reserve, School or Indian Land, or however otherwise denominated, or whether held in trust or in the nature of a trust for the Indians or for any other party whomsoever; and also to inquire into any complaint made to them, or any one of them, against any person for having unlawfully cut down or removed any timber, trees, stone or soil, on such land, or for having done any other wilful and unlawful injury thereon. 2 V. c. 15, s. 1,—12 V. c. 9, s. 1.

Commissioners on finding ille-

**3.** If the Commissioners, or any one or more of them, upon investigation of the complaint so made, find and determine that the

the person complained against is unlawfully in possession of such lands, they or any of them may give notice to such person to remove from the occupation thereof within not less than thirty days from service of the notice, and if the person so notified neglects so to remove within the time specified in the notice, the said Commissioners, or any one or more of them, may issue a warrant, signed and sealed by them or him, directed to the Sheriff of the County, in which the lands are situated, commanding him to eject and remove the person from the lands, which warrant the said Sheriff shall execute and carry into effect in like manner as a writ of *habere facias possessionem* issued by one of Her Majesty's Superior Courts of Common Law. 2 V. c. 15, s. 2.

gal possession—

To give notice to intruder to remove within thirty days.

On neglecting to remove, warrant of removal may be directed to and executed by the Sheriff.

4. If upon the investigation it appears to the Commissioners or Commissioner that any person has been actually in possession of such lands or a part thereof, or has, within twelve months next before, claimed to be in possession, or claimed or pretended to have a right to such possession, but it nevertheless appears uncertain who is then in actual possession, or whether the person in possession claims to be in possession of his own right, or merely under or on behalf of another, then the said Commissioners or Commissioner may give a notice to quit similar to that in the last preceding section, but directed generally to all persons having or claiming possession of the lands, their tenants, bailiffs and servants, and all others whom it may concern; and if all persons whomsoever who have not written authority from the Commissioners, or one of them, to remain upon such lands, do not quit and remove from the same within the time specified in such notice, the said Commissioners, or one of them, may issue a warrant of removal, signed and sealed by him or them, directed to the Sheriff of the proper County, commanding him to eject and remove all persons whomsoever from such lands, and the Sheriff shall execute and carry the warrant into effect as in the preceding section is provided. 12 V. c. 9, s. 2.

Commissioners may, in case of doubt, issue a general notice to quit.

Persons disobeying the notice may be removed on an order of the Commissioners directed to the proper Sheriff.

5. Every summons, notice to quit, and warrant of removal, shall describe the lands with the same certainty as would be necessary in a deed of conveyance between parties. 12 V. c. 9, s. 2.

As to the description of the lands in any summons under the said Act.

6. Neither the summons nor notice to quit need be personally served; it shall be sufficient to deliver the same to the person in actual possession or occupation of the land, and the notice to quit may also be served by leaving the same with the wife of such person on the premises, or with any grown person found thereon, and by putting up in the last case a duplicate notice in some conspicuous place on the premises; and where no grown person is found on the premises, then by putting up one such notice in each of four conspicuous places on the premises; but no fine shall be imposed on any person except upon personal service of the summons or service on his wife. 12 V. c. 9, s. 3.

How summons and notice to be served.

If the party removed returns or is expected by the Sheriff to return, a Writ of Removal by Continuance may be obtained from one of the Superior Courts.

**7.** If after the execution of any Warrant of Removal, special for the removal of particular parties or general for the removal of all parties found trespassing or intruding upon any such lands, the person removed, or any other person returns, or enters into, or upon the same lands, or if the Sheriff has reason to believe that such person, or any other person will so return or enter upon the same lands, unless they be protected by process for the prevention thereof, the Sheriff shall with the Warrant certify the same into the Court of Queen's Bench or Common Pleas at Toronto, setting forth such return, entry or intrusion, or his belief that such will take place unless the lands be protected by process for the prevention thereof, and thereupon the Court may issue a Writ of Removal by continuance, as nearly as may be in the form A annexed, and upon a similar return thereto a second Writ, and afterwards upon similar returns, other Writs of a like description, as often as may be necessary for the protection of the lands against intrusion. 12 V. c. 9, s. 4.

Writ of Removal by Continuance may be superseded upon cause shewn.

**8.** Any person concerned in the proceedings, or showing an interest entitling him to be heard in that behalf, may obtain from the Court of Queen's Bench or Common Pleas, a rule to show cause which shall be served personally on one or more of the Commissioners, and thereupon such Court may order a supersedeas to any such Writ, after which no further proceedings shall be had upon such writ of removal as aforesaid, or the proceedings of the Commissioners whereon it was founded, but if it be deemed necessary to proceed against such party, or any other for intrusion or trespass, upon the lands, the like proceedings of Notice to quit and Warrant of Removal may be had as at first. 12 V. c. 9, s. 5.

Proceedings if the party again intrude.

Penalty for resuming possession after having been removed by virtue of this Act.

**9.** If any person who has been so removed, returns and unlawfully resumes occupation of the same lands, or any part thereof, the Commissioners, or any one of them, may, upon complaint and satisfactory proof of such fact, order him to be committed to the Common Gaol of the County, for a term not exceeding thirty days, and that he shall pay a fine to Her Majesty, not exceeding eighty dollars. 2 V. c. 15, s. 3.

Penalty not exceeding \$80 for unlawfully cutting and removing trees, quarrying, &c.

**10.** If upon investigation of any complaint made against a person for having unlawfully cut down or removed any timber or trees, or quarried or removed any stone, or other materials from any of the lands aforesaid, the Commissioners, or any one or more of them, find him guilty thereof, the Commissioners, or any one or more of them may order him to pay a fine to Her Majesty not exceeding eighty dollars, and in default thereof to be committed to the Gaol of the proper County, for a period not exceeding three months. 2 V. c. 15, s. 4.

Imprisonment for default of payment.

Convictions before the Com-

**11.** In all cases of Summary conviction under this Act, the same may as of course be removed by certiorari into the Court



Court of Queen's Bench or Common Pleas, and thereupon unless otherwise provided by the Act respecting the Practice and Procedure in suits instituted on behalf of the Crown in matters relating to the Revenue and the repeal of Letters Patent, such Court shall, for enforcing the fine, issue, as in the case of other Crown debts, one or more Writs of *Fieri Facias* and *Capias ad Satisfaciendum*, in the nature of the Exchequer Long Writ, as nearly as may be in the form B, and from time to time repeat such Writs as may be necessary, till the amount has been made, and if at the time of the removal of such conviction, the person convicted be in Custody under the Warrant of the Commissioners, or any one of them, for non-payment of the fine, he shall not be discharged from imprisonment at the end of the time prescribed in such Warrant, if the Sheriff then has a Writ of *Fieri Facias* and *Capias ad Satisfaciendum*, for the levying of such fine and be unable to make the same out of the goods and chattels or lands and tenements of the party, but such party shall remain charged in Custody upon such Writ until the fine be fully paid as in the case of other Crown debtors similarly charged. 12 V. c. 9, s. 6.

Commissioners may be removed as of course by *certiorari*.

And proceedings had for the satisfaction of any fine imposed by such conviction.

If the party convicted be imprisoned for non payment of such fine when the Writ of Execution issues.

**12.** The Commissioners or any one of them may order and cause to be seized and detained any timber or trees unlawfully cut down and any stone quarried upon the lands aforesaid, and not removed therefrom, and may afterwards sell and dispose thereof as instructed from time to time by the Governor in that behalf. 2 V. c. 15, s. 5.

Timber, &c., cut, but not removed, may be seized and sold.

**13.** The Commissioners or any one of them may summon before them any person as a witness to give evidence on any matter they are authorized to investigate, and may administer to him an oath that he will true answer make to all questions put to him in reference to the matter under investigation. 2 V. c. 15, s. 6.

Commissioners authorized to summon witness and examine upon oath.

**14.** All moneys and fines collected under this Act shall, after deducting the expenses of collecting, be paid into the hands of the Receiver General, and be accounted for as part of the hereditary revenues of the Crown, or be appropriated for the benefit of the Indian Tribes, in such manner as the Governor in Council may direct. 2 V. c. 15, s. 7.

Appropriation of moneys levied under this Act.

**15.** The Commissioner or Commissioners before entering on the investigation of any charge under this Act, shall summon the party charged to appear before him or them at a place named in the summons, and if such party does not appear, the Commissioner or Commissioners may, upon proof of due service of the summons, proceed to hear and determine the complaint *ex parte*. 2 V. c. 15, s. 8.

Person accused to be summoned previous to investigation of charge.

**16.** The Commissioner or Commissioners acting under this Act, may issue any warrant or warrants under their hands and seals,

Commissioners empowered to

issue, and Sheriffs and other officers bound to execute their warrants.

seals, to any Sheriff, Gaoler or Peace Officer of the County wherein the proceeding is had, commanding such Sheriff, Gaoler or Peace Officer, to carry into effect any order by them made within their jurisdiction; and such warrants shall be executed by the Sheriff, Gaoler or Peace Officer, as warrants issued by Justices of the Peace are. 2 V. c. 15, s. 9.

Commissioners entitled to same protection as Justices of the Peace, &c.

**17.** The Commissioners and all acting under their authority shall respectively have the same privilege and protection in respect of any action or suit brought against them for any act by them done in the execution of their office, that Justices of the Peace, Sheriffs, Gaolers or Peace Officers respectively have, and the Commissioners when engaged in the execution of their office, and each of them when so engaged, shall have the same power to commit for contempt that Justices of the Peace have in similar cases for contempts against them in the execution of their office. 12 V. c. 9, s. 7, --2 V. c. 15, s. 10.

Appeal lies against judgment of Commissioners to the Court of Chancery.

**18.** Any person dissatisfied with the judgment or decision of the Commissioners in any of the foregoing cases, may, within three months from the date thereof, appeal to the Court of Chancery having first given to the Commissioners fourteen days' notice in writing of the intention to appeal, in which case such Commissioners shall thereupon transmit to the proper officer of the Court a copy of their judgment and the evidence, and the Court may revise, alter, affirm or annul such decision, or order further inquiry or direct an issue to be tried at law, or before the said Court of Chancery or a Judge thereof with the assistance of a jury, and may make such order respecting costs and other matters as seems reasonable and just; and the decree of the Court on the appeal shall bind the party appealing and the Commissioners. 2 V. c. 15, s. 11.

Commissioners and Superintendents of Indians to be Justices of the Peace.

**19.** The said Commissioners and each of them, and the different Superintendents of the Indian Department, either now in office or hereafter appointed shall, by virtue of their office and appointment, and without any other qualification, be Justices of the Peace within the County within which, for the time being, they may be respectively resident or employed as such Commissioners or Superintendents. 13, 14 V. c. 74, s. 9.

#### INDIAN LANDS.

Term "Indian" explained.

**20.** In the following sections of this Act, the term "Indian" is to be construed with reference to the consolidated Act of Canada "relating to the Civilization and enfranchisement of certain Indians." 13, 14 V. c. 74, s. 3,—20 V. c. 26, ss. 1, 2.

Purchases of land from Indians not valid without the

**21.** No purchase or contract for the sale of land in Upper Canada, which may be made of or with the Indians, or any of them, shall be valid unless made under the authority and with the

the consent of Her Majesty, attested by an Instrument under the Great Seal of the Province, or under the Privy Seal of the Governor. 13, 14 V. c. 74, s. 1. consent of the Crown.

**22.** If any person, without such authority and consent, purchases or leases, in any manner or form, or upon any terms whatsoever, any lands within Upper Canada of or from the said Indians, or any of them, or makes any contract with such Indians, or any of them, for or concerning the sale of any lands therein, or in any manner gives, sells, demises, conveys, or otherwise disposes of any such lands, or any interest therein, or offers so to do, or enters on, or takes possession of, or settles on any such lands, by pretext or colour of any right or interest in the same, in consequence of any such purchase or contract made or to be made with such Indians or any of them, unless with such authority and consent as aforesaid, every such person shall, in every such case, be deemed guilty of a misdemeanor, and shall, on conviction thereof before any Court of competent jurisdiction, forfeit and pay to Her Majesty, the sum of eight hundred dollars and be further punished by fine and imprisonment, at the discretion of the Court. 13, 14 V. c. 74, s. 2. Such purchase without consent to be a misdemeanor. Penalty.

**23.** No taxes shall be levied or assessed upon any Indian or any person inter-married with any Indian for or in respect of any of the said Indian lands, nor shall any taxes or assessments whatsoever be levied or imposed upon any Indian or any person inter-married with any Indian so long as he, or they reside on Indian lands not ceded to the Crown, or which having been so ceded have been again set apart by the Crown for the occupation of Indians. 13, 14 V. c. 74, s. 4. Taxes and assessments not to be levied on Indians.

**24.** Indians and persons inter-married with Indians, residing upon any such Indian lands and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed by the Superintendent General, the Assistant Superintendent General, or by any Subordinate Superintendent of Indian Affairs, who may, for the time being, be charged with the subordinate superintendence of such Indians and persons inter-married with Indians as aforesaid, or by any such Commissioner or Commissioners, to perform labour on the public roads laid out or used in or through such Indian lands, such labour to be performed under the sole control of the said Superintendents or Commissioners, or of any or either of them, who may direct when, where, how and in what manner the said labour shall be applied, and to what extent the same shall be imposed upon Indians or persons inter-married with Indians who shall be resident upon any of the said lands; and the said Superintendents and Commissioners, and every of them, shall have the like power to enforce the performance of all such labour by imprisonment or otherwise as may be done As to performance of statute labour by Indians.

Limit as to amount of labour.

done by any power or authority under any law, rule or regulation in force in this Province for the non-performance of Statute labour; But the labour to be so required of any such Indian or person inter-married with an Indian, shall not exceed in amount or extent what may be required of other inhabitants of Upper Canada, under the general laws requiring and regulating such labour and the performance thereof. 13, 14 V. c. 74, s. 5.

None but Indians or those inter-married with them to reside on Indian Lands.

**25.** No persons other than Indians, and those inter-married with Indians, shall settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada, and all leases, contracts and agreements made or purporting to be made, by any Indians, or any persons inter-married with Indians whereby persons other than Indians are permitted to reside upon such lands, shall be absolutely void.

Provision for the removal of persons contravening this section.

**26.** If any persons other than Indians, or those inter-married with Indians do, without the license of the said Commissioners or one of them, (which license, however, the said Commissioners or any of them may at any time revoke,) settle, reside upon or occupy any such lands, roads or allowances for roads, the Commissioners or any of them, shall, on complaint made to them or any of them, and on due proof of the fact, issue their or his warrant signed and sealed, directed to the Sheriff of the proper County, or if the said lands be not situated within any County, then directed to any literate person willing to act in the premises, commanding him forthwith to remove from the said lands or roads or allowances for roads all such persons and their families, so settled residing upon or occupying such lands, and the Sheriff, or other person shall, accordingly, remove such persons, and for that purpose shall have the same powers as in the execution of criminal process; but the provisions in this and the four following sections shall extend to such Indian lands only, as the Governor from time to time, by Proclamation under the Great Seal, declares and makes subject to the same, and so long only as such Proclamation remains in force. 13, 14 V. c. 74, s. 10.

To what lands this section shall extend.

Proceedings if persons so removed return to such lands.

**27.** If any person after having been removed as aforesaid, returns to, settles upon, resides upon, or occupies, any of the said lands or roads or allowances for roads, the said Commissioners, or any of them, upon view, or upon proof on oath, made before them or any of them, and upon being satisfied that the said person has returned to, settled or resided upon or occupied any of the said lands or roads or allowances for roads, the Commissioner or Commissioners shall direct and send his or their warrant signed and sealed, to the Sheriff of the proper County, or to any literate person therein, and if the said lands be not situated within any County, then to any literate person, commanding

commanding him forthwith to arrest such person and to commit him to the Common Gaol of the said County or to the Common Gaol of the nearest County to the said lands, if the said lands be not within any County, there to remain for the time ordered by such warrant, but which shall not exceed thirty days.

**28.** Such Sheriff or other person shall accordingly arrest the said party, and deliver him to the Gaoler or Sheriff of the proper County who shall receive such person, and imprison him in the said Common Gaol for the term aforesaid, there to remain without bail and without being entitled to the liberties of limits of the said Gaol.

Arrest of such person.

**29.** The Commissioners, or one of them shall cause the judgment or order against such person to be drawn up, and such judgment shall not be removed by *Certiorari* or otherwise, or be appealed from, but shall be final. 13, 14 V. c. 74, s. 11.

No *certiorari* or appeal allowed.

**30.** If any person without the license in writing of the Commissioners or one of them, trespass upon any of the said lands or roads or allowances for roads, by cutting; carrying away or removing therefrom, any of the trees, saplings, shrubs, underwood or timber thereon, or by removing any of the stone or soil of the said lands, roads or allowances for roads, the person so trespassing shall for every tree he cuts, carries away or removes, forfeit and pay the sum of twenty dollars, and for cutting, carrying or removing any of the saplings, shrubs, underwood or timber, if under the value of one dollar, the sum of four dollars, but if over the value of one dollar, then the sum of twenty dollars, and for removing any of the stone or soil aforesaid, the sum of twenty dollars such fine to be recovered by the said Commissioners or any or either of them, by distress and sale of the goods and chattels of the party or parties fined, or the said Commissioners, without proceeding by distress and sale as aforesaid, may, upon the non-payment of the said fine, order the party or parties to be imprisoned in the Common Gaol as aforesaid, for a period not exceeding thirty days, when the fine does not exceed twenty dollars, or for a period not exceeding three months, when the fine does exceed the sum of twenty dollars; and upon the return of any warrant for distress or sale, if the amount thereof has not been made, or if any part of it remains unpaid, the said Commissioners or any of them, may commit the party in default upon such warrant to the Common Gaol as aforesaid, for a period not exceeding thirty days if the sum claimed by the said Commissioners upon the said warrant does not exceed twenty dollars, or for a time not exceeding three months, if the sum claimed does exceed twenty dollars; all which fines shall be paid to Her Majesty, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor may direct. 13, 14 V. c. 74, s. 12.

Punishment of persons cutting timber on and doing damage to Indian Lands.

Penalties.

Imprisonment if the penalty cannot be levied.

Application of penalties.

Provision where the name of any person to be proceeded against under this Act cannot be ascertained.

**31.** In all orders, writs, warrants, summonses and proceedings whatsoever made, issued or taken by the Commissioners or any of them, it shall be necessary for the Commissioners or such of them as act, to insert or express the name of the person summoned, arrested, distrained upon, imprisoned or otherwise proceeded against therein, only when the name of such person is truly given to or known by such Commissioners, and if the name be not truly given to or known by such Commissioners, then they may name or describe the person by any part of the name of such person given to or known by them; and if no part of the name be given to or known by the said Commissioners, they may describe the person proceeded against in any manner by which he may be identified; and all such proceedings containing or purporting to give the name or description of any such person as aforesaid, shall *prima facie* be sufficient. 13, 14 V. c. 74, s. 13.

Sheriff to obey process.

**32.** All Sheriffs, Gaolers and Peace Officers, to whom any such process is directed by the Commissioners or any of them, shall obey the same, and all other Officers upon reasonable requisition shall assist in the execution thereof. 13, 14 V. c. 74, s. 14.

The case of a Railway passing through Indian Lands provided for.

**33.** If any Railway, to which the Act of Canada respecting Railways applies, passes through any land belonging to or in possession of any Tribe of Indians in this Province, or if any act occasioning damage to their lands be done under the authority of the said Act or of the Special Act, compensation shall be made to them therefore, in the same manner as is provided with respect to the lands or rights of other individuals; and whenever it is necessary that Arbitrators should be chosen by the parties, the Chief Officer of the Indian Department within this Province, is hereby authorized and required to name an Arbitrator on behalf of the Indians, and where the lands belong to the Indians, the amount awarded in any case shall be paid to the said Chief Officer for the use of the Tribe or Body. 14, 15, V. c. 51, s. 11, No. 22.

The case of certain works affecting Indian Lands provided for.

**34.** If any work under the Act of Canada respecting "Joint Stock Companies to construct works to facilitate the transmission of timber down rivers and streams," be constructed upon or otherwise interferes with any tract of land or property belonging to or in possession of any Tribe of Indians in this Province, or if any property belonging to them be taken, or any act done, under authority of the said Act is occasioning damage to their properties or their possessions, compensation shall be made to them therefor, in the same manner as provided with respect to the property, possession or rights of other individuals, and whenever it is necessary for Arbitrators to be chosen by the parties for settling the amount of such compensation, the Chief Officer of the Indian Department within the Province shall name an Arbitrator on behalf of the said Indians; and where

where the said lands belong to any Tribe or Body of Indians, the amount awarded shall be paid to the said Chief Officer, for the use of such Tribe or Body. 16 V. c. 191, s. 17.

**35.** The following are the forms referred to in the foregoing sections :

A. SEE S. 7.

WRIT OF REMOVAL BY CONTINUANCE.

*Upper Canada.*

Victoria, by the Grace of God, &c.

To the Sheriff of

—Greeting :

Whereas by a certain Warrant of Removal made by one (or two, as the case may be,) of the Commissioners appointed under the Great Seal of Our Province of Canada, by virtue of the Consolidated Statutes of Upper Canada, (Chapter ,) to prevent trespases to Public and Indian Lands, you were formerly commanded that (*here recite Commissioners' Warrant of Removal*) which said Warrant you lately returned to Us into Our Court of Queen's Bench (or Common Pleas,) at Toronto, and thereupon certified to Us that (*here insert the Sheriff's Return, setting forth the return of the party or parties, or his belief that he or they would return unless the land be protected by the issue of process for the protection thereof*) according to the form of the Statute in such case made and provided: Therefore, We command you, that immediately after receipt hereof you proceed to the said lands and premises, and remove or cause to be removed all and singular such person and persons, if any, whom you shall find in or upon the same, from the possession thereof, and give and cause to be given to such person or persons as shall for that purpose be appointed by Our said Commissioners, or any one of them, under their or his hand and seal, the full, quiet and peaceable possession of the said premises and every part and parcel thereof, and that such person or persons, and all others having from time to time a similar Warrant from Our said Commissioners, or any one of them, in such quiet and peaceable possession of the said premises, that you support, help and maintain from time to time, as often as occasion shall and may require ; and what you shall do in the premises you certify to Us in Our said Court of Queen's Bench or Common Pleas, before Us, at Toronto, on the day of

Term next, together with this Writ ; and herein fail not at your peril.

Witness the Honorable , Chief Justice, &c.,  
(as in other writs issued out of the said court.)

B.

## B. SEE S. 11.

WRIT OF FIERI FACIAS AND CAPIAS AD SATISFACIENDUM.

*Upper Canada.*

Victoria, by the Grace of God, &amp;c.

To the Sheriff of

—Greeting :

Whereas by a certain conviction had before \_\_\_\_\_, two of Our Commissioners appointed under the Great Seal of Our Province of Canada, by virtue of the Consolidated Statutes of Upper Canada (Chapter \_\_\_\_\_) to prevent trespasses to Public and Indian Lands, it was considered by the said Commissioners (*here set out the conviction*) which said conviction for certain reasons We caused to be certified to Us in Our Court of Queen's Bench (or Common Pleas) at Toronto, according to the form of the Statute in such case made and provided: We, therefore, being willing to be satisfied the said fine so by the said Commissioners set and imposed upon the said

\_\_\_\_\_, do hereby command you that you levy of the goods and chattels of the said \_\_\_\_\_, in your County, the amount of the said fine so set and imposed upon him as aforesaid, so that you may have that money in Our said Court of Queen's Bench (or Common Pleas) before Us at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_ next; and if it shall happen that sufficient goods and chattels of the said \_\_\_\_\_ shall not be found in your County for payment of the said fine, then, We command you that you levy of the Lands and Tenements of the said \_\_\_\_\_, in your County, the amount of the said fine so set and imposed on him as aforesaid, and have that money in Our said Court before Us on the day and at the place aforesaid; and if it shall happen that sufficient neither of goods or chattels, Lands or Tenements of the said \_\_\_\_\_ shall be found in your County for payment of the said fine, then, We command you that you take the Body of the said \_\_\_\_\_ wheresoever he shall be found in your County, and him safely keep in your prison until he hath fully satisfied Us the said fine so set and imposed upon him as aforesaid: and in what manner you shall have executed this Our Command, make appear to Us in Our said Court before Us, on the day and at the place aforesaid, and have then there this Writ.

Witness the Honorable \_\_\_\_\_, Chief Justice (*as in other Writs issued out of the same Court.*)



## C A P . L X X X I I .

## An Act respecting Real Property.

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

1. The eighteenth section of the interpretation Act is not to apply to this Act.

## DESCENTS SINCE THE 1ST JULY, 1834.

2. This Act shall not extend to any descent which took place on the death of any person who died before the first day of July, one thousand eight hundred and thirty-four. Relation of the Act. 4 W. 4, c. 1, s. 11.

3. The next ten sections of this Act numbered from four to thirteen shall apply retrospectively to the sixth day of March, one thousand eight hundred and thirty-four, and also prospectively (as the case may be), and shall be construed as if the same had been enacted and passed on the said sixth day of March, one thousand eight hundred and thirty-four. How the next ten sections are to apply. 4 W. 4, c. 1, s. 11.

4. In every case, on and after the first day of July, one thousand eight hundred and thirty-four, descent shall be traced from the purchaser ; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title require, the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof, unless it be proved that he inherited the same, in which case, the person from whom he inherited the same shall be considered to have been the purchaser, unless it be proved that he inherited the same ; and, in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it be proved that he inherited the same. Descent shall always be traced from the purchaser, &c. 4 W. 4, c. 1, s. 1.

5. When any land shall have been devised by any testator, who shall die after the first day of July, one thousand eight hundred and thirty-four, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent ; and when any land shall have been limited by any assurance, executed after the said first day of July, one thousand eight hundred and thirty-four, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled Heir entitled under a Will shall take as devisee and a limitation to the grantor or his heir shall create an estate by purchase.

entitled thereto, as of his former estate or part thereof. 4 W. 4, c. 1, s. 2.

When heirs take by purchase under limitations to the heirs of their ancestor, the land shall descend as if the ancestor had been the purchaser.

**6.** When any person shall have acquired any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July, one thousand eight hundred and thirty-four, or under a limitation to the heirs, or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said first day of July, one thousand eight hundred and thirty-four, then and in any of such cases, such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land. 4 W. 4, c. 1, s. 3.

After the death of a person attainted his descendants may inherit.

**7.** When the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land escheated in consequence of such attainder before the first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 9.

Heir-at-law need not prove entry.

**8.** Proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him. 4 W. 4, c. 1, s. 10.

Limitations made before 1st July, 1834, to the heirs of a person then living, shall take effect as if this Act had not been made.

**9.** Where any assurance executed before the said first day of July, one thousand eight hundred and thirty-four, or the will of any person who died before that day, contains any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 12.

Grantees, devisees, &c., shall not take as joint-tenants unless such intention be expressed.

**10.** Whenever by any letters patent, assurance or will, made and executed after the first day of July, one thousand eight hundred and thirty-four, land shall be granted, conveyed or devised to two or more persons other than executors or trustees, in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they shall take as joint tenants. 4 W. 4, c. 1, s. 48.

**11.** When the will of any person who shall die after the sixth day of March, one thousand eight hundred and thirty-four, contains a devise in any form of words of all such real estate as the testator shall die seized or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land that may have been or may be acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. 4 W. 4, c. 1, s. 49.

Estates acquired after the making of a Will may pass by the Will where such intention is expressed.

**12.** Whenever land is or shall be devised in a will made by any person who shall die after the sixth day of March, one thousand eight hundred and thirty-four, it shall be considered that the devisor intended to devise all such estate as he was seized of in the same land, whether fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seized of at the time of making the will containing such devise. 4 W. 4, c. 1, s. 50.

A devise of land shall be taken to carry as large an estate as the testator had in the land, unless a contrary intention be expressed.

**13.** Any will affecting land executed after the sixth day of March, one thousand eight hundred and thirty-four, in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if such witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the testator. 4 W. 4, c. 1, s. 51.

Witnesses need not subscribe in the presence of the testator.

#### INTERPRETATION CLAUSE.

**14.** The words and expressions in the foregoing sections and in the next seven sections numbered from fifteen to twenty-one inclusive, which in their ordinary signification have a more confined or a different meaning, shall, in all such sections, except where the nature of the provision or the context thereof shall exclude such construction, be interpreted as follows, that is to say: the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency; and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent or than by any partition, by the effect of which the land shall have become part of or descendible, in the same manner as other land acquired by descent;

Meaning of words in this Act.

Land.

Purchaser.

Descent. descent; and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants of any ancestor" shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

Descendants. shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

Persons last entitled. shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

Assurance. shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

Rent. shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

Number and gender. shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as to a male. 4 W. 4, c. 1, s. 59.

## DESCENTS BETWEEN 1ST JULY, 1834, AND 1ST JANUARY, 1852.

The foregoing sections not to operate retrospectively in certain cases.

**15.** The foregoing sections of this Act shall not have operation retrospectively to a period of time anterior to the sixth day of March, one thousand eight hundred and thirty-four, so as, by force of any of their provisions, to render any title valid, which in regard to any particular estate had prior to that day been adjudged, or has been or may be in any suit which was depending on that day adjudged invalid, on account of any defect, imperfection, matter or thing, which is by such Sections altered, supplied or remedied; but in every such case the law in regard to any such defect, imperfection, matter or thing, shall, as applied to such title, be deemed and taken to be as if those Sections of this Act had not been passed. 4 W. 4, c. 1, s. 60.

Relation of this Act as to descents between the 1st July, 1834, and 31st December, 1851.

**16** As respects every descent between the first day of July, one thousand eight hundred and thirty-four, and the thirty-first day of December, one thousand eight hundred and fifty-one, both days included, and as respects any descent not included or provided for in the sections of this Act, numbered from twenty-three to forty-nine, both included, the following sections numbered from seventeen to twenty-one, both included, shall apply retrospectively to the first day of July, one thousand eight hundred and thirty-four, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first

first day of July, one thousand eight hundred and thirty-four.  
See 14, 15 V. c. 6, s. 1.

**17.** No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent. 4 W. 4, c. 1, s. 4.

Brothers and sisters shall trace descent through parents.

**18.** Every lineal ancestor shall be capable of being heir to any of his issue, and in any case where there is no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue. 4 W. 4, c. 1, s. 5.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

**19.** None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants have failed; and no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male paternal ancestors and their descendants have failed, and no female maternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male maternal ancestors and their descendants have failed. 4 W. 4, c. 1, s. 6.

The male line to be preferred.

**20.** Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and when there shall be a failure of male paternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor and her descendants. 4 W. 4, c. 1, s. 7.

The mother of the more remote male ancestor to be preferred to the mother of the less remote male ancestor.

**21.** Any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor when such common ancestor shall be a female, so that the brother of the half blood on the part of the father, shall inherit

Half blood to inherit after the whole blood of the same degree.

inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother, shall inherit next after the mother. 4 W. 4, c. 1, s. 8.

DESCENTS FROM AND AFTER FIRST OF JANUARY, 1852.

Descents since the 1st January, 1852.

**22.** The following sections numbered from twenty-three to forty-nine, both included, shall apply retrospectively to the first day of January, one thousand eight hundred and fifty-two inclusive, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first day of January, one thousand eight hundred and fifty-two. 14, 15 V. c. 6, s. 1.

How real estate of an *intestate* dying after 1st January, 1852, shall descend.

**23.** Whenever on or after the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, any person shall die, seized in fee simple or for the life of another of any real estate in Upper Canada, without having lawfully devised the same, such real estate shall descend or pass by way of succession in manner following, that is to say :

*Firstly*—To his lineal descendants, and those claiming by or under them, *per stirpes* ;

*Secondly*—To his father ;

*Thirdly*—To his mother ; and

*Fourthly*—To his collateral relatives ;

Subject in all cases to the rules and regulations hereinafter prescribed. 14, 15 V. c. 6, s. 1.

As to descendants in equal degrees of consanguinity.

**24.** If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V. c. 6, s. 2.

If some children be living and others dead leaving issue.

**25.** If any one or more of the children of such intestate be living, and any one or more be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who have died leaving issue, had been living ; and so that the descendants of each child who shall be dead shall inherit in equal shares the share which their parent would have received if living. 14, 15 V. c. 6, s. 3.

**26.** The rule of descent prescribed in the last preceding section shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants who have died, shall respectively take the shares which their parents if living would have received. 14, 15 V. c. 6, s. 4.

Same rule as to other descendants in unequal degrees of consanguinity.

**27.** In case the intestate dies without lawful descendants, and leaving a father, then the inheritance shall go to such father,—unless the inheritance came to the intestate on the part of his mother, and such mother be living; and if such mother be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; and if there be no such brothers or sisters, or their descendants, living, such inheritance shall descend to the father. 14, 15 V. c. 6, s. 5.

If the intestate leave no descendants' rights of father, mother, &c.

**28.** If the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother or sister of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided; and if the intestate in such case leaves no brother or sister, nor any descendant of any brother or sister, the inheritance shall descend to the mother. 14, 15 V. c. 6, s. 6.

If there be no father entitled to inherit.

**29.** If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several of such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V. c. 6, s. 7.

And if there be neither father or mother.

**30.** If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; and if any one or more of them be living and any one or more be dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as have died, so that each brother or sister who may be living, shall inherit such share as would have descended to him or her, if all the brothers or sisters of the intestate who have died leaving

Succession of brothers and sisters and their descendants.

leaving issue had been living, and so that such descendants shall inherit in equal shares the share which their parent, if living, would have received. 14, 15 V. c. 6, s. 8.

As to such descendants in unequal degrees.

**31.** The same law of inheritance prescribed in the last section shall prevail as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees. 14, 15 V. c. 6, s. 9.

If there be no heir under the preceding sections.

**32.** If there be no heir entitled to take under any of the preceding ten sections, the inheritance, if the same shall have come to the intestate on the part of his father, shall descend :

*Firstly.*—To the brothers and sisters of the father of the intestate in equal shares, if all be living ;

*Secondly.*—If one or more be living, and one or more have died leaving issue, then to such brothers and sisters as are living, and to the descendants of such of the said brothers and sisters as have died, in equal shares ;

*Thirdly.*—If all such brothers and sisters have died, then to their descendants ; and in all such cases the inheritance shall descend in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. 14, 15 V. c. 6, s. 10.

Further provision.

**33.** If there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of such brothers or sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as have died, or if all have died, then to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the father. 14, 15 V. c. 6, s. 11.

Further provision if the estate came by the mother's side.

**34.** In all cases not provided for by the twelve next preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding thirty-second section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section ; and if there be no such brothers and sisters or descendants of them, then such inheritance shall descend to the brothers and sisters, and their descendants, of the intestate's father, as before prescribed. 14, 15 V. c. 6, s. 12.

If it came neither on father's nor mother's side.

**35.** In cases where the inheritance has not come to the intestate on the part of either the father or the mother, the inheritance shall descend to the brothers and sisters both of the father



father and mother of the intestate in equal shares, and to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. 14, 15 V. c. 6, s. 13.

**36.** Relatives of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance. 14, 15 V. c. 6, s. 14.

Half blood to succeed with whole blood.

**37.** On failure of heirs under the preceding rules, the inheritance shall descend to the remaining next of kin of the intestate, according to the rules in the English Statute of distribution of the personal estate. 14, 15 V. c. 6, s. 15.

If there be failure of heirs.

**38.** Whenever there shall be but one person entitled to inherit according to the provisions of the twenty-second and following sections of this Act, he shall take and hold the inheritance solely; and wherever an inheritance, or a share of an inheritance, shall descend to several persons under such provisions, they shall take as tenants in common, in proportion to their respective rights. 14, 15 V. c. 6, s. 16.

Co-heirs to take as tenants in common.

**39.** Descendants and relatives of the intestate begotten before his death, but born thereafter, shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him. 14, 15 V. c. 6, s. 17.

Descendants, &c., born after death of intestate, to inherit.

**40.** Children and relatives who are illegitimate shall not be entitled to inherit under any of the provisions of this Act. 14, 15 V. c. 6, s. 18.

Illegitimate persons not to inherit.

**41.** The estate of the husband as tenant by the curtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of the last preceding nineteen sections of this Act, nor shall the same affect any limitation of any estate by deed or will, or any estate which, although held in fee simple or for the life of another, is so held in trust for any other person, but all such estates shall remain, pass and descend, as if the last nineteen sections of this Act numbered from twenty-two to forty, both included, had not been passed. 14, 15 V. c. 6, s. 19.

Curtesy, dower and estates by Deed or Will, excepted.

**42.** If any child of an intestate shall have been advanced by the intestate by settlement, or portion of real or personal estate, or both of them, and the same shall have been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes

Case of children who have been advanced by settlement, &c.

purposes of this section only, as part of the real and personal estate of such intestate descendable to his heirs, and to be distributed to his next of kin according to law; and if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate. 14, 15 V. c. 6, s. 20.

If such advancement be not equal.

**43.** If such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only of the personal estate, and to inherit so much only of the real estate of the intestate, as shall be sufficient to make all the shares of the children in such real and personal estate and advancement to be equal, as near as can be estimated. 14, 15 V. c. 6, s. 21.

Value of property advanced, how estimated.

**44.** The value of any real or personal estate so advanced shall be deemed to be that, if any, which may have been acknowledged by the child by any instrument in writing, otherwise such value shall be estimated according to the value of the property when given. 14, 15 V. c. 6, s. 22.

Education, &c., not advancement.

**45.** The maintaining or educating, or the giving of money, to a child, without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of this Act. 14, 15 V. c. 6, s. 23.

As to the purchase by any of the parties interested of real estate, subject to partition.

**46.** The parties authorized to make partition of any such real estate according to law, shall receive from any of the persons entitled to a share of such real estate, an offer or proposition to purchase the share or shares of the other parties interested therein, giving the preference to the person who would have been the heir-at-law thereto, had the twenty-second and following sections of this Act not been passed; and next after such heir-at-law, giving such preference to the several persons successively who would have been such heir-at-law, had the said last mentioned sections of this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate.

Particulars of offer to purchase to be certified by the Court.

**47.** The parties so authorized to make such partition, shall certify particularly to the Court in which proceedings for a partition may be commenced or pending, the particulars of such offer or proposition for purchase, the nature, quantity and value of the estate or share proposed to be purchased, and whether they advise such offer or proposition to be accepted or rejected, and their reasons therefor.

Any Court authorized to make partition may direct a

**48.** Any Court authorized to make partition of real estate, may direct a sale of the same if they think it right so to do, upon the application of any of the parties beneficially interested therein, giving

giving however the preference at all times to the person who would have been the heir-at-law to such real estate had the twenty-second and following sections of this Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heir-at-law, had the said last mentioned sections of this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate.

sale, giving preference, &c.

**49.** Every such preference shall be upon and subject to such terms, security and conditions as the Court may think it right to direct. 14, 15 V. c. 6, s. 24.

Terms on which preference to be given.

**50.** In the last twenty-seven sections of this Act numbered from twenty-three to forty-nine both inclusive, the term "real estate" shall be construed to include every estate, interest and right, legal and equitable, held in fee simple or for the life of another (except as in the fortieth section is before excepted) in lands, tenements and hereditaments in Upper Canada, but not to such as shall be determined or extinguished by the death of the intestate seized or possessed thereof, or so otherwise entitled thereto, nor to leases for years; and the term "inheritance," as therein used, shall be understood to mean real estate as herein defined, descended or succeeded to, according to the provisions of the said twenty-seven sections. 14, 15 V. c. 6, s. 25.

Interpretation as to sections 23 to 49.

**51.** Whenever, in the last twenty-eight preceding sections, numbered from twenty-three to fifty both included, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent or succession came, and whenever any person is described as having died, it shall be understood that he died before such intestate. 14, 15 V. c. 6, s. 26.

Interpretation as to sections 23 to 50.

**52.** Whenever in any of the said twenty-eight sections the expressions "where the estate shall have come to the intestate on the part 'of the father,' or 'mother,'" as the case may be, are used, the same shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent. 14, 15 V. c. 6, s. 27.

Interpretation as to sections 23 to 50.

### C A P . L X X X I I I .

#### An Act respecting the Assurance of Estates Tail.

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

**1.** In the construction of this Act, the word "lands," shall extend to advowsons, rectories, messuages, lands, tenements, rents

Interpretation of words.

rents and hereditaments of any tenure, and whether corporeal or incorporeal, and any undivided share thereof; and the word "estate," shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and the expression "base fee," shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression "estate tail," in addition to its usual meaning, shall mean a base fee into which an estate tail has been converted; and the expression "actual tenant in tail," shall mean exclusively the tenant of an estate tail which has not been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression "tenant in tail," shall mean, not only an actual tenant in tail, but also a person who, where an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression "tenant in tail entitled to a base fee," shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression "money subject to be invested in the purchase of lands," shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands of any tenure out of Upper Canada, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and every assurance already made or hereafter to be made whether by deed, will, private Act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and, where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made; but those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction. 9 V. c. 11, s. 1.

2. This Act shall operate and apply retrospectively to the eighteenth day of May, one thousand eight hundred and forty-six, as well as prospectively, and shall be construed as if it had been passed on the said eighteenth day of May, one thousand eight hundred and forty-six.

This Act to relate to and from the 18th May, 1846.

3. All warranties of lands made or entered into by any tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. 9 V. c. 11, s. 2.

Estates tail and estates expectant thereon, no longer barable by warranty.

4. Every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail vested in or which might be claimed by, or which, but for some previous act would have been vested in, or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including Her Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made. 9 V. c. 11, s. 3.

Power to dispose of lands in fee simple or for a less estate, &c.

5. Where, under any settlement made before the eighteenth of May, one thousand eight hundred and forty-six, any woman shall be tenant in tail of lands within the provisions of an Act passed in the eleventh year of the Reign of His Majesty King Henry the Seventh, intituled, *Certain alienations made by the wife, of the lands of her deceased husband shall be void*, the power of disposition hereinbefore contained as to such lands, shall not be exercised by her, except with such assent, as if this Act had not been passed, would, under the provisions of the said Act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands. 9 V. c. 11, s. 4.

Power of disposition not to be exercised by women tenants in tail, *ex provisione viri*, &c.

6. Except as to lands comprised in any settlement made before the eighteenth day of May, one thousand eight hundred and forty-six, the said Act of the eleventh year of the Reign of His Majesty King Henry the Seventh, shall be of no force in Upper Canada. 9 V. c. 11, s. 5.

Except, &c., 11 H. 7, c. 20; to have no force.

7. The power of disposition hereinbefore contained shall not extend to tenants of estates tail, who, by an Act passed in the thirty-fourth and thirty-fifth years of the Reign of His Majesty King Henry the Eighth, intituled, *An Act to embar feigned recovery of lands wherein the King is in reversion*, or by any other

Power of disposition not to extend to certain tenants in tail.

other Act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct. 9 V. c. 11, s. 6.

Power to enlarge base fees saving the rights of certain persons.

8. In every case in which an estate tail in any lands has been barred and converted into a base fee, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, may dispose of such lands as against all persons, including Her Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made. 9 V. c. 11, s. 7.

Issue inheritable not to bar expectancies.

9. Nothing in this Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. 9 V. c. 11, s. 8.

Extent of estate created by a tenant in tail by way of mortgage or for any other limited purpose.

10. If a tenant in tail of lands makes a disposition of the same, under this Act, by way of mortgage, or for any other limited purpose, then such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity, as well as at law, to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition may be effected; but if the estate created by such disposition be only an estate *pur autre vie*, or for years, absolute or determinable, or if, by a disposition under this Act by a tenant in tail of lands, an interest, charge, lien or incumbrance, be created without a term of years, absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall, in equity, be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition may be effected. 9. V. c. 11, s. 9.

The owner of the first existing estate under settlement prior to an estate tail under the same settlement to be the protector of the settlement.

11. If at the time there be a tenant in tail of lands under a settlement, and there be subsisting in the same lands, or any of them, under the same settlement, any estate for years, determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the

the prior estate), shall be the protector of the settlement, so far as regards the lands in which such prior estate is subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate, although the same may have been charged or incumbered, either by the owner thereof or by the settler, or otherwise howsoever, and although the whole of the rents and profits be exhausted, or be required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and an estate by the curtesy or in dower, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement, within the meaning of this clause; and an estate by way of resulting use or trust to or for the settler, shall be deemed an estate under the same settlement, within the meaning of this clause. 9 V. c. 11, s. 10.

**12.** Where two or more persons are owners, under a settlement within the meaning of this Act, of a prior estate, the sole owner of which estate, if there had been only one, would, in respect thereof, have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement, to the extent of such undivided share. 9 V. c. 11, s. 11.

Each of two or more owners of a prior estate to be the sole protector as to his share.

**13.** Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement, and shall be deemed one owner; but, if such prior estate has by such settlement been settled or agreed, or directed to be settled to her separate use, then, she alone shall, in respect of such estate, be the protector of such settlement. 9 V. c. 11, s. 12.

Where a married woman alone shall be the protector and where she and her husband together shall be protectors.

**14.** Except in the case of a lease hereinafter provided for, where an estate is limited by a settlement, by way of confirmation, or where the settlement merely has the effect of restoring an estate, in either of those cases, such estates shall, for the purposes of this Act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement. 9 V. c. 11, s. 13.

As to estates confirmed or restored by settlement.

**15.** Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed, shall not, in respect thereof, be the protector of such settlement. 9 V. c. 11, s. 14.

As to leases at rent created by settlement.

Except in the case of a bare trustee, no tenant in dower, &c., to be protector.

**16.** No woman in respect of her dower, and (except in the case hereinafter provided for, of a bare trustee under a settlement made on or before the first day of July, one thousand eight hundred and forty-six) no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator or assign, shall be the protector of a settlement. 9 V. c. 11, s. 15.

Who shall be the protector where the owner of the prior estate shall by the two last clauses be excluded.

**17.** Where, under any settlement, there is more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of any such prior estate, in respect of which, but for the two last preceding clauses, or one of them, he would have been the protector of the settlement, is by virtue of such clauses, or either of them, excluded from being the protector; then, the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector. 9 V. c. 11, s. 16.

Where in the disposition of an estate before the 1st July, 1846, the person to make the tenant to the Writ of Entry in a recovery shall be the protector.

**18.** Where on or before the first day of July, one thousand eight hundred and forty-six, an estate under a settlement had been disposed of, either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, before the first day of January, one thousand eight hundred and thirty-four, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 17.

Where in the case of the disposition of a reversion on or before the 1st July, 1846, the person to make the tenant to the Writ of Entry in a recovery shall be the protector.

**19.** Where any person having, on or before the first day of July, one thousand eight hundred and forty-six, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would, under this Act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector; then, the person who, before the first day of January, one thousand eight hundred and thirty-four, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 18.

Where a bare trustee, &c.

**20.** Where, under any settlement of lands made before the first day of January, one thousand eight hundred and thirty-four,



four, the person who, if this Act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands, for the purpose of barring any estate tail or other estate under such settlement, is a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 19.

**21.** Any settlor entailing lands may appoint, by the settlement by which the lands are entailed, any number of persons in *esse*, not exceeding three, and not being aliens, to be protector of the settlement, in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons in *esse*, and not being an alien or aliens, whom the donee of the power thinks proper, by deed, to appoint protector of the settlement, in the place of any one person, or number of persons, who may die, or by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person; But the number of the persons to compose the protector by virtue or means of any such appointment, shall never exceed three.

Power to any settlor to appoint protector.

**22.** Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office, shall be void unless registered in the Registry Office of the County or Counties wherein the lands referred to lie, within six months after the execution thereof; and the person who, but for the last preceding clause, would have been sole protector of the settlement, may be one of the persons to be appointed protector under that clause, if the settlor thinks fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. 9 V. c. 11, s. 20.

Deeds appointing protectors to be registered.

**23.** If any person, protector of a settlement, be lunatic, idiot, or of unsound mind, and whether he has been found such by inquisition or not, then the Court of Chancery, shall be the protector of such settlement, in lieu of the person who is such lunatic or idiot, or of unsound mind, as aforesaid; or, if any person, protector of a settlement, be convicted of treason or felony; or, if any person not being the

The Court of Chancery to be the protector of lunatic, &c.

owner

owner of a prior estate under a settlement, be protector of such settlement, and be an infant; or, if it be uncertain whether such last mentioned person be living or dead; then the Court of Chancery shall be the protector of such settlement, in lieu of the person convicted as aforesaid, or of the person who is an infant, or whose existence cannot be ascertained as aforesaid; or, if any settlor entailing lands declares, in the settlement by which the lands are entailed, that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement, shall not be such protector, and shall not appoint any person to be protector in his stead, then, the said Court of Chancery shall, as to the lands in which such prior estate is subsisting, be the protector of the settlement during the continuance of such estate; or if, in any other case there be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate be sufficient to qualify the owner thereof to be protector of the settlement, and there happens at any time to be no protector of the settlement as to the lands in which the prior estate is subsisting, the said Court of Chancery shall, while there is no such protector, and the prior estate is subsisting, be the protector of the settlement as to such lands. 9 V. c. 11, s. 21,—9 V. c. 10, s. 1.

Where there is a protector, his consent requisite to enable an actual tenant in tail to create a larger estate than a base fee.

**24.** If at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, is desirous of making under this Act a disposition of the lands entailed, there be a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the lands entailed, which shall be good against all persons who, by force of any estate tail vested in or which might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed. 9 V. c. 11, s. 22.

Where a base fee and a protector, his consent requisite to the exercising of a power of disposition.

**25.** Where an estate tail has been converted into a base fee, in such case, so long as there is a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the lands in respect of which there is such protector, the power of disposition hereinbefore contained. 9 V. c. 11, s. 23.

The protector to be subject

**26.** Any device, shift, or contrivance by which it is attempted to control the protector of a settlement in giving his

his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a Court of Equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust. 9 V. c. 11, s. 24.

to no control in the exercise of his power of consenting.

**27** The rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. 9 V. c. 11, s. 25.

Certain rules of equity not to apply between the protector and a tenant in tail.

**28.** When a tenant in tail of lands under a settlement has already created in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and afterwards, under this Act, by any assurance other than a lease not requiring enrolment, makes a disposition of the lands in which such voidable estate has been created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; but if, at the time of making the disposition, there be a protector of the settlement, and such protector does not consent to the disposition, and the tenant in tail be not without such consent capable under this Act of confirming the voidable estate to its full extent, then such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent; But if such disposition be made to a purchaser for valuable consideration, not having express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him. 9 V. c. 11, s. 26.

A voidable estate by a tenant in tail in favor of a purchaser confirmed by a subsequent disposition of such tenant in tail under this Act, but not against a purchaser without notice.

**29.** If a base fee in any lands, and the remainder or reversion in fee in the same lands, were on the eighteenth day of May, one thousand eight hundred and forty-six, or at any time since have been or after this Act takes effect are united in the same person, and at any time after this Act takes effect there be no intermediate estate between the base fee and the remainder or reversion, then the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in

Base fees when united with the immediate reversions enlarged instead of being merged.

in

in tail, with the consent of the protector, if any, might have created by any disposition under this Act if such remainder or reversion had been vested in any other person. 9 V. c. 11, s. 27.

Tenant in tail may make a disposition by deed but not by Will or Contract, and if a married woman with her husband's concurrence.

**30.** Every disposition of lands under this Act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his state were an estate at law in fee simple absolute; but no disposition by a tenant in tail shall be of any force, either at law or in equity, under this Act, unless made or evidenced by deed; and no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this Act, notwithstanding such disposition be made or evidenced by deed; and, if the tenant in tail making the disposition be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed. 9 V. c. 11, s. 28.

Every assurance by a tenant in tail, except a lease not exceeding 21 years or not exceeding 12 months at a rack-rent, or five-sixths of a rack-rent, to be inoperative unless registered within six months.

**31.** No assurance by which any disposition of lands shall be effected under this Act by a tenant in tail thereof (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve months from the date of such lease, where a rent is thereby reserved, which, at the time of granting such a lease, shall be rack-rent, or not less than five sixth parts of a rack-rent,) shall have any operation under this Act unless it be registered in the Registry Office of the county or counties (or of the junior County or Riding of a County or Counties or of a City or Cities having a separate Registry Office established therein) wherein the lands referred to lie, within six months after the execution thereof. 9 V. c. 11, s. 29,—22 V. c. 95, s. 1.

Consent of protector to be by the same or a distinct Deed.

**32.** The consent of the protector of a settlement to the disposition under this Act of a tenant in tail, shall be given either by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent shall be void. 9 V. c. 11, s. 30.

If by distinct Deed, to be deemed unqualified unless otherwise expressed.

**33.** If the protector of a settlement gives his consent to the disposition of a tenant in tail by a distinct deed, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he refers to the particular assurance by which the disposition is effected, and confines his consent to the disposition thereby made. 9 V. c. 11, s. 31.

**34.** The protector of a settlement, who, under this Act, has given his consent to the disposition of a tenant in tail, shall not revoke such consent. 9 V. c. 11, s. 32.

Protector not to revoke his consent.

**35.** Any married woman, being either alone or jointly with her husband, protector of a settlement, may, under this Act, in the same manner as if she were a feme-sole, give her consent to the disposition of a tenant in tail. 9 V. c. 11, s. 33.

A married woman protector.

**36.** The consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition is effected by the tenant in tail, be void, unless such deed be registered in the Registry Office of the county or counties wherein the lands referred to lie, either at or before the time of the registry of the assurance. 9 V. c. 11, s. 34.

Consent by distinct Deed void, unless registered with or before assurance.

**37.** In cases of dispositions of lands under this Act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this Act by tenants in tail thereof, the jurisdiction of Courts of Equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts and the supplying of defects in the execution either of the powers of disposition given by this Act to tenants in tail, or of the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which, in a court of law, would not be an effectual disposition or consent under this Act; and no disposition of lands under this Act by a tenant in tail thereof, in equity, and no consent by a protector of a settlement to a disposition of lands under this Act, by a tenant in tail thereof, in equity, shall be of any force, unless such disposition or consent would, in case of an estate tail at law, be an effectual disposition or consent under this Act in a Court of Law. 9 V. c. 11, s. 35.

Courts of Equity excluded from giving any effect to dispositions in tail, &c.

**38.** In every case in which the Court of Chancery is the protector of a settlement, such Court while, protector of such settlement, shall, on the motion or petition in a summary way, by a tenant in tail under such settlement, have full power to consent to a disposition, under this Act, by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid, shall be such as may be approved of by the said Court, and the said Court may make such orders in the matter as may be thought necessary; and if such Court, in lieu of any such person as aforesaid, be the protector of a settlement, and there be any other person protector of the same settlement jointly with such person as aforesaid, then

When the Court of Chancery may consent to a disposition by a tenant in tail, and to make such orders as shall be thought necessary.

then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person, being protector as aforesaid, consents thereto in the manner in which the consent of the protector is by this Act required to be given. 9 V. c. 11, s. 36.

Order of the Court of Chancery to be evidence of consent.

**39.** In every case in which the said Court of Chancery is the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition has been made. 9 V. c. 11, s. 37.

The purchase money of lands of any tenure sold, if to be entailed, how to be invested.

**40.** Lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this Act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; except that in every case, where under this clause a disposition is to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favor or for whose benefit the disposition is made, be treated as personal estate, and the assurance by which the disposition of such leasehold lands or money is effected shall be an assignment by deed, which shall have no operation under this Act unless registered in the Registry Office of the county or counties wherein the lands therein referred to lie, within six months after the execution thereof. 9 V. c. 11, s. 49.

A married woman with her husband's concurrence, may release and extinguish pow-

**41.** A married woman may in every case except that of being tenant in tail, for which provision is already made by this Act, by deed, release or extinguish any power which may be vested in, or limited or reserved to her in regard of any lands of any tenure, or any such money as aforesaid, or in regard to any estate

estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme-sole; except that no such disposition, release, surrender or extinguishment, shall be valid and effectual, unless the husband concur in the deed by which the same is effected, nor unless the deed be acknowledged by her as hereinafter directed. 9 V. c. 11, s. 50.

**42.** The powers of disposition given to a married woman by this Act shall not interfere with any power which, independently of this Act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this Act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition. 9 V. c. 11, s. 51.

**43.** Every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall be executed, produced and acknowledged by her as her act and deed in manner and form prescribed by the Act enabling married women to convey their real estate. 9 V. c. 11, s. 52.

**44.** If a husband, in consequence of being a lunatic, idiot or of unsound mind, and whether he has been found such by inquisition or not, or from any other cause be incapable of executing a deed, or if his residence be not known, or he be in prison, or be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever; the Court of Queen's Bench for Upper Canada, or the Court of Common Pleas therein, may, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the Court seems meet, dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise; and all acts, deeds or surrenders, done, executed or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed or made by her in the same manner as if she were a feme-sole, and when done, executed or made by her, shall (but without prejudice to the rights of the husband as then existing independently of this Act) be as good and valid as they would have been if the husband had concurred; but this clause shall not extend to the case of a married woman where under this Act, the Court of Chancery, is the protector of a settlement in lieu of her husband. 9 V. c. 11, s. 53.

## C A P . L X X X I V .

## An Act respecting Dower.

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

## WIDOWS TO BE ENTITLED TO DOWER IN CERTAIN CASES.

Dower out of equitable estates.

1. When a husband dies beneficially entitled to any land for an interest which does not entitle his widow to dower out of the same at law, and such interest whether wholly equitable or partly legal and partly equitable, is an estate of inheritance in possession, or equal to an estate of inheritance in possession, (other than an estate in joint tenancy,) then his widow shall be entitled in equity to dower out of the same land. 4 W. 4, c. 1, ss. 13, 14, 15.

Dower where husband had a right of entry.

2. When a husband hath been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband did not recover possession thereof; but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. 4 W. 4 c. 1, s. 14.

## DOWER ABOLISHED IN CERTAIN CASES.

Certain dower abolished.

3. No widow shall be entitled to dower *ad ostium ecclesiæ*, or dower *ex assensu patris*. 4 W. 4, c. 1, s. 15.

## HOW DOWER MAY BE BARRED.

Dower may be barred by joint Deed of husband and wife.

4. A married woman may bar her dower in any lands or hereditaments in Upper Canada, by joining with her husband in a deed or conveyance thereof in which a release of dower is contained. 2 V. c. 6, s. 3.

When may be barred by separate Deed of wife.

5. A married woman may also bar her dower in any lands or hereditaments by executing either or alone, or jointly with other persons, a deed or conveyance to which her husband is not a party, containing a release of such dower. 37 Geo. 3, c. 7, s. 1.

When wife to be examined as to her consent.

6. A married woman barring her dower by a deed or conveyance to which her husband is not a party, shall be examined by one of the Judges of the Courts of Queen's Bench or Common Pleas in Upper Canada, or the Judge of the County Court, or Chairman or presiding Magistrate of the Court of Quarter Sessions, or two Justices of the Peace for the County in which she



she resides, or happens to be, touching her consent to be barred of her dower. 37 Geo. 3, c. 7, s. 1,—3 W. 4, c. 9, s. 1,—2 V. c. 6,—50 G. 3, c. 10, s. 1.

7. If such married woman upon being so examined gives such consent, and the same appears to the Judge, Chairman or presiding Magistrate, or Justices examining her to be voluntary and not the effect of coercion on the part of her husband or of any other person, such Judge, Chairman, or presiding Justice or Justices shall certify on the back of the deed to the following effect: 37 G. 3, c. 7, s. 2.

Certificate of consent.

We, A. B. and C. D., of the County of \_\_\_\_\_, in the Province of Canada, Esquires, two of Her Majesty's Justices of the Peace, in and for the said County, or, I (a Judge, &c., as the case may be,) do certify that E. F., wife of G. F., personally appeared before us (or me, as the case may be), and being duly examined by us (or me), touching her consent to be barred of her right of dower of and in the lands in the within deed mentioned, it did appear to us (or me) that the said E. F. did give her consent thereto freely and voluntarily without coercion or fear of coercion on the part of her husband or of any other person.

Signed,

Dated at

3 W. 4, c. 9, s. 1.

8. A married woman being within the United Kingdom of Great Britain and Ireland, or any of Her Majesty's Colonies, or the United States of America, and there barring her dower by any deed or conveyance to which her husband is not a party, shall be examined as mentioned in the sixth section of this Act, by the Mayor or Chief Magistrate of a City or Town if in the United Kingdom, or if in a Colony or in one of the United States, by a Judge of the Supreme Court of the Colony or State, and if she gives such consent and the same appears to the person so examining to be free and voluntary and not the effect of any coercion as aforesaid, such person shall certify on the back of the deed to the effect prescribed by the seventh section of this Act. 48 G. 3, c. 7, s. 1.

Who to certify out of Upper Canada.

9. Any certificate under the last section of this Act, shall, if granted by a Mayor or Chief Magistrate, be under the common seal of the City or Town over which such Mayor or Chief Magistrate presides, or under the seal of office of such Mayor or Chief Magistrate, and if granted by a Judge, such certificate shall be verified by the seal of the person administering the government of the Colony or State of which the person certifying is a Judge. 48 G. 3, c. 7, ss. 2, 3.

Certificate, how verified.

10. No deed or conveyance of a married woman to which her husband is not a party, shall be effectual to bar her dower unless the directions contained in the sixth, seventh, eighth and ninth

Unless the husband is a party, dower not

barred without  
acknowledg-  
ment.

ninth sections of this Act, (as the case may be,) are complied with. 37 G. 3, c. 7, s. 1.

Fec for certifi-  
cate.

11. A fec of one dollar may be demanded for any certificate under this Act. 50 G. 3, c. 10, s. 2,—3 W. 4, c. 9, s. 2.

## C A P . L X X X V .

### An Act respecting the conveyance of Real Estate by Married Women.

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

Married wo-  
man of full age  
may convey.

1. Any married woman seized of or entitled to Real Estate in Upper Canada, and being of the age of twenty-one years, may, subject to the provisions hereinafter contained, convey the same, by Deed to be executed by her jointly with her husband, to such use and uses as to her and her husband may seem meet. 59 G. 3, c. 3, s. 1,—2 G. 4, c. 14.

How to convey  
in Upper  
Canada.

2. In case such married woman executes such Deed in Upper Canada, she shall execute the same in the presence of a Judge of one of the Courts of Queen's Bench or Common Pleas, or of a judge of the County Court, or of two Justices of the Peace for the County in which such married woman resides or happens to be when the Deed is executed, and such Judge or two Justices of the Peace (as the case may be) shall examine such married woman apart from her husband respecting her free and voluntary consent to convey her Real Estate in manner and for the purposes expressed in the Deed, and if she gives her consent, such Judge or Justices shall, on the day of the execution of such Deed, certify on the back thereof to the following effect: 59 G. 3, c. 3, ss. 2, 3,—1 W. 4, c. 2, s. 1,—2 V. c. 6, s. 1,—14, 15, V. c. 115.

" I, (or we, inserting the name or names, &c.) do hereby  
" certify that on this \_\_\_\_\_ day of \_\_\_\_\_  
" \_\_\_\_\_ at \_\_\_\_\_ the within Deed was  
" duly executed in my (or our) presence by A. B., of \_\_\_\_\_  
" \_\_\_\_\_, wife of \_\_\_\_\_, one  
" of the grantors therein named, and that the said wife of the  
" said \_\_\_\_\_, at the said time and  
" place being examined by me (or us) apart from her husband,  
" did appear to give her consent to convey her estate in the  
" lands mentioned in the said Deed freely and voluntarily and  
" without coercion or fear of coercion on the part of her hus-  
" band or of any other person or persons whatsoever."

How in Great  
Britain or Ire-

3. In case any such married woman resides in Great Britain or Ireland, or in any Colony belonging to the Crown of Great Britain

Britain other than Upper Canada, and there executes any such Deed, she shall execute the same in the presence of the Mayor or Chief Magistrate of a City, Borough or Town corporate in Great Britain or Ireland, or of the Chief Justice or a Judge of the Supreme Court of such Colony; and such Mayor or Chief Magistrate, Chief Justice or Judge (as the case may be) shall examine such married woman, apart from her husband, touching her consent in manner and form and to the effect specified in the second section of this Act, and if she thereupon gives such consent, such Mayor or Chief Magistrate, under his hand and the seal of the City, Town or Borough, or such Chief Justice or Judge under his hand, shall, on the day of the execution of such Deed, certify on the back thereof to the effect hereinbefore mentioned in the said second section. 59 G. 3, c. 3, ss. 2, 5—1 W. 4, c. 2, s. 1,—2 V. c. 6,—14, 15 V. c. 115.

land or in the colonies.

4. In case any such married woman resides either temporarily or permanently in any State or Country not owing allegiance to the Crown of Great Britain, and there executes any such Deed, she shall execute the same in the presence of the Governor or other Chief Executive Officer of such State or Country, or in the presence of the British Consul resident in such State or Country, or in the presence of a Judge of a Court of Record of such State or Country, and such Governor, Chief Executive Officer, Consul or Judge (as the case may be) shall examine such married woman apart from her husband, touching her consent in manner and form and to the effect specified in the second section of this Act; and if she thereupon gives such consent, such Governor or Chief Executive Officer, under his Hand and the Seal of such State or Country, or such Consul under his Hand, or such Judge under his hand and the Seal of his Court, shall certify to the effect hereinbefore mentioned in the said second section. 59 G. 3, c. 3, s. 2,—1 W. 4, c. 2, s. 1,—2 V. c. 6,—14, 15 V. c. 115.

How in foreign States.

5. Every certificate given under this Act, shall be *prima facie* evidence of the facts therein stated. 14, 15 V. c. 115, s. 2.

Certificate to be evidence *prima facie*.

6. It shall not be necessary for any Judge or other Officer who may certify in any of the foregoing cases, to attest as a subscribing witness, the execution of any Deed upon the back of which he may so certify. 14, 15 V. c. 115, s. 1.

The Officer certifying need not attest as a witness.

7. If any such Deed of any such married woman be not executed, acknowledged and certified as aforesaid, the same shall not be valid or have any effect. 14, 15 V. c. 115, s. 2—1 W. 4, c. 2 s. 1,—59 G. 3, c. 3. s. 5.

If not duly executed the Deed shall not be valid.

8. No Deed of a married woman executed according to the provisions of this Act shall have any greater effect than the same would have had if such married woman had been sole. 1 W. 4, c. 2, s. 2.

The Deed not to have greater effect than if she was sole.

Fee for certificate.

**9.** The sum of one dollar may be demanded for every such certificate. 59 G. 3, c. 3, s. 2,—1 W. 4, c. 2, s. 4.

Recital.

Certificate under former Acts to be valid, tho' the Justices were not resident in the County or District in which the married woman resided.

**10.** And whereas it is expedient to provide for cases in which, before the Fourth day of May, one thousand eight hundred and fifty-nine, informal or erroneous certificates had been indorsed upon Deeds conveying real estate executed by married women jointly with their husbands, as well as for cases in which such Deeds had been executed in presence of and certificates endorsed thereon by non-resident Justices of the Peace, or in which certificates had been endorsed on such Deeds subsequent to the execution thereof: Therefore, Whenever any certificate on the back of any Deed executed before the said Fourth day of May, one thousand eight hundred and fifty-nine, by any married woman, pursuant to the Act of the Parliament of Upper Canada, passed in the first year of the Reign of his late Majesty King William the Fourth, chapter two, or pursuant to the Act of the said Parliament of Upper Canada, passed in the second year of Her Majesty's Reign, chapter six, has been signed by two Justices of the Peace, such certificate shall be held and is hereby declared to be valid and effectual for all the purposes contemplated by said Acts, although the said Justices were not at the time residents of the District or County in which such married woman resided; and every Deed executed before the said fourth day of May, one thousand eight hundred and fifty-nine, in the presence of such Justices, and every such certificate so signed shall have the same force, validity and effect as if the said Deed had been executed in the presence of, and such certificate had been signed by two Justices of the Peace of the District or County in which such married woman at the time of the execution thereof resided. 22 V. c. 35, (1859) s. 1.

Certificate to be valid tho' given subsequent to the execution of the deed.

**11.** When any certificate on the back of any Deed executed by any married woman, pursuant to the Act in the last preceding section first mentioned, had, before the said Fourth day of May, one thousand eight hundred and fifty-nine, been given on any day subsequent to the execution of such Deed, such certificate shall be deemed and be taken to have been given on the day on which the said Deed was executed; and such Deed shall be as good and valid in law as if such certificate had been in fact signed on the day of the execution of the Deed to which it relates, as required by the said Act. 22 V. c. 35, s. 2.

Deed executed by a married woman jointly with her husband to be a good conveyance notwithstanding errors in certificate endorsed.

**12.** In case any married women seized of or entitled to real estate in Upper Canada, and being of the age of twenty-one years, did, before the said Fourth day of May, one thousand eight hundred and fifty-nine, execute, jointly with her husband, a Deed for the conveyance of the same, knowing her estate therein and intending to convey the same, such Deed shall be taken and considered as a valid conveyance of the land therein mentioned, and the execution thereof shall be deemed and taken to be valid and

and effectual to pass the estate of such married woman in the said land, although a certificate of her consent to be barred of her right of Dower of and in such land, instead of a certificate of her consent to convey her estate in the same was endorsed thereon. 22 V. c. 35, s. 3.

**13.** Whenever, before the fourth day of May, one thousand eight hundred and fifty-nine, the requirements of the Acts of the former Parliament of Upper Canada, or of the Parliament of the Province of Canada, respecting the conveyance of real estate in Upper Canada by married women, while respectively in force, had been complied with on the execution by any married woman of a Deed of conveyance of real estate in Upper Canada then belonging to such married woman, such execution shall be deemed and taken to be valid and effectual to pass the estate of such married woman in the land intended to be conveyed, although the certificate endorsed on such Deed be not in strict conformity with the forms prescribed by the said Acts, or any or either of them. 22 V. c. 35, s. 4.

And notwithstanding the certificate be not in strict conformity to the forms in the said Acts.

**14.** The four last preceding sections of this Act shall not render valid any conveyance to the prejudice of any title subsequently acquired from the married woman, by Deed duly executed and certified as by law required, nor any conveyance from the married woman which was not executed in good faith, nor any conveyance of land of which the married woman or those claiming under her was or were in the actual possession or enjoyment on the said Fourth day of May, one thousand eight hundred fifty-nine, notwithstanding such conveyance. 22 V. c. 35, s. 5.

Act not to prejudice titles subsequently acquired, &c.

**15.** The requirements necessary to give validity at law to a conveyance by a married woman of any of her real estate with respect to Deeds of conveyance executed since the Fourth day of May, one thousand eight hundred and fifty-nine, or after the passing of this Act, shall continue to be necessary for that purpose notwithstanding anything contained in the five last preceding sections of this Act; But this section shall not affect any other remedy at law or in equity which a purchaser or other person may have upon any contract or deed of a married woman executed since the said Fourth day of May, one thousand eight hundred and fifty-nine, or which may after this Act takes effect be executed in respect of her real estate. 22 V. c. 35, s. 6. (1859.)

Requirements formerly necessary, to continue to be so as to future conveyances.

## C A P . L X X V I .

### An Act respecting the Partition and Sale of Real Estate.

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

**1.** "Land" and "lands," in this Act, shall mean and include *lands, tenements and hereditaments*, and all *estates and interests* therein.

Interpretation.

Surrogate Court Judge to be "real representative."

2. The Judge of the Surrogate Court in each County in Upper Canada shall be the "Real Representative" for all real property within such County in respect of or to which any person, being seized of or entitled to an estate in fee simple thereon, dies intestate, and for all other purposes hereinafter mentioned. 20 V. c. 65, s. 1.

Voluntary Partition to be by deed.

3. Every partition of lands voluntarily made by the parties thereto shall be made by deed, otherwise the same shall be void. 14, 15 V. c. 7, s. 4.

Who compellable to make partition.

4. All joint tenants, tenants in common and co-parceners of any lands within Upper Canada, may be compelled to make or suffer partition or sale of lands as hereinafter provided. 2 W. 4, c. 35, s. 1,—14, 15 V. c. 6, s. 24.

When lands situate in two or more counties.

5. When such lands are situate in two or more Counties, the proceedings shall be carried on in the Court of Queen's Bench, or Common Pleas, or in the Court of Chancery; and when the lands are situate in one County only, the proceedings may be carried on in the County Court of such County, or in any of the Superior Courts of Law or Equity. 2 W. 4, c. 35, s. 1.

When in one county.

Who may petition for partition.

6. Any joint tenant, tenant in common, or co-parcener as aforesaid, of any land, or the agent of any such person, or the guardian of any minor, may file a petition in any of the Courts as aforesaid, praying that partition of such lands may be made, and after the expiration of six months from the death of any person dying intestate, seized of or entitled to an estate in fee simple in any land in Upper Canada, any one or more persons entitled to a share or interest in such land and the immediate possession thereof, being of full age, may apply to any of the Courts as aforesaid for a division or partition thereof, or for a sale thereof, if a sale be by such Court considered more advantageous to the parties interested. 2 W. 4, c. 35, s. 2,—20 V. c. 65, s. 2.

How petition to be intituled, &c.

7. All proceedings in petition shall be intituled in the Court in which the same are had; and—In the matter of Partition between A. B. (*naming the Petitioner, if there is only one, and adding "and others," if there be more than one*) and X. Y. (*naming the person intended to be made a party to such petition, if only one, and adding "and others," if there be more than one*). 20 V. c. 65, s. 34.

Parties to the application.

What the application for partition or sale must set forth.

8. Every person having an interest as aforesaid, may be made a party to such petition, and the petition shall particularly describe the lands sought to be divided or sold, and shall set forth the interest of the petitioner and names and places of residence and the rights and titles of all persons interested therein, so far as the same are known to the petitioner, including the interest of any tenant for years, for life, by the courtesy or in dower, or in

in case any one or more of such parties, or the share or quantity of interest of any of the parties, be unknown to the petitioner, he shall set forth the same in such petition; and the truth of such petition and the matters contained therein shall be verified by the oath or affirmation of the petitioner, to be taken before any Commissioner for taking affidavits, or before a Judge of any of the said Courts. 20 V. c. 65, s. 3.

It must be verified on oath.

9. In case any of the parties so interested, other than a petitioner by guardian, be a minor, and in case it be satisfactorily proved to the Court that at least fourteen days' notice of an intention to apply to the Court for an order for partition or sale, has been served on such minors as reside in this Province, such Court shall thereupon, whether the said minors reside within or without the Province, appoint a suitable and disinterested person to be guardian for one or more of such minors, for the special purpose of taking charge of the interests of such minors in the proceedings upon such petition. 20 V. c. 65, s. 4. See 2 W. 4, c. 35, s. 9,—12 V. c. 72.

Notice to minors and appointment of guardians.

10. Every guardian so appointed shall, before entering upon his duties, execute to the "Real Representative" of the County where the estate is situate, by his own name of office, as Surrogate Judge and Real Representative for the County and his successors in office a bond, in such penalty and with such sureties as the Court directs, conditioned for the faithful discharge of the trust committed to him, and to render a just and true account of his guardianship, when thereto required by the Court, and no proceedings shall be taken upon the petition until such bond has been filed in the office of the Court.

Guardians to give security

Bond and condition.

11. After the execution and filing of such bond, such guardian shall represent his minor in the proceedings upon the said petition, and his acts in relation thereto shall be binding on such minor, and shall be as valid as if done by such minor after having arrived at full age. 20 V. c. 65, s. 5.

The powers of guardians.

12. It shall not be necessary in the first instance to make any creditor having a lien on the estate or any part thereof, by judgment, decree, mortgage or otherwise, a party to the proceedings, nor shall the partition or sale of the estate alter, affect or impair the lien of such creditor, but the petitioner may make such creditor a party, and in such case the petition shall set forth the nature of the lien or incumbrance, and if such lien or incumbrance is on the undivided interest or estate of any of the parties to the petition, it shall be a lien only on the share of such party, and such share shall be first charged with its just proportion of the costs of the proceedings in partition, in preference to any such lien. 20 V. c. 11, s. 6.

Provision as to creditors having a lien on the property or any part thereof.

13. A copy of the Petition, with notice that the same will be presented to the Court on some certain day in term, shall be personally

Service of copy of petition on parties interest-

ed not joining therein and un- resident in Canada.

personally served thirty days inclusive, previous to such term, on all the parties resident in the Province, who are interested in the estate and who have not joined in such petition, and on the guardians appointed as aforesaid of such as are minors; and every such notice shall be addressed to all the parties interested who are known, and generally to all others unknown, having or claiming any interest in such estate. 20 V. c. 65, s. 7.

Notice to absent and unknown parties.

**14.** If any parties having such interest be unknown, or if known, reside out of this Province or cannot be found therein, and have no known Attorney or Agent residing in Upper Canada, the petition and notice may be served on such unknown or absent party, by publishing the same three months previous to the presentation of the Petition, once in each week successively, in the *Canada Gazette*, and in a paper printed and published in the County where the estate is situate, and if there be none, then in the *Canada Gazette* alone, which shall be equivalent to a personal service on such unknown or absent parties, or such petition and notice may be served personally on any known absent party or upon his Attorney or Agent if he has one residing in Upper Canada, forty days previous to its presentation, without publishing the same. 20 V. c. 65, s. 8. See 2 W. 4, c. 35, s. 10.

On proper proof, petition to be allowed and parties to shew title.

**15.** Upon the presentation of a petition, and upon satisfactory proof of the service or publication thereof with the notice as aforesaid, and of the facts justifying the mode of publication, the Court shall, by rule, allow such Petition, and thereupon the parties interested in the estate shall appear and shew title to the proportions which they claim of the premises set forth in the petition, within the time for pleading according to the practice of the said Court. 20 V. c. 65, s. 9. See 2 W. 4, c. 35, s. 3.

Service of notice of allowance and subsequent notice.

**16.** Notice of the rule of allowance, and all other notices in any subsequent proceedings, unless otherwise specially directed, may be served by affixing the same in the office of the Clerk of the Court, which shall be equivalent to personal service on the party to be affected thereby. 20 V. c. 65, s. 10.

Parties consenting to partition may appoint arbitrators to make partition, and if they do not agree on the persons to be named, the Court may name them.

**17.** In case, at any time after filing the petition, and before a final order, decree, rule or judgment has been made or pronounced thereon, the parties of whom partition or against whom a sale is demanded, appear in person or by Guardian or Attorney, and pay their proportion of the costs then incurred, and consent to a partition or sale of the land, then a partition or sale shall be made thereof by such person or persons as the parties may agree upon; and in case they do not agree upon any person or persons before the end of the term or before such day as the Court may appoint, then such partition or sale shall be made as in other cases under this Act. 2 W. 4, c. 35, s. 5.



**18.** Any party appearing, may plead either separately or jointly with one or more of his co-defendants, that the petitioners or any of them, at the time of presenting the petition, were not entitled to or in possession of the premises or any part thereof, or that the defendants or any of them had no interest in the premises or did not hold the same together with the petitioners at the time of the commencement of the proceedings, as alleged in the petition; and such pleas shall form a complete issue, and any matters to support the claim or defence of either party may be given in evidence thereunder; and the issue thereon may be tried at the same time as the other issues on the petition. 20 V. c. 65, ss. 11, 12. See 2 W. 4, c. 35, s. 4.

Pleadings and proof in the case.

Issue, and evidence admissible under the same.

**19.** All issues so joined shall be tried by the Court or a Jury in the manner as other issues are determined on a record made up of the said petition and of the defence pleaded thereto, and the like proceedings shall be had thereupon in every respect as to new trials, amendments and any other particulars as in personal actions. 20 V. c. 65, s. 13.

Trial of the issues raised in the case.

**20.** If judgment be entered against any of the defendants by default for want of a plea, the Court shall still require the petitioners to exhibit proof of their title, and from such proofs, or from the confession by plea of the parties, if they appeared, or from the verdict of a jury by which any issue of fact has been tried, the Court shall declare the rights, title and interest of the parties to such proceedings, plaintiffs as well as defendants, and shall determine the rights of the parties in the estate, and give judgment that partition be made between such of them as have any rights therein, according to such rights, but not so as to affect any parties whose rights have not been ascertained. 20 V. c. 65, s. 14.

Petitioners must shew title though the opposite party makes default.

**21.** Whenever any judgment of partition has been rendered, the Court shall, by rule, order the "Real Representative" to make the partition so adjudged, according to the respective rights and interests of the parties, as the same have been ascertained and determined by such Court; and in such rule the Court shall designate the part or shares which remain undivided for the owners whose interests may be unknown and not ascertained; and the "Real Representative" shall forthwith proceed to make such partition according to the judgment of the Court, unless it appears to him that partition cannot be made without prejudice to the owners of the estate, in which case he shall make a return of such fact to the Court in writing under his hand. 20 V. c. 65, s. 15.

Real representative to carry out the judgment of partition, &c.

And report if the partition cannot be made without injury to the parties.

**22.** In making partition, the "Real Representative" shall divide the real estate, and allot the several portions and shares thereof to the respective parties, as adjudged by the Court, designating the several shares by posts, stones or other permanent monuments, and he may employ a Surveyor to assist him

How the partition shall be made.

Survey.

Report.

Costs.

him therein : and he shall make a true and accurate plan or map and field book of the land, and shall describe particularly the metes and bounds of the same, and he shall return to the Court having cognizance of the proceedings the plan or map, field book and description, and shall report to the Court in writing, the manner in which he has divided the estate, and the share allotted to each party, with the quantity, courses and distances of the boundaries of each share, and a description of the posts, stones or other monuments, together with an account of his fees, which fees together with any charges for surveyors, shall be ascertained and allowed by the Court, and the amount shall be paid by the petitioners, and shall be allowed to them as part of the costs to be taxed. 20 V. c. 65, s. 16. See 2 W. 4, c. 35, s. 7.

Proof, filing and registration of the report of partition.

**23.** The said report shall be proved by affidavit before a Commissioner for taking affidavits, and shall be filed in the said Court, and a copy thereof, after the report is confirmed by the Court, and certified under the hand of the Clerk and seal of the said Court, shall be registered in the County Register, on the production thereof to the Registrar of the County where the estate is situate. 20 V. c. 65, s. 17.

Confirmation of report with or without amendment.

Effect of such confirmation.

Certain parties not to be affected.

**24.** Upon the return of the report, the Court shall confirm the same, or may remit the same back to the "Real Representative" for amendment in any particular or particulars in which there is manifest error; and upon a final confirmation, judgment shall be given that such report is confirmed, and such judgment shall be binding and conclusive on all known parties named in the petition, and when publication as aforesaid has been made, then, also upon all unknown and absent parties and all persons claiming from or through them; but such judgment shall not affect any person having claims as tenants in dower, or by the courtesy, or for life to the premises which form the subject of such partition, nor any person not named in the petition either originally or by amendment, nor any unknown person when there has not been such publication as aforesaid. 20 V. c. 65, s. 18.

Sale may be ordered by Court and how to be made, credit for part of purchase money in certain cases : how secured.

**25.** Upon the report of the "Real Representative," the Court may order a sale of the estate, if deemed prudent so to do, and by a rule to be made on filing the report, the Court may order the "Real Representative" to sell the estate at public auction to the highest bidder; and in such order the Court shall direct the terms of credit which may be allowed for any portions of the purchase money of which it thinks proper to direct the investment, and for such portions of the purchase money as are required by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, infants, parties out of the Province, or any tenants for life, in dower or by courtesy; and such portions of the purchase money for which credit is so allowed, shall be secured at interest by a mortgage of

of the premises sold, by a bond of the purchaser, and by such other security as the Court may prescribe. 20 V. c. 65, s. 19. See 2 W. 4, c. 35, s. 6,—13, 14 V. c. 50 s. 9.

**26.** The "Real Representative" may take separate mortgages and other securities, for such convenient shares or portions of the purchase money as are directed by the Court to be invested as aforesaid, in his own name of office, as Surrogate Judge and "Real Representative" for the County and his successors in office, and for such shares as any known owner of full age may desire to be invested, in the name of such owner; and upon such sales being confirmed, the "Real Representative" shall deliver such mortgages to the Clerk of the Court, or to the known owners whose shares have been so invested. 20 V. c. 65, s. 20.

Real representative may take mortgages for moneys to be invested.

**27.** Before making any order for sale, where the creditors having specific liens have not been made parties, the Court, on motion of either party, shall direct the Petitioner to amend his Petition by making a party to the proceedings, every creditor having a specific lien on the whole estate, or on the undivided interest or estate of any of the parties, by mortgage, judgment or otherwise, and shall direct the Clerk of the Court to ascertain and report whether the shares or interests in the premises of the parties in the suit, or any of them, are subject to any general lien or incumbrance by judgment or decree, and such clerk shall forthwith cause a notice to be published once a week for four weeks in the *Canada Gazette*, and also in a newspaper, if there be one, in the County in which the estate is situate, requiring all persons having any general lien or incumbrance on the estate or on any undivided interest or share therein, by mortgage, judgment, decree, or otherwise, to produce to the said Clerk on or before a certain day to be named in such notice, proofs of all such liens and incumbrances, together with satisfactory evidence of the amount due thereon, and the Clerk shall report with all convenient speed, the names of the creditors, the nature of the incumbrances, the dates thereof, and the several amounts appearing to be due thereon, and thereupon the Court shall order the "Real Representative" to bring into Court and pay to the Clerk the whole purchase money, if the lien be on the whole estate, or the portion thereof arising from the sale of the part charged with the lien, after deducting the portion of the costs, charges and expenses to which it may be liable. 20 V. c. 65, s. 21.

How creditors having specified liens on the property and not made parties to the petition shall be called in, and their liens dealt with.

**28.** Any party entitled to a share of the estate may apply to the Court to order the part of the purchase money which he claims, to be paid to him, on affidavit shewing the amount truly due on each incumbrance, if any, the owner of such incumbrance, and his residence as far as known to such party, and also on proof of the due service of a notice on each incumbrancer, of the intention to make the application, at least ten days

Application of party entitled to a share of the estate for payment.

days previous thereto, such service to be personal, or on a grown up person at the residence of the incumbrancer, if residing in this Province, and if residing out of this Province, such service to be personal thirty days previously, or by publishing the notice once a week for four weeks in the *Canada Gazette*. 20 V. c. 65, s. 22.

Hearing and proofs, ascertaining amount of incumbrances and payment thereof.

**29.** Upon such application, and proof of notice being given, the Court shall proceed to hear the allegations and proofs of the parties, and after the amount of incumbrances has been ascertained, shall order a distribution of the moneys so brought into and remaining in Court, among the several parties having such incumbrances, according to the priority thereof respectively, and the Clerk of the Court shall procure satisfaction thereof to be acknowledged, in the form required by law, and shall cause the incumbrances to be duly satisfied or discharged of record, defraying the expenses out of the moneys payable on the share or shares which were so incumbered; but the proceedings to ascertain and value the amount of incumbrances, shall not affect or delay the paying over or investing of money to or for any party upon whose estate in the premises there does not appear to be any existing incumbrance. 20 V. c. 65, s. 23.

Case of tenant in dower, by courtesy or for life, if sale be made such tenant shall be satisfied out of proceeds, and how.

**30.** Whenever the estate of any tenant in dower or of any tenant by the courtesy or for life to the whole or to any part of the estate, has been admitted by the parties, or ascertained by the Court to be existing at the time of the order for such sale, and the person entitled to such estate has been made a party to the proceedings, the Court shall first determine whether such estate ought to be exempted from the sale, or whether the same should be sold; and in making such determination, regard shall be had to the interests of all the parties, and if a sale be ordered including such estate, all the estate and interest of every such tenant shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share, or to the whole or any part of the premises sold; and the Court shall direct the payment of such sum in gross out of the purchase money, to the person entitled to such dower or estate by courtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate. 20 V. c. 65, s. 24.

When a married woman is a party, her husband to be joined.

If her claims be for an inchoate right of dower.

**31.** When any married woman is a party to such proceedings, the petition shall be by her and her husband, and the service or notice of such petition shall be upon her and her husband, and the judgment or decree shall be binding in such case upon her and her husband, and all claiming through her or them; and if her claim be an inchoate right of dower, then in case of sale, the Court shall determine the value of such right according to the principles applicable to deferred annuities and survivorships,

survivorships, and shall order the amount of such value to be paid to her and her husband on their joint release under seal, and such order and the payment and release thereon shall be a valid and effectual bar to any right or claim of dower. 20 V. c. 65, s. 25.

**32.** The "Real Representative" shall give notice of any sale to be made by him, for the same time and in the same manner as is required by law on sales of real estate by sheriffs on execution, and the terms of such sale shall be made known at the time of the sale, and after the completion thereof he shall report the same in writing to the Court, with a description of the different parcels of land sold to each purchaser, and the price paid by him; and on the filing such report, if the sales be approved and confirmed by the Court, an order shall be made directing the "Real Representative" to execute deeds pursuant to such sales, and such deeds so executed shall be recorded in the County where the lands lie, on a memorial thereof, in the same manner as other deeds, and shall be a bar both in law and equity, against all parties interested in the premises, who have been named in such proceedings as parties, and against all unknown parties where notice was published as aforesaid, and against all persons claiming under or through them, and also against all incumbrancers, where the notice hereinbefore mentioned has been given to them. 20 V. c. 65, s. 26.

Notice of sale and report thereof.

Deeds to be made and registered if the sale be approved.

**33.** The proceeds of such sale, after deducting all costs, shall be divided among the parties whose rights and interests have been sold, in proportion to their respective rights in the premises, and the shares of such as are of full age shall be paid to them by order of Court, and in the case of infants, unknown or absent parties, shall be invested for them, in the name of the "Real Representative" and his successors in office, until lawfully claimed by them or their legal representatives; and the Court may in its discretion require all or any of the parties, before they receive any share of the moneys arising from such sale, to give security to the satisfaction of the Court, to refund the said shares, with interest thereon, in case it should thereafter appear that such party was not entitled thereto. 20 V. c. 65, s. 27.

Division of proceeds and payment or investment of shares thereof; Court may require security to be given.

**34.** All securities shall be taken in the name of the "Real Representative" in his own name of office as Surrogate Judge and Real Representative for such County and his successors in office except when directed to be taken in the name of any known party, and shall be delivered to and kept by the Clerk of the Court, who shall receive the interest and principal thereon, and shall apply or invest the same as the Court directs, and shall in each term render to the Court an account in writing under oath, of all moneys received by him and of the application thereof, and upon refusal to render such account, or any misapplication of the funds,

Securities to be deposited with Clerk of Court who shall receive and apply the money under order of Court.

he may be proceeded against and punished for embezzling the moneys of the "Real Representative" as in ordinary cases of embezzlement of a clerk or servant. 20 V. c. 65, s. 28.

Investments to be in certain debentures or stock only.

**35.** All investments of moneys arising from sales shall be made in Provincial or Consolidated Municipal Loan Fund Debentures or in Canadian Consolidated Stock. 20 V. c. 65, s. 29,—22 V. c. 84, s. 1.

Costs of proceedings, how to be apportioned and recovered or secured.

**36.** The Court shall apportion the costs of the proceedings on the petition according to the respective shares and interests of the parties known or unknown, and shall direct the same to be paid to the petitioners, and such order shall operate as a judgment for such costs, and on a copy thereof being filed in the County Registry Office where the lands lie, shall be a charge for such proportion, against the shares representing such proportion, and execution may issue thereon as in ordinary cases of costs, and such share or interest may be sold thereon and a valid title on such sale be given to the purchaser thereof, as in the cases of sales by sheriffs in execution; and if judgment be rendered against the petitioners for any cause, the Court shall adjudge costs against them, to be recovered as in cases of personal actions. 20 V. c. 65, s. 30.

Removal of proceedings by *certiorari*.

**37.** The proceedings upon petition, if commenced in a County Court, may, at any time before judgment, be removed into either of the Superior Courts of Law or Equity by *certiorari*, to be allowed by any judge of such Court, on security being given by the party applying for the *certiorari*, for the costs of the proceedings on petition, to the satisfaction of such judge; and upon any final judgment, decree or order, an appeal may be had by any of the parties interested, in the same manner and with the same consequences as in other cases of appeal, from the decision of any Court rendering such judgment, decree or order. 20 V. c. 65, s. 31.

Powers of the Court of Chancery when the interests are equitable fees simple.

**38.** Where the interests in such estate are equitable fees simple, the Court of Chancery alone shall have the same powers, upon petition or bill filed in that Court, to act thereupon, as are hereby given to the Courts of Law and Equity in other cases, and the same notices shall be given, served, published and verified, guardians of minors appointed, and the same rules apply as to parties, and the like proceedings be had, as hereinbefore directed. 20 V. c. 65, s. 32.

Statement to be published yearly by Clerks of Courts of moneys in hand and unclaimed.

**39.** In the month of January of every year, the Clerk of the Court having the custody of any bonds, mortgages or investments arising from sales of such estates, for the benefit of any unknown, absent, infant or lunatic parties, where no claim has been made on their behalf for any interest or principal of such investments during the preceding year, shall cause to be published in the *Canada Gazette*, and in one newspaper in the County

County in which such lands are situate, weekly, for the period of four weeks, a statement of the securities or investments remaining unclaimed, showing the name of the intestate party, the amount unclaimed, and the property from which the claim has arisen, and such statement shall be verified by the Clerk, and a copy thereof be filed among the records of the Court. 20 V. c. 65, s. 33.

**40.** In all cases of partition and sale of estates of joint tenants, tenants in common and coparceners, the Court of Chancery shall also possess the same jurisdiction as by the laws of England, on the tenth of August, one thousand eight hundred and fifty, were possessed by the Court of Chancery in England. 13, 14 V. c. 50, s. 4.

The Court of Chancery to possess like powers as the Court of Chancery in England.

**41.** Any partition or sale made by the Court of Chancery, shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition has been made or declared, as of any person competent to act for himself, and an office copy of any Decree, Order or Report for a partition or sale shall be sufficient evidence in all Courts, of the partition declared thereby and of the several holdings by the parties of the shares allotted to them. 13, 14 V. c. 50, s. 4.

Partition or sale by the Court of Chancery to be as valid as if by the parties.

**42.** The Judges of the Superior Courts of Common Law and the Court of Chancery, respectively, shall make such tariff of fees and rules and orders, for the proceedings on petitions at Law and in Equity, as they shall deem expedient and advisable. 20 V. c. 65, s. 34.

Courts to make tariffs, rules.

C A P . L X X X V I I .

An Act respecting Mortgages of Real Estate.

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

**1.** Any mortgagee of freehold or leasehold property, or any Assignee of such Mortgagee, may take and receive from the Mortgagor or his Assignee, a release of the equity of redemption in such property, or may purchase the same under any power of sale in his Mortgage, or any judgment or decree, without thereby merging the Mortgage debt as against any subsequent Mortgagee or registered judgment Creditor having a charge on the same property. 14, 15 V. c. 45, s. 1.

Mortgagee of freehold property, &c., may receive release, &c., without merger of debt.

**2.** In case any such prior Mortgagee or his Assignee, takes a release of the equity of redemption of the Mortgagor or his Assignee in such Mortgaged property, or purchases the same under any power of sale in his Mortgage, or any judgment or  
ccc<sup>2</sup> decree,

When prior mortgage shall take release of equity of redemption, &c.,

subsequent mortgagee not entitled to foreclose or sell property without redeeming, &c.

decree, no subsequent Mortgagee or his Assignee, or registered judgment Creditor, shall be entitled to foreclose or sell such property without redeeming or selling subject to the rights of such prior Mortgagee or his Assignee, in the same manner as if such prior Mortgagee or his Assignee had not acquired such equity of redemption. 14, 15 V. c. 45, s. 2.

Priority of mortgage and judgment under register Act not to be affected.

3. This Act shall not affect any priority or claim which any Mortgagee or judgment Creditor may have under the registry laws. 14, 15 V. c. 45, s. 3.

In proceedings for foreclosure, &c., state of mortgage account may be proved *prima facie* by statement on oath of assignee of mortgage.

4. On any proceeding for foreclosure by, or for redemption against an Assignee of a Mortgagee, the statement of the Mortgage account, under the oath of such Assignee, shall be sufficient *prima facie* evidence of the state of such account, and no affidavit or oath shall be required from the Mortgagee or any intermediate Assignee denying any payment to such Mortgagee or intermediate Assignee, unless the Mortgagor or his Assignee, or the party proceeding to redeem, denies the correctness of such statement of account by oath or affidavit. 14, 15 V. c. 45, s. 4.

Executors of deceased mortgagees may convey or release the lands mortgaged in certain cases.

5. When any person entitled to any freehold or leasehold land by way of Mortgage, has departed this life, and his executor or administrator is entitled to the money secured by the Mortgage, or has assented to a bequest thereof, or has assigned the Mortgage debt, such executor or administrator, if the Mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the said Mortgage, may convey, release and discharge the said Mortgage debt, and the legal estate in the land; and such executor or administrator shall have the same power as to any portion of the lands, on payment of some part of the Mortgage debt, or on any arrangement for exonerating the whole or any part of the Mortgaged lands without payment of money, and such conveyance, release or discharge shall be as effectual as if the same had been made by the person having the legal estate. 14, 15 V. c. 7, s. 8.

## C A P. L X X X V I I I .

An Act respecting the limitation of Actions and Suits relating to Real Property, and the time of prescription in certain cases.

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

No land or rent to be recovered

1. No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after



after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same. 4 W. 4, c. 1, s. 16.

but within twenty years after the right of action accrued to the claimant or some person whose estate he claims.

2. In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned: 4 W. 4, c. 1, s. 17.

When the right shall be deemed to have first accrued.

1. When the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in the receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; 4 W. 4, c. 1, s. 17.

On dispossession.

2. When the person claiming such land or rent claims the estate or interest of some deceased person who shall have continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; 4 W. 4, c. 1, s. 17.

On abatement or death.

3. When the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument other than a will, to him or some person through whom he claims, by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument shall have been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming, as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; 4 W. 4, c. 1, s. 17.

Alienation.

4. When the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right

In case of future estates.

right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; 4 W. 4, c. 1, s. 17.

Forfeiture or breach of condition.

5. When the person claiming such land or rent, or the person through whom he claims, shall have become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken. 4 W. 4, c. 1, s. 17.

Lands granted by the Crown, and not cultivated or improved.

3. In the case of lands granted by the Crown of which the grantee, his heirs or assigns by themselves, their servants or agents have not taken actual possession by residing upon or cultivating some portion thereof, and in case some other person not claiming to hold under such grantee has been in possession of such land, such possession having been taken while the land was in a state of nature, then unless it can be shewn that such grantee or such person claiming under him while entitled to the lands had knowledge of the same being in the actual possession of such other person, the lapse of twenty years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring such action shall be deemed to have accrued from the time that such knowledge was obtained. 4 W. 4, c. 1, s. 17.

Where advantage of forfeiture is not taken by remainder man, he shall have a new right when his estate comes into possession.

4. When any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened. 4 W. 4, c. 1, s. 17.

Reversioner to have a new right.

5. The right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent. 4 W. 4, c. 1, s. 17.

**6.** For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. 4 W. 4, c. 1, s. 18.

An administrator to claim as if he obtained the estate without interval after death of deceased.

**7.** When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. 4 W. 4, c. 1, s. 19.

In the case of a tenant at Will, the right shall be deemed to have accrued at the end of one year.

**8.** No mortgagor or *cestui que* trust shall be deemed to be a tenant at will within the meaning of the last clause of this Act to his mortgagee or trustee. 4 W. 4, c. 1, s. 19.

Case of mortgagor or *cestui que* trust.

**9.** When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received, (which shall last happen.) 4 W. 4, c. 1, s. 20.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent.

**10.** When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of four dollars or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion, immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming, as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled. 4 W. 4, c. 1, s. 21.

When rent amounting to \$4 reserved by a lease in writing has been wrongfully received, the right to accrue at the time the rent was wrongfully received.

A mere entry not to be deemed possession.

**11.** No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon. 4 W. 4, c. 1, s. 22.

No right to be preserved by continual claim.

**12.** No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. 4 W. 4, c. 1, s. 23.

Possession of one coparcener, &c., not to be the possession of the others.

**13.** When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. 4 W. 4, c. 1, s. 24.

Possession of a younger brother, &c., not to be the possession of the heir.

**14.** When a younger brother or other relation of the person entitled, as heir to the possession, or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir. 4 W. 4, c. 1, s. 25.

Acknowledgment in writing given to the person entitled or his agent, to be equivalent to possession or receipt of rent.

**15.** When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or to his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 4 W. 4, c. 1, s. 26.

At the end of the period of limitation the right of the party out of possession to be extinguished.

**16.** At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action or suit respectively, might have been made or brought within such period, shall be extinguished. 4 W. 4, c. 1, s. 37.

Receipt of rent to be deemed receipt of profits.

**17.** The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed

to

to be the receipt of the profits of the land for the purposes of this Act. 4 W. 4, c. 1, s. 38.

#### ARREARS OF DOWER, RENT AND INTEREST.

**18.** No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit. 4 W. 4, c. 1, s. 44.

No arrears of dower to be recovered for more than six years.

**19.** No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. 4 W. 4, c. 1, s. 45.

No arrears of rent or interest to be recovered for more than six years.

**20.** Where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, as aforesaid, although such time may have exceeded the said term of six years. 4 W. 4, c. 1, s. 45.

Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession.

#### MORTGAGES.

**21.** When a mortgagee has obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the mean time an acknowledgment of the title of the mortgagor, or of his right of redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 4 W. 4, c. 1, s. 36.

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession, or from the last written acknowledgment.

**22.** In case there be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, the acknowledgment mentioned in the last section, if

Such acknowledgment to one of several

mortgagors to be sufficient.

if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. 4 W. 4, c. 1, s. 36.

If more than one mortgagee, the acknowledgment to bind only the one who gives it.

**23.** In case there be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment mentioned in the twenty-first section, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land or rent, by, from or under, him or them, and any person or persons entitled to any estate or interest, to take effect after or in defeasance of his or their estate or interest, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land or rent; and when such of the mortgagees or persons aforesaid who have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent, on payment with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage. 4 W. 4, c. 1, s. 36.

Money charged upon land and legacies, to be deemed satisfied at the end of 20 years if there shall be no interest paid or acknowledgment in writing in the mean time.

**24.** No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought, but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given. 4 W. 4, c. 1, s. 43.

Mortgagee may make entry or bring suit at any time within 20 years from the last payment.

**25.** Any person entitled to or claiming under a mortgage of land, may make an entry or bring an action at law or suit in equity to recover such land, at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry, or bring such action or suit in equity, shall have first accrued. 16 V. c. 121, s. 1.

**26.** The last preceding section of this Act shall not be held to affect any title, possession, interest or case which was in litigation, on the twenty-third day of May, one thousand eight hundred and fifty-three. 16 V. c. 121, s. 1.

As to existing suits, &c.

**27.** Whereas the law of England was at any early period introduced into Upper Canada, and continued to be the rule of decision in all matters of controversy relative to property and civil rights, while at the same time, from the want of an equitable jurisdiction, until the fourth day of March, one thousand eight hundred and thirty-seven, it was not in the power of mortgagees to foreclose, and mortgagors out of possession were unable to avail themselves of their equity of redemption, and in consequence of the want of these remedies the rights of the respective parties, or of their heirs, executors, administrators or assigns, may be attended with peculiar equitable considerations, as well in regard to compensation for improvements, as in respect to the right to redeem, depending on the circumstances of each case, and a strict application of the rules established in England might be attended with injustice; the Court shall have authority in every case of mortgage, where, before the said fourth day of March, one thousand eight hundred and thirty-seven, the estate had become absolute in law, by failure in performing the condition, to make such decree in respect to foreclosure or redemption, and with regard to compensation for improvements, and generally with respect to the rights and claims of the mortgagor and mortgagee, and their respective heirs, executors, administrators or assigns, as may appear to the Court just and reasonable under all the circumstances of the case, subject however to appeal by either party. 7 W 4, c. 2, s. 11.

The case of mortgages prior to the establishment of the Court of Chancery provided for.

#### BAR OF ESTATES TAIL BY WANT OF ENTRY.

**28.** When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same, shall have been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. 10, 11 V. c. 5, s. 9.

Act of limitation to be in certain cases valid against the tenant in tail and against those whose rights he could have barred.

**29.** When a tenant in tail of any land or rent entitled to recover the same shall have died before the expiration of the period limited by this Act, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. 10, 11 V. c. 5, s. 10.

Term elapsed in such cases during the life of the tenant to be computed against those whose rights he could have barred.

Effect of an assurance by a tenant in tail and possession for 20 years in certain cases.

**30.** When a tenant in tail of any land or rent has made an assurance thereof, which shall not operate to bar an estate to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the execution thereof or at any time afterwards, be in possession or in receipt of the profits of such land or in the receipt of such rent, and the same person or any other person whatsoever, (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail,) shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance if it had been executed by such tenant in tail or the person who would have been entitled to his estate tail, if such assurance had not been executed, would without the consent of any other person have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years, such assurance shall be and be deemed to have been effectual, as against any person claiming any estate, interest or right to take effect after or in defeasance of such estate tail. 10, 11 V. c. 5, s. 11.

#### LIMITATION OF SUITS IN EQUITY.

No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.

**31.** No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress, or brought an action to recover the same, respectively, if he had been entitled at law to such estate, interest or right, in or to the same as he shall claim therein in equity. 4 W. 4, c. 1, s. 32.

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

**32.** When any land or rent shall be vested in a trustee upon any express trust, the right of the *Cestui que* trust, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at, and not before, the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. 4 W. 4, c. 1, s. 33.

In cases of fraud no time shall run whilst the fraud remains concealed.

**33.** In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered. 4 W. 4, c. 1, s. 34.

Unless in the case of *bouâ*

**34.** Nothing in the last preceding clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery



recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud against any *bonâ fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed. 4 W. 4, c. 1, s. 34.

**35.** Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act. 4 W. 4, c. 1, s. 35.

#### PREScription IN CASES OF EASEMENTS.

**36.** No claim which may be lawfully made at the Common Law by custom, prescription or grant to any profit or benefit to be taken and enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs or Successors, or of any Ecclesiastical or Lay person or body corporate, except such matters or things as are hereinafter specially provided for, and except rent and services, shall, where such profit or benefit shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. 10, 11 V. c. 5, s. 1.

**37.** No claim which may lawfully be made at the Common Law by custom, prescription or grant to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs or Successors, or being the property of any Ecclesiastical or Lay person or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to the period of twenty years, but nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed

*bonâ fide* purchaser for value without notice.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.

Certain claims not to be defeated by shewing only that the enjoyment began more than 30 years ago.

Indefeasible if enjoyed over 60 years.

Right of way or water not to be defeated by shewing only that it begun more than 20 years ago.

But otherwise if 40 years.

deemed

deemed absolute and indefeasible unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. 10, 11 V. c. 5, s. 2.

Access and use of light enjoyed for 20 years indefeasible.

**38.** When the access and use of light to or for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. 10, 11 V. c. 5, s. 3.

Exception.

How the terms shall be calculated and what acts only shall be an interruption to the prescription.

**39.** Each of the respective periods of years in the last three preceding sections mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate, shall have been or shall be brought into question; and no act or other matter shall be deemed an interruption within the meaning of the said three sections, unless the same shall have been, or shall be, submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made. 10, 11 V. c. 5, s. 4.

What allegation by the party claiming shall be sufficient.

**40.** In all actions upon the case and other pleadings wherein the party claiming may now by law allege his right generally without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in the four next preceding sections of this Act mentioned and provided which shall be applicable to the case shall be admissible in evidence to sustain or rebut such allegation; and in all pleadings to actions of trespass, and in all other pleadings wherein it would formerly have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee as was usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation. 10, 11 V. c. 5, s. 5.

What proof admitted for or against such allegation.

No presumption admissible on proof of enjoyment for

**41.** In the several cases mentioned in and provided for by this Act, of claims to lights, ways, water courses or other easements, no presumption shall be allowed or made in favor

or

or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim. 10, 11 V. c. 5, s. 6.

a less period than prescribed by this Act.

#### DISABILITIES AND EXCEPTIONS.

##### 1.—*In cases of Easements.*

**42.** The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in the thirty-sixth to the forty-first preceding sections of this Act, may be an infant, idiot, *non compos mentis*, *feme-covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the period hereinbefore mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. 10, 11 V. c. 5, s. 6.

Time during which a party could not act not to be computed against him.

**43.** When any land or water upon, over or from which any such way or other easement, water-course or run of water shall have been or shall be enjoyed or derived, or may be held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end, or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof. 10, 11 V. c. 5, s. 7.

Terms of years, &c., excluded from computation in certain cases.

**44.** Nothing in the thirty-sixth to the forty-first sections of this Act shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement or water-course or other matter shall lie and be situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by proper authority. 10, 11 V. c. 5, s. 8.

Exception as to lands of the Crown not duly surveyed and laid out.

##### 2.—*In cases of Land or Rent.*

**45.** If at the time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, as hereinbefore mentioned, such person shall have been an infant under coverture, an idiot, lunatic, of unsound mind or absent from Upper Canada, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land

Persons under disability of infancy, lunacy, coverture or absence from the Province, and their representatives to be allowed ten years from the termination of

their disability  
or death.

land or rent, at any time within ten years next after the time at which the person to whom such right shall have first accrued, as aforesaid, shall have ceased to be under any such disability, or shall have died, (which shall have first happened.) 4 W. 4, c. 1, s. 28.

But no action,  
&c., shall be  
brought forty  
years after the  
right of action  
accrued.

**46.** But no entry, distress or action, shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired. 4 W. 4, c. 1, s. 29.

No further time  
to be allowed  
for a succession  
of disabilities.

**47.** When any person shall be under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person. 4 W. 4, c. 1, s. 30.

When the right  
to an estate in  
possession is  
barred the right  
of the same  
persons to fu-  
ture estates  
shall also be  
barred.

**48.** When the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession, shall have been barred by the determination of the period, hereinbefore limited, which shall be applicable in such case, and such person shall, at any time during the said period, have been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action, shall be made or brought by such person, or any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the mean time such land or rent shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession. 4 W. 4, c. 1, s. 31.

#### INTERPRETATION CLAUSE.

Interpretation.

**49.** The words and expressions in this Act mentioned, which in their ordinary signification have a more confined or a different

different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say: the word "land," shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, (and to chattels and other personal property transmissible to heirs,) and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency; and the word "assurance," shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent," shall extend to all annuities and periodical sums of money charged upon or payable out of any land. 4 W. 4, c. 1, s. 59.

50. The eighteenth section of the Interpretation Act of the Upper Canada Consolidated Statutes, is not to apply to this Act, unless the context requires a construction in accordance therewith. Section 18 of Cap. 2 not to apply to this Act.

## C A P . L X X X I X .

An Act respecting the Registration of Deeds, Wills, Judgments, Decrees in Chancery and other Instruments.

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

1. In the construction of this Act, the word "Instrument," shall include every deed, conveyance, assurance and other instrument whereby lands or real estate may be transferred, disposed of, or affected, the word "Land" shall include lands, tenements, hereditaments and real estate, the word "Will" shall include every devise whereby lands are disposed of, or affected, the word "Affidavit" shall include Affirmation, and the word "County" shall include a City, Junior County, and Riding having a separate Registry Office established therein. Interpretation clause. 9 V. c. 34, s. 10.

2. There shall be a separate Registry Office in every County and Union of Counties in Upper Canada, wherein at present a separate Registry Office is established, and whenever any County is separated from a Union of Counties, or a new County is formed, there shall be a separate Registry Office established A Registry Office to be kept in each County in Upper Canada.

established therein, which office shall be kept in the County Town in like manner as in other Counties. 9 V. c. 34, s. 3,—16 V. c. 187, ss. 4, 11,—See 14, 15 V. c. 5, s. 1, *latter part*, s. 2,—22 V. c. 99, s. 50.

Governor may, by proclamation, establish a Registry Office in any City, Junior County or Riding of a County :

**3.** In case the Governor deems the circumstances of any City, or of any Junior County of an Union of Counties, or Riding of a County or Counties not set apart for Judicial or Municipal purposes, such as to call for or render expedient and advisable the establishment therein of a separate Registry Office, he may from time to time by an Order in Council cause to be issued a Proclamation under the Great Seal of this Province, and thereby set apart and establish a Registry Office for such City or Junior County or Riding of a County or Counties, and in the case of a Junior County or Riding of a County or Counties, name some place where the Office of the Registrar shall be held until the dissolution of such Union of Counties or the erection of such Riding into a separate County and the fixing therein of a County Town, when such Registry Office shall be removed to and kept in such County Town. 22 V. c. 95, s. 1.

And appoint the place thereof in a Junior County or Riding.

All Acts in force respecting Registry Offices, to apply to those established under this Act.

**4.** Upon the issuing of any such Proclamation the provisions of this Act, in reference to the establishment of Registry Offices, or in connection therewith, and in reference to the registration of Deeds or other instruments affecting real estate shall, except in so far as the same may be inconsistent with the provisions of the last preceding section of this Act, apply to Registry Offices, so set apart and established, and the word "County" in this Act shall, for the purposes of this and the last preceding section of this Act, mean and include a City, as well as a Junior County or a Riding of a County or Counties for which a separate Registry Office may be so established; and the duties imposed upon Municipal Councils shall, in the case of such Junior County or Riding, be discharged by the Municipal Council of the Counties of which such Junior County or Riding forms part, and in the case of a City by the Municipal Council of such City. 22 V. c. 95, s. 2.

Offices to be kept by registrars.

**5.** Every Registry Office shall be kept by a Registrar appointed by the Governor. 9 V. c. 34, s. 3.

If office inconveniently situated, Governor may remove it.

**6.** Whenever in any County or Union of Counties the Registry Office appears to the Governor to be inconveniently situated, he may by Proclamation order the same to be removed to any other place in the County. 9 V. c. 34, s. 30,—22 V. c. 99, s. 50.

In what offices Deeds, &c., to be registered.

**7.** Until the establishment of additional Registry Offices, all Deeds, Wills and Memorials, Instruments, Judgments, Decrees and proceedings, for the Registry of which provision is by law made, may be registered in the present Offices, and with the same effect as at present. 16 V. c. 187, s. 4.

**8.** For the safe keeping of all books, records and other papers belonging to the Office of Registrar, the Council, in each and every County, shall provide, at the expense of the County, not exceeding one thousand dollars, safe and proper Fire proof Offices and Vaults, at the place where the Registry Office is to be kept, and the Registry Office shall from thenceforth be kept there. 9 V. c. 34, s. 19.

Fire proof offices and vaults to be provided for Registry offices.

#### REGISTRAR.

**9.** Every Registrar in Office when this Act takes effect, is hereby continued in his Office, subject to the laws respecting the same.

Registrars continued in office.

**10.** As occasion requires, the Governor shall from time to time, by commission under the Great Seal of the Province, appoint a fit person to the office of Registrar, and shall in like manner fill up any vacancy occurring by the death, resignation, removal or forfeiture of office by any Registrar. 9 V. c. 34, s. 3.

A registrar to be appointed by the Governor under the Great Seal.

**11.** In the Commission of every Registrar a convenient place shall be named where the Registry Office is to be held, until otherwise ordered. 9 V. c. 34, ss. 3, 4. See 22 V. c. 95, s. 50.

Place where office kept to be named in the commission.

**12.** Every Registrar, before he enters upon the execution of his office, shall be sworn before two or more of the Justices of the Peace for the County, in these words :

Registrar to take an oath of office.

“ You swear that you will well, truly and faithfully perform  
 “ and execute the office and duty that is directed and required  
 “ by any Act of the Legislature of this Province, in registering  
 “ Deeds, Memorials of Deeds, Conveyances, Wills and Judgments,  
 “ within the County of \_\_\_\_\_ so long as you  
 “ continue in the said office, and that you have not given or  
 “ promised, directly nor indirectly, nor authorized any person  
 “ to give any money, gratuity or reward whatsoever, for procuring  
 “ or obtaining the said office for you. So help you God.”  
 9 V. c. 34, s. 25.

Form.

**13.** Before any Registrar is sworn into Office, such Registrar and two or more sufficient sureties shall enter into a Recognizance in writing under their hands and seals to Her Majesty, in the penal sum of four thousand dollars, which sureties shall be approved of by two or more Justices of the Peace for the County, and such Recognizance shall be taken by the same Justices, and shall be conditioned for the true and faithful performance by the said Registrar of his duty in the execution of his office, in all things directed and required by law, and shall, by the said Justices within six months after the date thereof, be transmitted into the Court of Queen's Bench, to remain

Registrars to enter into a recognizance with sureties.

remain amongst the Records of the said Court. 9 V. c. 34, s. 26.

When in case of death of Registrar, recognition to be void.

**14.** In case of the death or resignation of a Registrar, and in case within the space of one year thereafter no misconduct appears to have been committed by him in his Office, then at the end of such year the Official recognition hereinbefore required shall be void. 9 V. c. 34, s. 28.

Registrar may nominate a Deputy.

**15.** The Registrar may nominate a Deputy in his office, and may remove him, and appoint another in his place, whenever he thinks it necessary; and in case of the death, resignation, removal or forfeiture of office of the Registrar, the Deputy Registrar shall do and perform all and every act, matter and thing necessary for the due execution of the said office, until a new appointment be made. 9 V. c. 34, ss. 5, 26.

Deputies to be sworn.

**16.** Every Deputy, before he enters on the execution of his office, shall take the same oath appointed to be taken by the Registrar, before two or more Justices of the Peace for the County. 9 V. c. 34, s. 26.

#### INSTRUMENTS AND PROCEEDINGS THAT MAY BE REGISTERED.

What Deeds and Instruments may be registered.

**17.** The following instruments and proceedings may be registered at the election of the party concerned, viz :

Deeds.

1. Deeds, Conveyances and Assurances of or in any wise affecting in law or equity any lands in Upper Canada, executed after such lands have been granted by Letters Patent; 9 V. c. 34, s. 6.

Powers of Attorney.

2. Powers of Attorney under which any such Deed, Conveyance or Assurance has been executed; 16 V. c. 187, s. 7,—18 V. c. 127, s. 5.

Wills.

3. Wills and Devises of or affecting any such lands, the testator being dead; 9 V. c. 34, s. 6.

Judgments.

4. Judgments entered up in a suit or action in any Court of Record, and when exceeding forty dollars in any Division Court in Upper Canada; 9 V. c. 34, s. 13,—19 V. c. 90, s. 7,—13, 14 V. c. 53, s. 58.

Decrees.

5. Decrees of foreclosure and all other decrees affecting any title or interest in land, also decrees or orders of the Court of Chancery, or of a County Court on its equity side, for the payment of money, costs or charges; 18 V. c. 127, s. 4,—20 V. c. 56, s. 10.

Bill in Chancery.

6. The filing of a Bill or taking of proceedings in Chancery, or of a County Court on its equity side, whereby any title or interest



interest in lands in Upper Canada may be brought in question ;  
18 V. c. 127, s. 3.

7. Satisfaction of judgments and mortgages ; 9 V. c. 34, ss. 23, 24,—10, 11 V. c. 16, ss. 1, 2,—20 V. c. 57, s. 20. Satisfaction of judgments and mortgages.

8. Discharge of Decrees or Orders of the Court of Chancery, or of a County Court on its equity side, for the payment of money, costs, charges or expenses ; 20 V. c. 56, *latter part* of s. 10. Discharges of decrees or orders in chancery.

9. Every rule or order of the Court of Queen's Bench or Common Pleas or of a Judge thereof directing payment of money other than costs, and every rule or order of a County Court directing such payment. 22 V. c. 33, s. 17. (1859.) All rules and orders directing the payment of money may be registered.

#### HOW REGISTERED.

18. Deeds, Conveyances, Assurances, Powers of Attorney and Wills are to be registered through memorials thereof ; and Sheriff's Deeds of lands sold for taxes, Judgments, Decrees and Proceedings in Chancery, or of a County Court on its equity side, rules or orders of the Courts of Queen's Bench or Common Pleas, or of a Judge thereof, and rules or orders of a County Court respectively directing payment of money other than costs, through certificates thereof. 9 V. c. 34, s. 7,—16 V. c. 182, ss. 65, 66,—6 G. 4, c. 7, ss. 19, 20,—18 V. c. 127, ss. 3, 4,—22 V. c. 33, s. 17, (1859) How Deeds registered.  
How Sheriff's Deeds and other Instruments registered.

#### REQUISITES OF A MEMORIAL TO BE REGISTERED.

19. Every Memorial shall be in writing or be partly printed and partly written : 9 V. 34, s. 7. Memorial to be in writing, and contain as follows—

1. It shall contain the date of the Instrument or Will, the names and additions of all the parties to the instrument or of the Devisor, Testator or Testatrix of the will as set forth in the Instrument or Will ; 9 V. c. 34, s. 8. Date, &c.

2. The names and additions of all the witnesses to the Instrument or Will and of their places of abode respectively ; 9 V. c. 34, s. 8. Names of witnesses.

3. It shall mention the lands contained in the Instrument or Will, and the City, Town, Township or Place in the County or Riding where the lands are situate in the manner in which the same are described in the Instrument or Will, or to the same effect. 9 V. c. 34, s. 8,—16 V. c. 187, s. 5. Description of land as in the Deed.

20. The Memorial of an instrument other than a power of Attorney, shall be under the hand and seal of the grantor or of one or more of the grantors, or of the grantee or of one or more of the grantees, his or their heirs, executors or administrators, guardians Memorial of Deed, &c., to be under the hand of the grantor or

grantee, and attested by two witnesses, &c.

guardians or trustees, and shall be attested by two witnesses, one of whom shall be also a witness to the execution of the Instrument. 9 V. c. 34, ss. 7, 8.

Memorial of power of Attorney to be under the hand of the constituent or of the constituted.

**21.** The Memorial of a power of Attorney shall be under the hand and seal of one or more of the constituents or of the constituted, and shall be attested by two witnesses, one of whom shall be also a witness to the power of Attorney. 16 V. c. 187, s. 7,—18 V. c. 127, s. 5.

Memorials of Will to be under the hand of one of the devisees.

**22.** The Memorial of a will shall be under the hand and seal of the Devisee, or of one or more of the Devisees, his or their executors, administrators, guardians or trustees, and shall be attested by two witnesses, one of whom in the case of wills made and published out of Upper Canada, shall be also a witness to the Will. 9 V. c. 34, ss. 7, 8, 10.

#### MODE OF PROOF FOR REGISTRATION.

Instruments or Wills, how proved.

**23.** In the case of an Instrument or Will, one of the witnesses to the memorial who is also a witness to the instrument, and in the case of a Will, one of the witnesses to the memorial of such Will or Probate thereof, or if the Will be made or published out of Upper Canada, then to the Will and Memorial, shall make an affidavit wherein he shall, in the case of an instrument, swear to the execution of the same and of the memorial thereof, and the place of such execution, and in the case of a Will, to the execution of the memorial of such Will or Probate, or to the execution of the Will and Memorial, (*as the case may be.*) 9 V. c. 34, s. 10.

Deeds, &c., executed within Upper Canada, on what evidence to be registered.

**24.** When the instrument or will has been executed or made and published within Upper Canada, the affidavit may be sworn before the Registrar or Deputy Registrar of the County in which the lands lie, or before a Judge of any of the Superior Courts of Law or Equity, or any Judge of a County Court within his County in Upper Canada, or before a Commissioner authorized by any of such Superior Courts to take affidavits; and when the Instrument or Will has been executed or made and published without Upper Canada, the affidavit may be sworn before any of the persons aforesaid, or before the Mayor or Chief Magistrate of any City, Borough or Town corporate in Great Britain or Ireland, and be certified under the Common Seal of such City, Borough or Town corporate, or before a Judge of any of the Superior Courts or Circuit Courts in Lower Canada, or before a Commissioner authorized by any of the Superior Courts of Common Law for Upper Canada, to take affidavits in Lower Canada, or before a Judge of the Supreme Court of any Colony belonging to the Crown of Great Britain, or before the Mayor of any City, Borough or Town corporate in any foreign Country, or any Consul or Vice Consul of Her Majesty resident therein. 9 V. c. 34, ss. 7, 10,—18 V. c. 127, s. 5,—12 V. c. 77, s. 2,—19 V. c. 88, s. 2,—16 V. c. 187, s. 6.

If executed abroad.

**25.** Where the Proof is made without Upper Canada, it may be either by affidavit or by a declaration, where by the law a declaration in writing may be substituted for an affidavit. If without Upper Canada, by affidavit or declaration. 9 V. c. 34, s. 10,—18 V. c. 127, s. 5.

**26.** But no memorial of any Instrument, or of a Will, or the Probate thereof, made and executed or published out of Upper Canada, shall be registered unless the Instrument or the Will, or the Probate thereof, be identified as that referred to in the affidavit or declaration, by a certificate indorsed on the Deed, Conveyance or Will, or Probate thereof, under the hand of the person before whom the affidavit or declaration is made. And how identified. 9 V. c. 34, s. 10.

**27.** When the witnesses to any Deed or Will, have died, or are permanently resident out of this Province, the Grantee, his Heirs, Executors, Administrators, Guardians or Trustees, or their Assignee, may make proof before the Justices in General Quarter Sessions assembled in any County of Upper Canada, of the execution of such Deed or Will, and upon a certificate, signed by the Chairman and witnessed by the Clerk of the Peace, that the majority of the Magistrates present in such Sessions, are satisfied by the proof adduced of the due execution of the said Deed or Will, the Registrar or his Deputy shall record such Deed or Will, and certificate, and shall certify the same. Cases in which the witnesses have died or reside permanently out of the Province provided for. 9 V. c. 34, s. 11.

**28.** The Seal of any Corporation affixed to any Deed, Memorial or Instrument in writing, shall of itself be sufficient evidence of the due execution of such Deed, Memorial or Instrument in writing by such Corporation, for all purposes respecting the registering thereof, and no further evidence or verification of such execution shall be required for the purpose of registry. Seal of a Corporation to be sufficient evidence to justify the registration of their Deed. 9 V. c. 34, s. 29.

**29.** Any Letter or Power of Attorney from the grantor or grantors under which an Instrument is executed may be registered in the same manner as a Deed may be registered. Memorials of letters of Attorney may be registered, and how. 16 V. c. 187, s. 7,—18 V. c. 127, s. 5.

**30.** The Registrar or Deputy Registrar of the County in which the lands are situate, shall, upon the production to him of the Instrument, or Will or probate thereof, and of the Memorial and Affidavit or declaration of execution, enter the memorial in the Register Book, and shall file the memorial and affidavit or declaration of execution, and immediately after such entry shall endorse a certificate on every such Instrument or Will, or Probate thereof, and shall therein mention the certain day, hour and time on which such memorial is entered and registered, expressing also in what book, page and number the same has been entered, and the said Registrar or his Deputy shall sign the said certificate when so endorsed, which certificate shall be taken The Registrar to register Instruments and Wills on production thereof with memorials thereof duly proved.

taken and allowed as evidence of such respective registries in all Courts of Record and in all other Courts in Upper Canada. 9 V. c. 34, s. 8.

Register books and memorials to be numbered and date of registry noted.

**31.** Every page of the Register Book, and every memorial entered therein shall be numbered, and the day of the month and the year and hour or time of the day when registered, shall be entered in the margins of the said Register Books and of the memorial. 9 V. c. 34, s. 8.

The Registrar to keep alphabetical list, &c., with reference to the numbers of the memorials.

**32.** Every Registrar shall keep an alphabetical calendar of all Cities, Towns, Townships and places within the County or Counties, Riding or Ridings, with reference to the number of every memorial that concerns the lands, tenements or hereditaments in such Townships or places respectively, and of the names of the parties mentioned in the memorials; and the said Registrar shall enter the said memorials in the same order in which they respectively come to his hands. 9 V. c. 34, s. 8.

And to enter Memorials in the same order as received.

When a Deed relates to lands in several localities in the same county, one memorial shall be sufficient.

**33.** When any Deed, Will or other Instrument, embraces different lots or parcels of land situate in different localities in the same County, it shall only be necessary to furnish one Memorial of such Deed, Will or other Instrument, and such Memorial shall be copied into the Registry Book for the City, Town, Township or place in which the different parcels or lots of land are situate, in the same manner and to the same extent only as if a separate Memorial had been furnished in relation to the lands situate within each such City, Town, Township or place respectively, and the Registrar shall make the necessary Entries and Certificates accordingly. 16 V. c. 187, s. 5.

Registrar to register Sheriff's Deeds of land sold for taxes before 1st Jan., 1851.

**34.** A Sheriff's Deed made under authority of Law, of land sold for taxes before the first day of January one thousand eight hundred and fifty-one, may be registered upon the certificate of the Sheriff under his hand and seal of office, stating the name of the purchaser, the sum paid, the number of acres sold, the lot or tract of which they form a part, and the date of the Sheriff's Deed, and such certificate may comprise a Schedule of any number of such Deeds, and the Registrar shall receive such certificate from the Sheriff in place of a memorial, and shall, on production of the Sheriff's Deed, enter on record a transcript thereof which shall be deemed sufficient registry. 16 V. c. 182 s. 66,—6 G. 4. c. 7, s. 19.

On what evidence Sheriff's Deeds for land sold for taxes since the 1st Jan., 1851, to be registered.

**35.** A Sheriff's Deed of land sold for taxes after the last above mentioned day, may be registered upon the like certificate given by the Sheriff to the purchaser signed and sealed by the Sheriff as above provided, and containing the above mentioned particulars, which certificate shall be deemed a memorial, and the Registrar upon the production of such certificate and the Deed, shall register the same and grant a certificate of the registry. 16 V. c. 182, s. 65.

**36.** When any Judgment has been entered up in any suit or action in a Court of record in Upper Canada, or any rule or order made by the Court of Queen's Bench or Common Pleas, or by a Judge thereof, or by a County Court directing the payment of money other than costs, the Plaintiff or Defendant in such Action, or the party in whose favor such rule or order has been made, or his Attorney, may obtain a certificate from the Clerk of the Court in which such Judgment, rule or order has been obtained, signed by the Clerk and under the seal of the Court in the form following :

Certificate of judgment to bind lands, how obtained.

“ In the Court of (as the case may be,) I hereby certify that Judgment was entered up between A. B., Plaintiff, and C. D., Defendant, on the \_\_\_\_\_ day of \_\_\_\_\_ in a plea of \_\_\_\_\_ for \_\_\_\_\_ dollars, debt (or damages) \_\_\_\_\_ and \_\_\_\_\_ dollars, costs, or that a rule or order was made between A. B., Plaintiff, and C. D., Defendant, (stating the names of the parties and the amount and subject matter of the order, as the case may be.)

“ E. F., Clerk.”

And for such certificate the Clerk may charge fifty cents. 9 V. c. 34, s. 13,—22 V. c. 33, s. 17, (1859.)

**37.** The party obtaining such certificate, or his Attorney, may carry the said certificate to the Registrar or Deputy Registrar of the County wherein any lands lie which belong to the party against whom such Judgment has been entered, or Rule or Order made, and such Registrar or Deputy upon the receipt thereof, signed and sealed as aforesaid, shall register the same; and the registry thereof shall be deemed a registry of the judgment, rule or order, for the purposes of this Act. 9 V. c. 34, ss. 13, 7,—13, 14 V. c. 63, s. 7,—22 V. c. 33, s. 17. (1859.)

Such certificate may be registered—effect of such registration.

**38.** When any Deputy Clerk of the Crown or the Clerk of a County Court has entered up any Judgment in either of the Superior Courts of Common Law or in any County Court (as the case may be,) or has issued any Rule or Order aforesaid, he may give to the party on whose behalf the same has been entered or issued, or to his legal representative, a certificate signed by him of such Judgment, Rule or Order, containing the like particulars as are required in certificates of Judgments, Rules or Orders given by the Clerks of the Crown and Pleas, which certificate may be registered in the registry office of any County in Upper Canada, and when registered shall have the like force and effect in binding and operating as a charge upon lands of the judgment debtor in such County as certificates of Judgments, Rules or Orders granted by either of the Clerks of the Crown and Pleas at Toronto. 19 V. c. 90, s. 7,—19 V. c. 43, s. 15,—22 V. c. 33, s. 17, (1859.)

Certificates of Deputy Clerks of the Crown and Clerks of County Courts may be registered in any County.

**39.** Any party who has obtained a Judgment in any Division Court exceeding forty dollars may, at any time after fourteen days

Certificates of Clerks of Di-

vision Courts  
to have the  
same effect.

days from the day of giving judgment, obtain a certificate of such judgment from the Clerk of such Division Court, in the form used in the Superior Courts as near as circumstances will permit, which certificate shall, on the request of the party obtaining the same, be registered in the same manner, and on payment of the same fees to the Registrar as are paid upon certificates of the Judgments of the Superior Courts, and such registry shall bind lands to the same extent as they would have been bound had the judgment been rendered in any of the Superior Courts. 13, 14 V. c. 53, s. 58.

How decrees  
of foreclosure,  
&c., shall be  
registered.

**40.** Every decree of foreclosure, and every other decree in the Court of Chancery or in any County Court affecting any title or interest in land, may, at the instance of any person, be registered in the Registry Office of the County where the land is situate, on a certificate given by the Registrar or Clerk of the Court, stating the substance and effect of such decree, and the lands affected thereby. 18 V. c. 127, s. 4.

Registration of  
decree or order  
for payment  
of money in  
order to bind  
lands.

**41.** Every decree or order of the Court of Chancery, or of a County Court on its equity side, ordering money, costs, charges or expenses to be paid by Instalments or otherwise to any person or to be paid into the Court, or to the credit of a cause in the Court or otherwise, may be registered in the Registry Office of the County, on the certificate of the Registrar, Deputy Registrar or Clerk of the Court, stating the title of the cause or matter in which the decree or order has been made, the date of the decree or order and the amount of money thereby, or by any report made in pursuance thereof, ordered or decreed to be paid, and such certificate shall be entered and recorded by the County Registrar in the same books and in the same manner as certificates of Judgments at law. 20 V. c. 56, s. 10.

Court may con-  
fine the effect  
of the registra-  
tion to specified  
property prov-  
ed to be suffi-  
cient.

**42.** The Court of Chancery or a County Court on its equity side, upon being satisfied by proof that some specified part of the real estate of a person ordered by a decree or order of the Court to pay any sum or sums of money, will be sufficient security for the payment of such sum or sums of money, may direct either in the same decree or order or by a subsequent decree or order, that the charge created by any such decree or order shall be confined to such part of the real estate of the person or persons so liable, and that the residue of the real estate of such person shall be unaffected by such registration, and in case such restriction is contained in the original decree or order, the Registrar's, Deputy Registrar's or Clerk's said certificate shall state the same, and if such restriction is contained in some subsequent order, the Registrar's or Deputy Registrar's or Clerk's certificate thereof may be registered by either party. 20 V. c. 56, s. 11.

What only  
shall be deemed

**43.** The filing of any bill, or the taking of any proceeding, in the Court of Chancery in Upper Canada, or County Court

Court on its equity side, in which bill or proceeding any title or interest in lands is brought in question, shall not be deemed notice of such bill or proceeding to any person not being a party to such bill or proceeding, unless and until a certificate given by the Registrar, Deputy Registrar or Clerk of the Court to some person demanding the same, in the form mentioned in this section, has been registered in the Registry Office of the County in which are situate the lands of which the title or interest is questioned in such bill or proceeding :

notice of proceedings in Chancery by which title or interest in lands shall be called in question.

## FORM.

" I certify that in a suit or proceeding in Chancery, or in the County Court of \_\_\_\_\_ on its equity side (*as the case may be,*) between A. B. and C. D., some title or interest is called in question in the following lands, (*stating them.*)"

But no such certificate shall be required to be registered in any suit or proceeding for foreclosure of a registered mortgage. 18 V. c. 127, s. 3.

As to suit for foreclosure.

## EFFECT OF REGISTERING, OR OMITTING TO REGISTER.

44. After any memorial has been registered, as in this Act provided, every Deed and Conveyance made and executed of the lands, tenements or hereditaments, or any part thereof, comprised or contained in such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial thereof be registered in the manner hereby directed, before the registering of the memorial of the Deed or Conveyance under which such subsequent purchaser or mortgagee may claim; and every devise by Will of the lands, tenements or hereditaments or of any part thereof, contained in any memorial registered as aforesaid, made and published after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such Will be registered in the manner herein directed; and a memorial of any further mortgage (whether legal or equitable) to a first mortgagee, shall in like manner be registered before it can prevail against a second mortgagee of the whole or any part of the lands, tenements, hereditaments and premises comprised in the first mortgage. 9 V. c. 34, s. 6.

Deeds not registered to be void as against subsequent purchasers whose deeds are registered.

45. This Act shall not extend to any lease for a term not exceeding twenty-one years, where the actual possession goeth along with the lease. 9 V. c. 34, s. 18,—See Cap. 83, s. 31.

Act not to extend to certain leases.

46. All Wills, or the Probates thereof, recorded within the space of twelve months, next after the death of the Devisor, Testator or Testatrix, shall be as valid and effectual against subsequent

Wills may be registered with effect within

twelve months after the death of the testator.

subsequent purchasers, as if the same had been recorded immediately after such death; And in case the Devisee, or person interested in the lands, tenements or hereditaments, devised in any such Will as aforesaid, be disabled from recording the same within the said time by reason of the contesting of such Will, or by any other inevitable difficulty without his wilful neglect or default, then the recording the same within the space of twelve months next after his attainment of such Will or Probate thereof, or the removal of the impediment aforesaid, shall be a sufficient recording within the meaning of this Act. 9 V. c. 34, s. 12.

When registration to constitute notice.

47. The registry of any instrument, will, judgment, decree, rule or order, affecting any lands or tenements registered under this or any former Act, shall in Equity constitute notice of such deed, conveyance, will or judgment, decree, rule or order to all persons claiming any interest in such lands or tenements subsequent to such registry. 13, 14 V. c. 63, s. 8,—22 V. c. 33, s. 17, (1859.)

Effect of judgments entered before 1st January 1851, and registered afterwards.

48. Every judgment entered up against any person in any Court of Record in Upper Canada, before the first day of January, one thousand eight hundred and fifty-one, and registered since that day, or hereafter registered in any County in manner aforesaid, shall affect and bind all the lands therein, belonging to the person against whom the Judgment has been rendered, at the time of the registering thereof, or at any time afterwards, in like manner as a judgment of any of Her Majesty's Superior Courts at Westminster would, when duly docketed have bound lands before the practice of docketing judgments had been discontinued in England, and whenever any judgment had been registered before the first day of January, in the year aforesaid, the party, in whose favour the same was rendered, may (if not already done) require the Registrar of any County to mark on the margin of such Registry and sign the same "registered this            day of            A. D.           ," and such entry of registry shall have the same effect from such date as if the judgment had been registered under this section, and the Registry, or Registry of any certificate of any judgment as in this section mentioned, shall be deemed and taken to be a registry of such judgment for the purposes of this Act. 13, 14 V. c. 63, ss. 1, 7.

Or registered before that day.

How registered judgments shall affect lands, &c.

49. Every judgment entered up against any person in any Court of record in Upper Canada, subsequent to the first day of January, one thousand eight hundred and fifty-one, shall, so soon as a certificate of such judgment has been duly registered in any county, affect and bind all the lands within such County belonging to the person against whom such judgment has been rendered, at the time of the Registering thereof or at any time afterwards in like manner as a judgment of any of Her Majesty's Superior Courts at Westminster would, when duly docketed, have bound lands before the practice of docketing judgments



ments had been discontinued in England, and shall operate as a charge upon and shall affect and bind all lands, in that County, of or to which such person was at the time of registering such judgment, or at any time afterwards became seized, possessed or entitled for any estate or interest whatever at Law or in Equity, whether in possession, reversion, remainder or expectancy, or over which such person had at the time of registering such judgment, or at any time afterwards any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding upon the person against whom judgment has been so entered up and registered, and against all persons claiming under him after such judgment and registry, and shall also be binding as against the issue of his body, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or any other interest in or out of the said lands, tenements or hereditaments; and every judgment-creditor shall have such and the same remedies in a Court of Equity against the lands so charged as aforesaid, as he would be entitled to in case the person against whom such judgment has been so entered up and registered had power to charge the same lands and had by writing under his hand agreed to charge the same with the amount of such judgment-debt and interest; and all such judgments shall be claimed and taken to be valid and effectual according to the priority of registering such certificates; but nothing herein contained shall be deemed to alter or affect any doctrine of Courts of Equity whereby protection is given to purchasers for valuable consideration without notice. 13, 14 V. c. 63, s. 2,—15 V. c. 127, s. 8.

Remedies of judgment creditors.

Priority.

**50.** A decree or order of the Court of Chancery for the payment of money, costs, charges or expenses when registered shall have the same effect as a registered judgment. 20 V. c. 56, s. 10.

Decrees and orders to affect lands in like manner.

**51.** Every rule or order of the Court of Queen's Bench or Common Pleas or of a Judge thereof directing payment of money other than costs, and every rule or order of a County Court directing such payment, may be registered in the Registry Office of any County, and such registration shall be on the certificate of the same officer and shall have the same effect as the registration of a judgment of the same Court. 22 V. c. 33, s. 17. (1859.)

All rules and orders directing the payment of money may be registered.

**52.** No unregistered judgment shall take effect against a prior registered judgment, unless the party who has such first registered judgment has for one year next after the entry of such judgment neglected to put his execution against lands in the hands of the proper Sheriff. 13, 14 V. c. 63, s. 1,—9 V. c. 34, s. 13.

How far registered judgments protected against unregistered judgments.

All Deeds, devise, &c., executed after 1st January, 1851, must be registered.

**53.** After any Grant from the Crown of lands in Upper Canada, and Letters Patent thereof issued, every deed, devise or other conveyance executed after the First day of January, one thousand eight hundred and fifty-one, whereby the said lands, tenements or hereditaments may be in any wise affected in Law or Equity, shall be adjudged fraudulent and void, not only against any subsequent purchaser or mortgagee for valuable consideration, but also against a subsequent judgment-creditor or creditor by decree or order in Chancery, who has registered a certificate of his judgment, decree or order, unless a memorial of such deed or devise or a certificate of such judgment be registered as by this Act is specified, before the registering of the memorial of the deed, devise, conveyance or certificate of judgment, decree or order, under which such subsequent purchaser, mortgagee or judgment-creditor or creditor by decree or order claims, subject nevertheless, as to devisees, to the provisions contained in the forty-sixth section of this Act; but nothing herein contained shall affect the rights of equitable mortgagees as now recognized in the Court of Chancery in Upper Canada. 13, 14 V. c. 63, s. 3,—18 V. c. 127, s. 8.

Judgments to give no lien or charge on lands until registered.

**54.** No judgment of any Court of Record in Upper Canada shall create a lien or charge upon any lands, within the same, or upon any interests in lands liable to seizure or sale on any execution against lands, until such judgment has in the manner required by law for registering judgments, been registered in the Registry Office of the County in which such lands are situate. 18 V. c. 127, s. 1.

Judgment creditor not registered need not be a party to foreclosure.

**55.** No judgment-creditor shall be a necessary party to any bill for the foreclosure of a mortgage, so as to prevent the mortgagee obtaining a complete title by such foreclosure, unless such judgment-creditor has registered his judgment in the County Registry Office as aforesaid, before the filing of the bill of the mortgagee for foreclosure. 18 V. c. 127, s. 2.

Deeds, &c., to take priority according to the date of registry.

**56.** The doctrine of tacking having been found productive of injustice: therefore, every deed executed subsequent to the first day of January, one thousand eight hundred and fifty-one, a memorial whereof has been or may be duly registered, and every judgment recovered since that day, a certificate whereof has been or may be duly registered, shall be deemed effectual both in Law and in Equity according to the priority of the time of registering such memorial or certificate; and when no memorial of such deed has been duly registered, then such deeds shall be deemed effectual, both at Law and in Equity, according to the priority of time of execution. 13, 14 V. c. 63, s. 4.

#### THE MANNER OF REGISTERING SATISFACTION OF MORTGAGES AND JUDGMENTS.

Affidavits of payment of

**57.** An affidavit of the due execution of any certificate of payment of mortgage money executed, published or made

made in Lower Canada may be sworn before any Judge or Commissioner mentioned in the twenty-fourth section of this Act. See 18 V. c. 127, s. 5,—13, 14 V. c. 65, s. 5. purchase money.

**58.** When any registered Judgment or Mortgage has been satisfied, the Registrar or his Deputy— How registered securities may be discharged.

1. In the case of a mortgage, on receiving from the person entitled to the amount of such Mortgage, or his Attorney, a certificate in the form A duly proved by the oath of a subscribing witness, in the same manner as herein provided for the proof of Deeds and other instruments affecting lands ; and Mortgages.

2. In the case of a Judgment, on receiving a satisfaction piece under the seal of the Court in which such Judgment was entered, signed by the Clerk thereof, may write the word "discharged," and affix his name in the margin of the Register wherein the said Mortgage or Judgment has been registered, and the same shall be deemed a discharge thereof ; and such certificate or satisfaction piece shall be filed and numbered and entered on the margin of the Register under the word "discharged." Judgments.

**59.** Every such certificate of payment or performance of the condition of any Mortgage by the Mortgagee, his Heirs, Executors, Administrators or Assigns, at whatsoever time given, and whether before or after the time limited by the Mortgage for payment or performance, shall, when so registered, be as valid and effectual in law as a release of such Mortgage, and as a conveyance to the Mortgagor, his heirs, executors, administrators and assigns of the original estate of the Mortgagor ; and if given after the expiration of the period within which the Mortgagor had a right in law to perform the condition, shall have the effect of defeating any title remaining vested in the Mortgagee or his Heirs, Executors, Administrators or Assigns, but shall not have the effect of defeating any other title whatsoever. 9 V. c. 34, ss. 23, 24,—10, 11 V. c. 16, ss. 1, 2. Effect of registered certificate.

**60.** Any judgment registered against land may be discharged from the registry of the County where the same is registered, on the production to the Registrar of such County of a certificate signed by the judgment-creditor, or, if more than one, by any one of them, his executors, administrators or assigns, to the following effect : Registry of judgment may be discharged by certificate of judgment creditor.

" I do hereby certify that a judgment rendered in favor of A. B. against C. D., for the sum of \$ \_\_\_\_\_, and registered in the Registry Office of the County of \_\_\_\_\_, has been discharged." Form of certificate.

20 V. c. 57, s. 20.

Proof of.

**61.** Such certificate shall be proved to the Registrar by the affidavit of one subscribing witness who witnessed the execution of such certificate, which affidavit may be taken before any person before whom an affidavit for the registry of any deed or other instrument can be taken. 20 V. c. 57, s. 20.

The registry of a judgment may be otherwise discharged.

**62.** The registry of a judgment may also be discharged in any other manner provided by law. 20 V. c. 57, s. 20.

And decrees or orders in like manner.

**63.** A Decree or Order of the Court of Chancery or of a County Court on its equity side, for the payment of money, costs, charges or expenses, may be discharged in the same manner as a Registered Judgment. 20 V. c. 56, s. 10.

Registered judgment to bind lands only three years from registration, unless re-registered d.

**64.** Every judgment registered against land in any County shall, in three years after such judgment has been registered, cease to be a lien or charge upon the land of the party against whom such judgment was rendered, or any one claiming under him, unless before the expiration of the said period of three years, such judgment be re-registered; and such lien or charge shall cease whenever the period of three years has at any time been allowed to elapse without a further re-registry. 20 V. c. 57, s. 19.

#### DUTIES AND FEES OF REGISTRARS.

Registrar to reside in County and keep his office in the place appointed.

**65.** Every Registrar shall reside in the County, and shall keep his Office at the place named in his commission or otherwise appointed by Law. 9 V. c. 34, ss. 19, 20.

If Registrar does not keep his office in the place appointed, or if he removes from the County or becomes incapacitated he shall be liable to be removed from his office.

**66.** If any Registrar does not keep his office in the place appointed in his commission, or by proclamation, or, not having a fire-proof office and vaults, neglects or refuses to remove to the office provided for him by the County Council or otherwise, at the time fixed by the Governor, or if the Registrar ceases to reside within the limits of the County of which he is Registrar or becomes by sickness or otherwise wholly incapable of discharging the duties of his Office, and if the Grand Jury at any Court of General Quarter Sessions of the County, on the evidence on oath of one or more competent witnesses, make a presentment of any of such facts respectively, of which presentment the Clerk of the Peace shall forthwith forward a copy to the Governor, the Governor may in his descretion remove such Registrar. 9 V. c. 34, ss. 19, 20.

Office hours and holidays.

**67.** The Registrar or his sufficient Deputy, shall, for the dispatch of all business belonging to the said office, attend at his office every day in the year (except Sunday, Christmas Day, New Year's Day, Good Friday, Ash Wednesday, Easter Monday and the Queen's Birth Day,) from the hour of ten in the forenoon until three in the afternoon, and shall, when required, make searches concerning all memorials registered and

and concerning all Deeds, Wills or Judgments, decrees or orders recorded, and give certificates thereof under his hand if required by any person. 16 V. c. 187, s. 13, -9 V. c. 34, s. 15.

**68.** The Treasurer of the County shall provide a fit and proper Register Book for each Township, reputed Township, City and Town, the limits whereof are defined by law; and all such Register Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so, and from the time such books are so provided and received at the Registry office, the person who holds and executes the office of Registrar shall keep and cause to be used for that purpose a separate Register Book for and of each Township, reputed Township, City and Town, the limits whereof are defined by law within the County, Junior County, or Riding, or City for which he holds office; and whenever any Registrar requires a new Registry Book, the same shall, on his application therefor, be furnished to him by the Treasurer, and all such books so furnished shall be paid for by the Treasurer out of the County Funds.

Treasurer of County to furnish register book for each Township, City and Town.

**69.** If the Treasurer refuses or neglects to furnish such books within thirty days after the application of the Registrar therefor, the Registrar may provide the same and recover the cost thereof from the Municipality of the County. 16 V. c. 187, s. 3, -9 V. c. 34, s. 22, -22 V. c. 95, s. 2.

Case of neglect provided for.

**70.** The Judge of the County Court of the County shall give a certificate respecting each Registry Book so furnished or provided in the form B or to the like effect. 16 V. c. 187, s. 3.

Judge of County Court to give certificate.

**71.** The Registrar shall enter in a separate book to be kept for that purpose, the certificates of all judgments, decrees or orders brought to him for registration and prepare an Alphabetical Index thereto. 13, 14 V. c. 63, s. 9.

Separate Registry Book to be kept of judgments and decrees.

**72.** When any City, Town, Township, reputed Township or place making part of a County wherein a separate Registry Office is kept, is detached from such County and attached to or made part of another County for which a separate Registry Office is also kept, the Registrar of the County from which such localities are so detached, shall deliver to the Registrar of the County whereunto the same is newly attached: 16 V. c. 187, s. 1, -9 V. c. 34, s. 32, -18 V. c. 127, s. 6.

Duty of Registrar when a place is detached from one County and attached to another.

1. That part of the Registry Book or Books which has been kept according to the statute for such City, Town, Township, reputed Township or place; 9 V. c. 34, ss. 22, 32.

To deliver over the Register Book.

2. The original memorials of all deeds, conveyances and wills of or relating to any lands within the same, and all plans

To transmit original memorials.

or Maps of Town or Village lots within the same, lodged according to law in his Office; 9 V. c. 34, ss. 22, 32,—18 V. c. 127, s. 6.

Also a statement of titles entered before separate registry books were kept.

3. Also, a statement of all titles to lands within such detached localities, registered before separate Registry Books were kept for each Township or place, which statement shall set forth the dates of the Deeds and other registered documents affecting such lands, and the particulars of the parcels of land to which they refer, and the names of the parties and witnesses thereto, and such statement shall also contain the same particulars with regard to Wills, and shall be accompanied by an index thereto, which shall be considered as a part of the said statement; 16 V. c. 187, s. 2.

Also a statement of Wills registered.

4. Such Registrar shall moreover furnish therewith a statement of any Wills registered in any General Registry Book of Wills; 9 V. c. 34, ss. 22, 32,—16 V. 187, s. 2.

To be carefully compared.

5. Such Registrar shall carefully compare such statement with the original entries in the Register Books in his office, and indorse a Certificate to that effect on the statement when furnishing the same; 9 V. c. 34, ss. 22, 32.

The Registrar receiving such books to keep the same safely.

6. The Registrar receiving such Books and his successors shall keep the same among the Registry Books of his Office and deal with them in all respects in like manner as those originally supplied to and kept therein. 9 V. c. 34, ss. 22, 32,—16 V. c. 187, s. 1.

Penalty for refusal to deliver after demand.

**73.** Any Registrar who refuses to deliver such Books, plans or memorials as aforesaid, within three months after demand in writing therefor made upon him by the Registrar entitled to receive the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any Court of Oyer and Terminer and General Gaol Delivery shall forfeit his office and be liable to a fine in the discretion of such Court not exceeding four hundred dollars. 18 V. c. 127, s. 6.

Fees to Registrars in Upper Canada.

**74.** Every Registrar shall be allowed the following fees and no more, that is to say: 16 V. c. 187, s. 8.

Affidavits of execution.

1. For drawing Affidavit of Execution of Instrument and Memorial brought to be registered, if done by the Registrar or his Deputy, including swearing and all Certificates thereof, fifty cents; 16 V. c. 187, s. 8.

Recording Deeds.

2. For recording every Deed, Conveyance, Will, Power of Attorney or Agreement, including all necessary Entries and Certificates, one dollars and twenty-five cents, but in case such Entries and Certificates exceed eight hundred words, then at the rate of thirteen and one third cents for every additional hundred words; but

but in counting folios to be charged for in cases within the thirty-third section of this Act, only one certificate of Registry shall be charged for, and the marginal certificates, notes or references shall not be charged. 16 V. c 187, s. 5.

3. For registering a Sheriff's deed, seventy cents ; 16 V. c. Sheriff's Deeds. 182, s. 65.

4. For registering Certificate of Judgment, fifty cents, and satisfaction thereof, fifty cents ; 16 V. c. 187, s. 8. Certificates of judgment.

5. On registering any Certificate of a suit or proceeding in Equity, fifty cents ; 18 V. c. 127, s. 7. Certificate of suit.

6. On registering any Certificate of Decree, one dollar ; 18 V. c. 127, s. 7. Certificate of decree.

7. For entering Certificate of Payment of Mortgage Money, including all Entries and Certificates thereof, fifty cents ; 16 V. 187, s. 8. Certificate of payment of mortgage money.

8. Drawing Affidavit of the Execution thereof, including the swearing of the witness, when done by the Registrar or his Deputy, fifty cents ; See No. 1, and s. 58, No. 1. Affidavits of execution.

9. For searching Records relating to the title of any lot or parcel of land not exceeding four references, twenty-five cents, and twenty-five cents for every additional four distinct references, and so in proportion for every number of searches made ; but in no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of two dollars ; Searching records, &c.

10. For every extract furnished by the Registrar, including Certificate, twenty-five cents, and where the same exceeds one hundred words, fifteen cents for every additional one hundred words contained in such Extract and Certificate ; 16 V. c. 187, s. 8. Extracts.

11. For furnishing the statements required under the seventy-second Section of this Act to be paid by the County to which any City, Town, Township or place may be attached, the sum of ten cents for every folio of one hundred words contained in any such statement so furnished. 14, 15 V. c. 5, s. 17. Furnishing statements, &c.

75. The Registrar or his Deputy shall not be compelled to register any Deed, Conveyance, Will, Instrument, or Certificate unless the fees authorized by this Act are paid thereon. 9 V. c. 34, s. 27. No Deed, &c., need be registered until the fees thereon be paid.

Registrar to keep account of fees, &c., and make returns thereof.

**76.** Every Registrar shall keep a book in which shall be entered all the Fees and Emoluments received by him by virtue of his office, shewing separately the sums received for registering Memorials, Certificates and other Documents, and for searches, and he shall make a Return of such Fees and Emoluments in detail to the Legislature annually. 16 V. c. 187, s. 9.

Punishment of Registrars guilty of undue practices.

**77.** If any Registrar or his Deputy neglects to perform his duty as required by this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution thereof, and he thereof legally convicted, then such Registrar shall forfeit his said office and shall moreover be liable to pay treble damages with full costs of suit to any person injured thereby, to be recovered by action of debt, or information, in any of Her Majesty's Courts of Record; and any Deputy executing the office of Registrar during any vacancy occasioned by death, resignation or forfeiture of the Registrar, shall be for the same cause and in like manner liable. 9 V. c. 34, s. 21.

#### MISCELLANEOUS PROVISIONS.

When a Company, &c., subdivide any land into town lots a plan or map of such land to be lodged in the Registry Office.

**78.** Any person, Corporation or Company who surveys and subdivides any land into Town or Village lots, differing from the manner in which such lands were described as granted by the Crown, shall lodge with the Registrar a plan or map of such Town or Village lots, shewing the numbers and ranges of such lots, and the names, sites and boundaries of the streets or lanes by which such lots may be in whole or in part bounded, together with a declaration signed by such person, or by the lawful Officer, Agent or Attorney of such Corporation or Company, that the said plan contains a true description of the lots and streets laid out by such person, Corporation or Company, and thenceforth the Registrar shall keep an Index of the land described on such map or plan as a Town or Village, or part of a Town or Village, by the name by which such person, Corporation or Company designates the same. 9 V. c. 34, s. 33,—See 12 V. c. 35, s. 42.

Where no plan of an unincorporated village has been registered, township Council to cause one to be made.

**79.** In each and every case in Upper Canada where an unincorporated Village comprises different parcels of land owned at the original division thereof by two or more persons, and the same was not jointly surveyed and laid out into a village plot, and where in such case no entire plan or map of the said Village has been deposited with the Registrar of the County within which the same is situate, the Municipality of the Township within which the said Village is situate, shall immediately cause a plan or map of such Village to be made on the scale required by law, and to be deposited in the Registry Office of the County within which the said Village is situate; and the expense attending the getting up of the map and depositing it as aforesaid shall be paid out of the general funds of the Municipality, or by a local tax upon the rate-payers of the Village. 22 V. c. 42, s. 1, (1859.)

Cost how paid.



**80.** The Officer or person performing the duties formerly assigned to the Surveyor General of the Province, shall, from time to time within twelve months after any Registrar has in writing made application to the said Officer or person for the same, furnish each such Registrar with a list of the names of all persons to whom Patents have issued from the Crown for grants of land within his County, and also with copies of all plans or maps of Towns and Townships within the same. 9 V. c. 34, s. 31.

Commissioner of Crown Lands to furnish Registrars with certain information.

**81.** Any person forswearing himself before any Registrar or his Deputy, or before any Judge, Commissioner, or other person duly authorized to administer an oath in any of the cases aforesaid, and lawfully convicted, shall incur and be liable to the same penalties as if the oath had been taken in any Court of Record in Upper Canada. 9 V. c. 34, s. 17.

Punishment for false swearing.

**82.** Any person who forges or counterfeits any certificate by this Act authorized or directed, or any Affidavit of the execution of any Memorial, or any such Memorial, is guilty of felony and shall be imprisoned at hard labor in the Penitentiary for any term not less than four years nor more than ten years. See 10, 11 V. c. 9, s. 9.

Or guilty of forging.

**83.** The following are the forms referred to in the foregoing sections of this Act :

Forms.

A.

REFERRED TO IN THE 58TH SECTION NO. 1, OF THIS ACT.

To the Registrar of the County of

I, A. B., of \_\_\_\_\_, do certify that C. D. of \_\_\_\_\_, hath satisfied all money due upon a certain mortgage made by the said C. D. to me, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and registered at \_\_\_\_\_ of the clock in the forenoon of the \_\_\_\_\_ day of \_\_\_\_\_ following, and that such mortgage is therefore discharged.

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

(Signed) A. B.

E. F., of \_\_\_\_\_ }  
 G. H., of \_\_\_\_\_ } Witnesses. 9 V. c. 34, Sch.

B.

## B.

REFERRED TO IN THE 70TH SECTION OF THIS ACT.

This Register contains \_\_\_\_\_ pages and is to be used in and for the (City, Town or Township, *as the case may be*), in the County of \_\_\_\_\_, for the Enregistration of memorials, under the provisions of the Act respecting the Registration of Deeds, Wills and Judgments and of Decrees in Chancery, and is provided in pursuance of the requirements of the said Statute.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

A. B.

Judge of the County Court of \_\_\_\_\_ 16 V.  
c. 187, Sch.

## C A P . X C .

An Act respecting the transfer of real property, and the liability of certain interests therein to execution.

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

interpretation  
of certain words  
in this Act.

**1.** The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act excludes such construction, be interpreted as follows, that is to say: the word "Land" shall extend to messuages, lands, tenements and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interest therein, and to money subject to be invested in the purchase of land or of any interest therein; the word "Conveyance" shall extend to a feoffment, grant, lease, surrender, or other assurance of land. 12 V. c. 71, s. 1.

Corporeal tenements, &c., deemed to lie in grant, &c.

**2.** All corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. 14, 15 V. c. 7, s. 2.

Feoffments unless by deed to be void.

**3.** A feoffment, otherwise than by deed, shall be void at law, and no feoffment shall have any tortious operation. 14, 15 V. c. 7, s. 3.

Partition or exchange of Land, &c.,

**4.** A partition and an exchange of any land, and a lease required by law to be in writing of any land, and an assignment of a chattel interest in any land, and a surrender in writing of

of any land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. 14, 15 V. c. 7, s. 4. unless by deed, to be void.

5. A contingent, an executory, and a future interest, and a possibility coupled with an interest in any land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent into or upon any land may be disposed of by deed, but no such disposition shall by force only of this Act defeat or enlarge an estate tail, and any such disposition by a married woman shall be made conformably to the provisions of the Act enabling married women to convey their real estate. 14, 15 V. c. 7, s. 5. Certain interest in tenements may be disposed of by deed.

6. A contingent remainder, which existed at any time between the thirtieth day of May, one thousand eight hundred and forty-nine, and the second day of August, one thousand eight hundred and fifty-one, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger, of any preceding estate of freehold. 14, 15 V. c. 7, s. 6. Certain contingent remainders made valid.

7. When the reversion expectant on a lease of any land merges or is surrendered, the estate which, for the time being, confers, as against the tenant under the same lease, the next vested right to the same land shall, to the extent of and for preserving such incidents to and obligations on the same reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease. 14, 15 V. c. 7, s. 7. Effect of surrender or merger of reversions expectant on a lease in certain cases.

8. When the reversion of any land, expectant on a lease, has merged in any remainder or other reversion or estate, the person entitled to the estate into which such reversion has merged, his heirs, executors, administrators, successors and assigns, shall have and enjoy the like advantage, remedy and benefit against the lessee, his heirs, successors, executors, administrators and assigns, for non-payment of the rent, or for doing of waste or other forfeiture, or for not performing conditions, covenants, or agreements contained and expressed in his lease, demise or grant, against the lessee, farmer or grantee, his heirs, successors, executors, administrators and assigns, as the person who would for the time being have been entitled to the mesne reversion which has merged, would or might have had and enjoyed if such reversion had not so merged. 12 V. c. 71, s. 12. The remedies for the rent and covenants in a lease not to be extinguished by the merger of the immediate reversion.

9. The *bonâ fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust, or for any limited purpose, and such payment to and receipt by the survivors or survivor Receipts of trustees to be effectual discharges.  
of

of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary be expressly declared by the instrument creating the trust or security. 12 V. c. 71, s. 10.

No implied warranty, &c., to be created by the word "grant" or "exchange."

**10.** Neither of the words "Grant" or "Exchange," in any deed, shall create any warranty or right of re-entry, or covenant by implication, except in cases where by any Act in force in Upper Canada, it is declared that the word "Grant" shall have such effect. 12 V. c. 7, s. 6.

Any interest in lands which might be conveyed under this Act to be bound by judgments liable under executions.

**11.** Any estate, right, title or interest in lands which, under the fifth section of this Act, may be conveyed or assigned by any party, shall be bound by the judgments of any Court of Record, and shall be liable to seizure and sale under Execution against such party, in like manner and on like conditions as lands are by law bound by Judgments and liable to seizure and sale under execution, and the Sheriff selling the same may convey and assign the same to the purchaser in the same manner and with the same effect as the party might himself have done. 12 V. c. 71, s. 13,—14, 15 V. c. 7, s. 9.

This Act not to extend to Deeds, &c., executed before 1st January, 1850.

**12.** The foregoing sections of this Act shall not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the first day of January, one thousand eight hundred and fifty, but they shall extend to and have operation and effect on and from that day. 12 V. c. 71, s. 14.

Corporations aggregate may convey by bargain and sale.

**13.** Any Corporation aggregate in Upper Canada, capable of taking and conveying land, shall be deemed to have been and to be capable of taking and conveying land by deed of bargain and sale, in like manner as any person in his natural capacity, subject nevertheless to any general limitations or restrictions and to any special provisions as to holding or conveying real estate which may be applicable to such Corporation. 4 W. 4, c. 1, s. 46.

Deed of bargain and sale shall not require enrolment to render it a valid conveyance.

**14.** No deed of bargain and sale of land in Upper Canada, executed subsequent to the sixth day of March, one thousand eight hundred and thirty-four, shall require enrolment or registration to supply the place of enrolment, for the mere purpose of rendering such bargain and sale a valid and effectual conveyance for passing the land thereby intended to be bargained and sold; but this shall not affect any question of priority under the Registry Act. 4 W. 4, c. 1, s. 47,—13, 14 V. c. 63, s. 3.

This shall not affect priority.

## C A P. X C I.

## An Act respecting Short Forms of Conveyances.

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

**1.** When a deed made according to the forms set forth in the first Schedule to this Act, or any other deed expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms or words contained in column one of the second Schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of the same Schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be necessary, in any such deed, to insert any such number. 9 V. c. 6, s. 1.

Where words of column 1 of the second Schedule are employed, the deed to have the same effect as if the words in column 2 were inserted.

**2.** Any deed or part of a deed, which fails to take effect by virtue of this Act, shall, nevertheless, be as effectual, to bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made. 9 V. c. 6, s. 4.

Deeds failing to take effect under this Act to be as valid as if Act not made.

**3.** Every such deed, unless an exception be specially made therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to the lands therein comprised, belonging or in any wise appertaining, or with the same demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof; and if the same purports to convey an estate in fee, also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same lands, and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at law and in equity, of the grantor, in, to, out of, or upon the same lands, and every part and parcel thereof, with their and every of their appurtenances. 9 V. c. 6, s. 2.

Deed to include all houses, &c., and the reversion, and all the estate, &c.

**4.** In the construction of this Act, and the Schedules thereto, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein, respectively; and the word "party" shall mean and include any body politic or corporate or collegiate as well as an individual. 9 V. c. 6, s. 5.

Construction of Act.

Remuneration for deeds under the Act not to be by length only.

5. In taxing any bill for preparing and executing any deed under this Act, the taxing officer, in estimating the proper sum to be charged therefor, shall consider not the length of such deed, but the skill and labour employed and responsibility incurred in the preparation thereof. 9 V. c. 6, s. 3.

Schedules, &c., to form part of Act.

6. The Schedules, and the directions and forms therein contained, shall be deemed parts of this Act. 9 V. c. 6, s. 6.

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SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, in pursuance of the Act to facilitate the conveyance of real property, between (*here insert names of parties and recitals, if any,*) Witnesseth, that in consideration of \_\_\_\_\_ dollars, of lawful money of Canada, now paid by the said (*grantee or grantees*) to the said (*grantor or grantors*) (the receipt whereof is hereby by him (*or them*) acknowledged,) he (*or they*) the said (*grantor or grantors*) doth (*or do*) grant unto the said (*grantee or grantees*) his (*or their*) heirs and assigns for ever, all, &c., (*parcels.*) (*Here insert covenants, or any other provisions.*)

In witness whereof, the said parties hereto have hereunto set their hands and seals.

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THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

*In cases of Sale and Conveyance of Real Property.*

1. Parties who use any of the forms in the first column of this Schedule, may substitute for the words "covenantor" or "covenantee," or "releasor" or "releasee," "grantor" or "grantee," any name or names, and in every such case, corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to, any of the forms in the first column, any express exceptions from, or other express qualifications thereof respectively, and the like exceptions

exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of form two, of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants two, three and four, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons, so named.

## COLUMN ONE.

## COLUMN TWO.

1. The said (covenantor) covenants with the said (covenantee.)

1. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said covenantee, his heirs and assigns, in manner following, that is to say :

2. That he has the right to convey the said lands to the said (covenantee) notwithstanding any act of the said (covenantor.)

2. That for and notwithstanding any act, deed, matter or thing by the said covenantor, done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said covenantor, now hath in himself good right, full power, and absolute authority, to convey the said lands and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the said covenantee, in manner aforesaid, and according to the true intent of these presents.

3. And that the said (covenantee) shall have quiet possession of the said lands.

3. And that it shall be lawful for the said covenantee, his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said land and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and to have, receive, and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from, or by him the said covenantor, or his heirs, or any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them.

4. Free from all incumbrances.

4. And that free and clear, and freely and absolutely acquitted, exonerated, and for ever discharged,

## COLUMN ONE.

## COLUMN TWO.

discharged, or otherwise by the said covenantor or his heirs well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned, or suffered by the said covenantor or his heirs, or by any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them.

5. And the said (covenantor) covenants with the said (covenantee) that he will execute such further assurances of the said lands as may be requisite.

5. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with, and to the said covenantee, his heirs and assigns, that he the said covenantor, his heirs, executors and administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to, or out of, the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs or assigns, make, do, execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and every part thereof, with their appurtenances, unto the said covenantee, his heirs and assigns, in manner aforesaid, as by the said covenantee, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators, only, and

so



## COLUMN ONE.

## COLUMN TWO.

so as no person who shall be required to make or execute such assurances, shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the said (covenantor) covenants with the said (covenantee) that he will produce the title deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said (covenantee.)

6. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said covenantee, his heirs and assigns, that the said covenantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs and charges of the said covenantee, his heirs or assigns, or his or their attorney, solicitor, agent, or counsel, at any trial or hearing in any action or suit at law or in equity, or other judicature, or otherwise, as occasion shall require, produce all and every or any deed, instrument or writing hereunder written, for the manifestation, defence and support of the estate, title and possession of the said covenantee, his heirs and assigns, in, or to, the said lands and premises hereby conveyed, or intended so to be, and at the like request, costs and charges, shall and will make and deliver, or cause to be made and delivered, true and attested, or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds, by the said covenantee, his heirs and assigns, or such person as he or they shall for that purpose direct and appoint.

7. And the said (covenantor) covenants with the said (covenantee) that he has done no act to incumber the said lands.

7. And the said covenantor, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said covenantee, his heirs and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in any wise impeached, charged, affected, or incumbered in title, estate or otherwise howsoever.

## COLUMN ONE.

## COLUMN TWO.

8. And the said (releasor) releases to the said (releasee) all his claims upon the said lands.

8. And the said releasor hath released, remised, and forever quitted claim, and by these presents doth release, remise, and forever quit claim, unto the said releasee, his heirs and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law and in equity, into and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he nor his heirs, executors, administrators, or assigns, shall nor may, at any time hereafter, have, claim, pretend to, challenge, or demand the said lands and premises, or any part thereof, in any manner howsoever, but the said releasee, his heirs and assigns, and the same lands and premises shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor, might or could have upon him in respect of the said lands, or upon the said lands.

9. And the said (A. B.) wife of the said (grantor) hereby bars her dower in the said lands.

9. And the said (A. B.) wife of the said (grantor) for and in consideration of the sum of dollars, of the lawful money of Canada, to her in hand paid by the said (grantee) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said (grantee) his heirs and assigns, all her dower and right and title which in the event of surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed, or intended so to be.

## CAP. XCII.

## An Act respecting short forms of Leases.

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

1. When a deed, made according to the forms set forth in the first Schedule to this Act, or any other deed expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms or words contained in column one of the second

Where words of column 1 of the second Schedule are employed, the

second

second Schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of the same Schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be necessary, in any such deed, to insert any such number. 14, 15 V. c. 8, s. 1.

deed to have the same effect as if the words in column 2 were inserted.

2. Any deed or part of a deed, which fails to take effect by virtue of this Act, shall nevertheless be as effectual to bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made. 14, 15 V. c. 8, s. 3.

Deeds failing to take effect under this Act to be as valid as if Act not made.

3. Every such deed, unless an exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to the lands and tenements therein comprised belonging or in any wise appertaining. 14, 15 V. c. 8, s. 2.

Deed to include all houses, &c.

#### SCHEDULES TO WHICH THIS ACT REFERS.

##### THE FIRST SCHEDULE.

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord one thousand eight hundred and \_\_\_\_\_, in pursuance of the Act respecting short forms of leases between \_\_\_\_\_, of the first part, and \_\_\_\_\_, of the second part, Witnesseth, that in consideration of the rents, covenants and agreements, hereinafter reserved and contained on the part of the said party (or parties) of the second part, his (or their) executors, administrators and assigns, to be paid, observed, and performed, he (or they) the said party (or parties) of the first part hath (or have) demised and leased, and by these presents do (or doth) demise and lease unto the said party (or parties) of the second part, his (or their) executors, administrators, and assigns, all that Messuage or Tenement situate, (or all that parcel or tract of land situate) lying and being (*here insert a description of the premises with sufficient certainty*).

To have and to hold the said demised premises for and during the term of \_\_\_\_\_, to be computed from the day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and from thenceforth next ensuing and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party (or parties) of the first part, his (or their) heirs, executors, administrators, or assigns,

assigns, the sum of \_\_\_\_\_, to be payable on the following days and times, that is to say: (on, &c.,) the first of such payments to become due and be made on the \_\_\_\_\_ day of \_\_\_\_\_ next

THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

*In case of the Leasing of Lands and Tenements.*

1. Parties who use any of the forms in the first column of this Schedule, may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the form in the first column of the Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or express qualification thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4. Where the premises demised are of freehold tenure, the covenants 1 to 8 shall be taken to be made with, and the proviso 9 to apply to the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with, and apply to the lessor, his executors, administrators and assigns.

COLUMN ONE.

COLUMN TWO.

1. That the said (lessee) covenants with the said (lessor) to pay rent.

1. And the said lessee doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators and assigns will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

2. And to pay taxes.

2. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof.

## COLUMN ONE.

## COLUMN TWO.

3. And to repair. 3. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances, in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made, when, where and so often as need shall be.
4. And to keep up fences. 4. And also will from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husbandlike manner, and at proper seasons of the year.
5. And not to cut down timber. 5. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.
6. And that the said (lessor) may enter and view state of repair, and that the said (lessee) will repair according to notice. 6. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof, and further that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators and assigns will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly.
7. And will not assign or sub-let without leave. 7. And also that the lessee shall not, nor will during the said term, assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor, his heirs or assigns first had and obtained.
8. And that he will leave the premises in good repair. 8. And further, the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up

## COLUMN ONE.

## COLUMN TWO.

unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire only excepted.

9. Proviso for re-entry by the said (lessor) on non-payment of rent or non-performance of covenants.

9. Provided always, and it is hereby expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, his executors, administrators or assigns, then and in either of such cases it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy, as of his or their former estate; any thing hereinafter contained to the contrary notwithstanding.

10. The said (lessor) covenants with the said (lessee) for quiet enjoyment.

10. And the lessor doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns that he and they paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

## CAP. XCIII.

## An Act respecting the Survey of Lands in Upper Canada.

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

Stone monuments may be

1. Stone monuments or monuments of other durable materials, shall be placed at the several corners, governing points

or

or off-sets of every Township already surveyed or after this Act takes effect from time to time surveyed in Upper Canada, and also at each end of the several Concession Lines of such Townships; and lines drawn in the manner hereinafter prescribed from the monuments so erected, shall be taken and considered to be the permanent boundary lines of such Townships and Concessions, respectively. 12 V. c. 35, s. 26.

placed at certain points in Townships in U. C.

2. The monuments to be placed as above mentioned shall be so placed under the direction and order of the Commissioner of Crown Lands. 12 V. c. 35, s. 27.

To be placed under the direction of the Commissioner of Crown Lands.

3. The courses and lengths of the said boundary lines, so ascertained and established, shall on all occasions be the true courses and lengths of the boundary lines of the said Townships and Concessions, whether the same do or do not, on actual survey, coincide with the courses and lengths in any Letters Patent of Grant or other Instrument mentioned and expressed in respect of such boundary lines. 12 V. c. 35, s. 28.

Boundaries ascertained as aforesaid in U. C., to be deemed the true ones.

4. If any person knowingly and wilfully pulls down, defaces, alters or removes any monument so erected as aforesaid, such person shall be adjudged guilty of Felony; and if any person knowingly and wilfully defaces, alters or removes any other land mark, post, or monument placed by any Land Surveyor, to mark any limit, boundary or angle of any Township Concession, range, lot or parcel of land, in Upper Canada, such person or persons shall be deemed guilty of a misdemeanor, and being convicted thereof before any competent Court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such Court, such fine not to exceed one hundred dollars, and such imprisonment not to be for a longer period than Three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages by reason of such offence; But this shall not extend to prevent Land Surveyors, in their operations, from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before. 12 V. c. 35, s. 29.

Punishments of persons removing or defacing land marks.

As to Surveyors.

5. It shall not be necessary for the Commissioner of Crown Lands, to proceed to carry the provisions of the first, second, third and fourth (or "four" last preceding) Sections of this Act into execution, until an application for that purpose has been made to the Governor, by the Council of the County in which the Township or Townships interested may be situate, and which Council shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable by the inhabitants of any Township or Concession, to be levied on the said inhabitants, in the same manner as any sum required for any other local purpose authorized by law may be levied. 12 V. c. 35, s. 30.

Monuments not to be placed in U. C., except on the application of the Municipal Council.

Recital.

**6.** And whereas in several of the Townships in Upper Canada, some of the Concession lines, or parts of the Concession lines, were not run in the original survey performed under competent authority, and the surveys of some Concession lines or parts of Concession lines have been obliterated, and owing to the want of such lines the inhabitants of such Concessions are subject to serious inconvenience: therefore the County Council of the County in which any Township in Upper Canada is situate, may, on application of one half of the resident landholders in any Concession, (or may without such application) make application to the Governor, requesting him to cause any such line to be surveyed, and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, in the manner prescribed in this Act, at the cost of the proprietors of the lands in each Concession or part of a Concession interested. 12 V. c. 35, s. 31,—22 V. c. 99, s. 258.

In what cases the Municipal Council may apply to have monuments placed.

As to the adjacent concessions.

**7.** The lines shall be so drawn as to leave each of the adjacent Concessions of a depth proportionate to that intended in the original survey. 12. c. 35, s. 31,—22 V. c. 99, s. 258.

To be permanent boundary lines.

**8.** The lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be the permanent boundary lines of such Concessions or parts of Concessions to all intents and purposes of law whatsoever. 12 V. c. 35, s. 31,—22 V. c. 99, s. 258.

Expenses to be estimated and provided for.

**9.** The Council shall cause to be laid before them, an estimate of the sum requisite to defray the expenses to be incurred in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in such Concession or part of a Concession, in the same manner as any sum required for any other purposes authorized by law may be levied. 12 V. c. 35, s. 31,—22 V. c. 99, s. 258.

Expenses to be paid to the Government.

**10.** All expenses incurred in performing any survey or placing any monument or boundary under the provisions of the sections preceding shall be paid by the County Treasurer to the person or persons employed in such services, on the certificate and order of the Commissioner of Crown Lands. 12 V. c. 35, s. 31.

Municipal Councils may cause the boundaries of lots in any concession, &c., to be ascertained and marked.

**11.** Whenever the Municipal Council of any Township, City, Town or Incorporated Village in Upper Canada adopts a resolution on application of one half the resident landholders to be affected thereby, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any Concession or Range or part of a Concession or Range in their Township, City, Town or Incorporated Village, such Municipal Council may make



make application to the Governor, in the same manner as is provided in the sixth and four following sections of this Act, praying him to cause a survey of such Concession or Range or part of a Concession or Range to be made, and such boundaries to be planted, under the authority of the Commissioner of Crown Lands. 18 V. c. 83, s. 8.

**12.** The person or persons making such survey shall accordingly plant stone or other durable monuments at the front, or at the rear, or at the front and rear angles of each and every lot in such Concession or Range, or part of a Concession or Range, and the limits of each lot so ascertained and marked shall be the true limits thereof. 18 V. c. 83, s. 8.

To be marked by stone or some other durable monuments to be placed at the angles.

**13.** The cost of survey shall be defrayed in the manner prescribed by the ninth and tenth sections of this Act. 18 V. c. 83, s. 8.

How cost to be defrayed.

**14.** All boundary lines of Townships, Cities, Towns and Villages, all Concession lines, governing points, and all boundary lines of Concessions, sections, blocks, gores and commons, and all side-lines and limits of lots surveyed, and all posts or monuments, marked, placed or planted at the front angles of any lots or parcels of land, under the authority of the Executive Government of the late Province of Quebec or of Upper Canada, or under the authority of the Executive Government of this Province, shall be the true and unalterable boundaries of all and every such Townships, Cities, Towns, Villages, Concessions, Sections, Blocks, Gores, Commons, and lots or parcels of land, respectively, whether the same upon admeasurement be found to contain the exact width, or more or less than the exact width mentioned or expressed in any Letters Patent, Grant or other Instrument in respect of such Township, City, Town, Village, Concession, Section, Block, Gore, Common, lot or parcel of land. 12 V. c. 35, s. 32.

Boundaries placed under the authority of the Government to be deemed the true ones, &c.

**15.** Every Township, City, Town, Village, Concession, Section, Block, Gore, common, lot or parcel of land, shall embrace the whole width, contained between the front posts, monuments or boundaries, planted or placed at the front angles thereof respectively, so marked, placed or planted as aforesaid, and no more nor less, any quantity or measure expressed in the original grant or patent thereof notwithstanding. 12 V. c. 35, s. 32.

Townships, &c., to comprise all the space included within their boundaries.

**16.** Every patent, grant or instrument, purporting to be for any aliquot part of any such Township, City or Town, Village, Concession, Section, Block, Gore, common, lot or parcel of land, shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument. 12 V. c. 35, s. 32.

As to aliquot parts of Townships, &c.

Road allowan-  
ces in Cities,  
&c., to be pu-  
blic highways.

**17.** In every City, Town or Village in Upper Canada, which has been surveyed by the authority aforesaid, all allowances for any road, street, lane or common laid out in the original survey of such City, Town or Village, shall be public highways and commons; and all posts or monuments placed or planted in the original survey of such City, Town or Village, to designate or define any allowance for a road, street, lane, lot or common, shall be the true and unalterable boundaries of every such road, street, lane, lot and common; and all Land Surveyors, employed to make surveys in such City, Town or Village shall follow and pursue the same rules and regulations in respect of such surveys as is by law required of them when employed to make surveys in Townships. 12 V. c. 35, s. 33.

Recital.

**18.** Whereas many Townships, tracts or blocks of land in Upper Canada were granted by the Crown to companies and individuals before any surveys had been made therein, and such Townships, tracts or blocks of land were afterwards surveyed by the owners thereof--All such surveys of such Townships, tracts or blocks of land, shall be original surveys thereof, and shall have the same force and effect as though the said original surveys and plans thereof had been made by the authority aforesaid; and all allowances for roads or commons surveyed in such Townships, tracts or blocks of land, and laid down on the plans thereof, shall be public highways and commons; and all lines run and marked in such original surveys, and all posts or monuments planted or placed in such original surveys, to designate and define any allowance for road, concession, lot of land or common, shall be the true and unalterable lines and boundaries of such allowance for road, common or lot of land, and all land Surveyors, when employed to make surveys in such Townships, tracts or blocks of land, shall follow and pursue the same rules and regulations in respect of such Townships, tracts or blocks of land, and the original surveys thereof, as they are by law required to follow and pursue in all Townships, tracts or blocks of land surveyed by the authority aforesaid. 12 V. c. 35, s. 34.

As to lands  
granted in  
blocks and sub-  
sequently sur-  
veyed by the  
grantees.

Governing  
lines declared.

**19.** The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be the course of the division or side lines throughout the several Townships or Concessions in Upper Canada, respectively, provided that such division or side lines were intended, in the original survey performed under such authority as aforesaid, to run parallel to the said boundary. 12 V. c. 35, s. 35.

All side lines  
to be run pa-  
rallel to gov-  
erning lines.

**20.** Every Surveyor shall run all division or side-lines, which he may be called upon by the owner or owners of any lands to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid, provided such division or side-lines were intended, in the original survey

survey performed under such competent authority as aforesaid to run parallel to the said boundary. 12 V. c. 35, s. 35.

**21.** When that end of a concession, from which the lots are numbered, is bounded by a Lake or River, or other natural boundary, or when it has not been run in the original survey performed under competent authority as aforesaid, or when the course of the division or side-lines of the lots therein was not intended in the original survey performed as aforesaid, to run parallel to such boundary, the said division or side-lines shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended, in the original survey performed as aforesaid, to be parallel thereto, and that such boundary line was run in the original survey. 12 V. c. 35, s. 35.

Course to be adopted when concession bounded by lakes or rivers.

**22.** When in the original survey, performed under competent authority as aforesaid, the course of the division or side lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the concession from which the lots are numbered, as is stated in the plan and field-notes of the original survey, of record in the Office of the Commissioner of Crown Lands, provided such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey; or if neither of the aforesaid boundaries of the concession were run in the original survey, or if the concession be bounded at each end by a Lake or River or other natural boundary, then at such angle with the course of the line in front of the said concession, as is stated in the plan and field-notes aforesaid. 12 V. c. 35, s. 35.

When division or side lines not intended to run parallel to the side lines at either end of a concession.

**23.** If any division or side-line between lots, or proof-line intended to be parallel to the division or side-lines between lots, was drawn in any such concession in the original survey thereof, the division or side-lines between the lots therein shall be drawn parallel to such division or side-line or proof-line. 12 V. c. 35, s. 35.

When a division or proof line has been run between lots, the same shall govern.

**24.** When two or more such division or side-lines or proof-lines were drawn in the original survey of such concession, that division or side-line or proof-line which is nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side-lines of all the lots in such concession between the boundary of the concession from which the lots are numbered and the next division or side-line or proof-line drawn in the original survey, and such last mentioned line or proof-line shall govern the course of the division or side-lines of all the lots up to the

Where there are two of such lines, the line nearest the end of the concession, from which the lots are numbered, to govern to the next of such lines.

next

next division or side-line or proof-line drawn in the original survey, or to the boundary of the concession towards which the lots are numbered, as the case may be. 12 V. c. 35, s. 35.

How lines to be governed in Townships laid out in sections under the O. C. of the 27th March, 1829.

**25.** In all those Townships in Upper Canada, which in the original survey were divided into sections, agreeably to an Order in Council bearing date the Twenty-seventh day of March, one thousand eight hundred and twenty-nine, the division or side-lines in all concessions, in any section shall be governed by the boundary lines of such section, in like manner as the division or side-lines in Townships originally surveyed before the said day are governed by the boundary lines of the concession in which the lots are situate. 12 V. c. 35, s. 35.

What shall be deemed the front of a concession in certain cases.

**26.** The front of each concession in any Township in Upper Canada, where only a single row of posts has been planted on the concession lines, and the lands have been described in whole lots, shall be that end or boundary of the concession which is nearest to the boundary of the Township, from which the several concessions thereof are numbered. 12 V. c. 35, s. 36.

When, in Townships bounded in front by rivers or lakes, the lines are to be drawn from posts in rear of the concession.

**27.** In those Townships in Upper Canada which are bounded in front by a river or lake where no posts or other boundaries were planted in the original survey on the bank of such river or lake to regulate the width in front of the lots in the broken front concessions, the division or side-lines of the lots in such broken front concessions shall be drawn from the posts or other boundaries on the concession line in rear thereof, parallel to the governing line determined as aforesaid to the river or lake in front, and when the line in front of any such concession was not run in the original survey, the division or side-lines of the lots in such concession shall be run from the original posts or monuments placed or planted on the front line of the concession in the rear thereof parallel to the governing line determined as aforesaid to the depth of the concession—that is, to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth or if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands, having due respect to any allowance for a road or roads made in the original survey; and a straight line joining the extremities of the division or side-lines of any lot in such concession drawn as aforesaid, shall be the true boundary of that end of the lot which was not run in the original survey. 12 V. c. 35, s. 36.

When the front line of any concession was not run in the original survey.

Fronts of concessions in certain other cases, depths of lots, &c.

**28.** In those Townships in Upper Canada in which the concessions have been surveyed with double fronts, that is, with posts or monuments planted on both sides of the allowances for roads between the concessions, and the lands have been

been described in half lots, the division or side-lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side-lines of any half lot in such concession, drawn as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey. 12 V. c. 35, s. 37.

**29.** And whereas some of the double front Concessions in the Townships in Upper Canada, are not of the full depth, and doubts have arisen as to the manner in which the division or side-lines in such concessions should be established:—Therefore in such concessions the division or side-lines shall be drawn from the posts at both ends thereof, to the centre of the concession, as provided in the last preceding section of this Act, without reference to the manner in which the lots or parts of lots in such concession have been described for Patent. 18 V. c. 83, s. 9.

Mode of drawing lines in double fronted concessions.

**30.** In those Townships in which each alternate concession line only has been run in the original survey, but with double fronts as aforesaid, the division or side-lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession, that is, to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shewn on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands; and each alternate concession line as aforesaid shall be the front of each of the two concessions abutting thereon. 12 V. c. 35, s. 38.

As to concessions in cases where alternate concession lines only have been run.

**31.** In all cases where any Crown Patent of Grant, or other Instrument, has been issued for several lots or parcels of land in concessions adjoining each other, the side-lines or limits of the lots or parcels of land therein mentioned and expressed, shall commence at the front angles of such lots or parcels of land respectively, and shall be run as hereinbefore provided, and shall not continue on in a straight line, through several concessions, unless the side-lines or limits, when run as aforesaid, intersect the corresponding post or monument in the front of the concession next in rear, that is to say, each such lot or parcel of land shall be surveyed and bounded according to the provisions of this Act, independently of the other lots or parcels mentioned in the same grant or instrument. 12 V. c. 35, s. 44.

As to lands in adjoining concessions included in the same grant.

**32.** Every Land Surveyor employed to run any division-line or side-line between lots, or any line required to run parallel to any division-line or side-line in the concession in which the land to be surveyed lies, shall, if it has not been done before,

Rule when a line is to be drawn parallel to a governing line.

before, or if it has been done, but the course cannot at such time be ascertained, determine by astronomical observation, the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such division-line or side-line as aforesaid, truly parallel to such straight line, if so intended in the original survey, or at such angle therewith as is stated in the plan and field-notes as aforesaid, which shall be deemed to be the true course of the said governing or boundary line for all the purposes of this Act, although such governing or boundary line as marked in the field be curved or deviate otherwise from a straight course; and the same rule shall be observed, if a line is to be run at any angle with a front line or other line, which may not be straight. 12 V. c. 35, s. 39.

Case where the original post or monument cannot be found, provided for in Upper Canada.

**33.** In all cases when any Land Surveyor is employed in Upper Canada to run any side-line or limits between lots, and the original post or monument from which such line should commence cannot be found, he shall obtain the best evidence that the nature of the case admits of, respecting such side-line, post or limit; but if the same cannot be satisfactorily ascertained, then the Surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field-notes thereof, of record in the office of the Commissioner of Crown Lands; and if any portion of the line in front of the concession in which such lots are situate, or boundary of the Township in which such concession is situate, has been obliterated or lost, then the Surveyor shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, in the manner provided in this Act, and shall plant all such intermediate posts or monuments as he may be required to plant, in the line so ascertained, having due respect to any allowance for a road or roads, common or commons, set out in such original survey; and the limits of each lot so found shall be the true limits thereof. 18 V. c. 83, s. 10.

If side lines were drawn in original survey, the same to be adhered to.

**34.** In those townships in Upper Canada in which the side lines of the lots were drawn in the original survey, every Provincial Land Surveyor, when called upon to determine any disputed boundary in any of such townships, shall ascertain and establish the division or side-lines of the lots, by running such side-lines as they were run in the original survey, whether the same were in the original survey run from the front of the concession to the rear, or from the rear of the concession to the front, and shall adhere to all posts, limits or monuments, planted on the division or side-lines in the original survey, as being or designating corners of lots under such original survey. 20 V. c. 73, s. 1.

**35.** And whereas Towns and Villages in Upper Canada have been or may be surveyed and laid out by companies and individuals, and by different owners of the lands comprising the same, and lands have been or may be sold therein according to the surveys and plans thereof, therefore all allowances for roads, streets or commons, which have been surveyed in such Towns and Villages in Upper Canada, and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for roads, streets or commons, have been or may be sold to purchasers, shall be public highways, streets and commons; and all lines which have been or may be run, and the courses thereof given in the survey of such Towns and Villages, and laid down on the plans thereof, and all posts or monuments which have been or may be placed or planted in the first survey of such Towns and Villages to designate or define any such allowances for roads, streets, lots or commons, shall be the true and unalterable lines and boundaries thereof respectively. 12 V. c. 35, s. 41,---See 13, 14 V. c. 15.

As to allowances for roads or streets in Towns or Villages laid out by private owners.

**36.** No lot or lots of land in such Towns and Villages shall be so laid out as to interfere with, obstruct, shut up, or be composed of any part of any allowance for road, common or commons, which were surveyed and reserved in the original survey of the Township or Townships wherein such Towns or Villages are or may be situate.

Town or village lots not to be laid out so as to interfere with any allowance for roads.

**37.** Any owner or owners of any such Town or Village, or the owner or owners of any original division thereof, may amend or alter the first survey and plan of any such Town or Village, or any original particular division thereof, provided no lots of land have been sold fronting on or adjoining any street or streets, common or commons where such alteration is made.

When owners of land laid out in Town or Village lots, may alter their first survey or plan.

**38.** No such private survey shall be valid, unless performed by a duly authorized Surveyor. 12 V. c. 35, s. 41.

By whom private survey to be performed.

**39.** The original owner or owners of the lands forming the site of any Town or Village in Upper Canada, mentioned in the four last preceding sections of this Act, or the agent or agents, heirs or other legal representatives of the original owner or owners of any such Town or Village, or any original division thereof, shall, (if not already done) provide and deposit in the Registry Office of the County wherein such Town or Village is situate, a fair and correct plan or map of such Town or Village, or original division thereof, on a scale of not less than one inch to every four chains, and shall lay down thereon all roads, streets, lots and commons within the same, with the courses and width thereof respectively, and the width and length of all lots, and the courses of all division-lines between the respective lots within the same, together with such information as will show the lots, concessions, tracts or blocks of land

Original owners or their heirs to deposit plan of towns or villages laid out by them.

land of the Township wherein such Town or Village is situate. 12 V. c. 35, s. 42.

Plan to be certified.

**40.** Every such plan or map of every such Town or Village or original division thereof, shall be certified by some Land Surveyor, and also by the original owner or owners thereof, or the legal representative or representatives of such owner or owners, as being a correct plan or map of the same. 12 V. c. 35, s. 42.

Copies of registered plans, to be evidence of the originals.

**41.** Every copy of such plan or map obtained from such Registry Office, and certified as correct by the Registrar or Deputy Registrar of such County, shall be taken as evidence of the original plan and survey of such Town or Village in all Courts of Record and in all other Courts in Upper Canada. 12 V. c. 35, s. 42.

Duty of the Registrar in whose office any such plan is deposited.

**42.** Whenever any such plan or map of any such Town or Village, in Upper Canada, or original division thereof, has been made and deposited in the Registry Office of the County wherein the lands are situate, the Registrar of such County shall make a record of the same, and enter the day and year on which the same is deposited in his office; and for such service the said Registrar shall be entitled to charge the same fees, as by law established for making a record of any other document, which is by law required to be entered of record in his office but no higher fees. 12 V. c. 35, s. 43.

Registrar to keep a separate registry book, &c.

**43.** Every Registrar shall keep a separate book for the registering of title deeds of lands situate in any such Town or Village, in the same manner as is by law required for registering title deeds for lands situate in Townships. 12 V. c. 35, s. 43. See Cap. 89, s. 32.

Penalty for neglect.

**44.** If the owner or owners of any such Town or Village, or any original division thereof, or their agents, heirs, or other legal representatives, refuse or neglect to make or cause to be made, the plan or map of such Town or Village, or original division thereof, and deposit the same in the Registry Office of the County wherein the same is situate, within one year from and after the time of surveying and laying out the same, he or they shall forfeit and pay for such refusal or neglect, the sum of ten dollars, and a like sum for every year thereafter until such plan or map be made and deposited in the Registry Office of the County wherein the Town or Village is situate. 12 V. c. 35, s. 42.

Effect of payment of any penalty.

**45.** The payment of any such penalty or penalties shall not free or discharge such owner or owners, their agents, or other legal representatives, from any penalties which may not have been paid at the time of such payment. 12 V. c. 35, s. 42.



**46.** The several Penalties or Forfeitures mentioned in the preceding sections of this Act, may be recovered upon information and complaint before any three of Her Majesty's Justices of the Peace of the County in which the lands lie, and shall be levied by warrant signed by any two of the Justices, who have heard the complaint, directed to the Sheriff of the County, commanding him, the said Sheriff, to make of the Goods and Chattels of the person or persons convicted on such information and complaint in his County, the amount of such Penalties or Forfeitures, and the costs of such conviction, and to return the said warrant, and to pay the moneys thereon made to the Treasurer of the County, on a day to be therein named, being not less than one month from the date of such warrant, and the said moneys shall be appropriated in like manner as the Assessment levied for the general use of such County. 12 V. c. 35, s. 42,—S V. c. 58, s. 6.

Penalties, &c., how recoverable, and their appropriation.

**47.** In case the Sheriff returns on the said warrant, that the person or persons so convicted has or have no goods in his County, then, any two Justices of the said County, shall issue a like warrant to the Sheriff, against the Lands and Tenements of the said person or persons in the said County, returnable in one year from the date thereof, and the Sheriff shall thereupon advertise the said Lands for sale, and sell the same, in the same manner as he is authorized and required by law to advertise and sell lands under a Writ of *Fieri Facias*. 8 V. c. 58, s. 7.

Where the owner has no goods his lands may be sold by Sheriff.

**48.** And whereas there are many unincorporated Villages in Upper Canada of which no plan or map has been deposited pursuant to law in the Registry Office of the County within which the same are respectively situate, in consequence of the several original owners of the lands comprising the said Villages either not having jointly laid out and surveyed the same, or because some of the original owners left no legal representatives: Therefore, in each and every case in Upper Canada where an unincorporated Village comprises different parcels of land, owned at the original division thereof by two or more persons, and the same was not jointly surveyed and laid out into a village plot, and where in such case no entire plan or map of the said Village has been deposited with the Registrar of the County within which the same is situate, the Municipality of the Township within which the said Village is situate, shall immediately cause a plan or map of such Village to be made on the scale required by law, and to be deposited in the Registry Office of the County within which the said Village is situate; and the expense attending the getting up of the map and depositing it as aforesaid shall be paid out of the general funds of the Municipality, or by a local tax upon the rate-payers of the Village. 22 V. c. 42. (1859.)

Recital.

Where no plan of an unincorporated village has been registered, Township Council to cause one to be made.

Cost how paid.

Surveyors in U. C. to keep regular journals and field notes and furnish copies to parties interested.

**49.** Every Land Surveyor in Upper Canada shall keep exact and regular journals and field-notes of all his surveys, and file them in the order of time in which the surveys have been performed, and shall give copies thereof to the parties concerned when so required, for which he is hereby allowed the sum of one dollar for each copy, if the number of words therein do not exceed four hundred words, but if the number of words exceed four hundred, he is allowed ten cents additional for every hundred words, over and above four hundred words. 12 V. c. 35, s. 45.

Surveyors in U. C. may administer oaths for certain purposes.

**50.** For better ascertaining the original limits of any lot, concession, range, Township or tract of land in Upper Canada, every Land Surveyor acting in that portion of this Province, shall and may administer an oath or oaths to each and every person whom he examines concerning any boundary, post or monument, or any original land mark, line, limit or angle of any Township, concession, range, lot or tract of land which such Surveyor may be employed to survey. 12 V. c. 35, s. 46.

Evidence taken by Surveyors in U. C. to be reduced to writing and signed, &c.

**51.** All evidence taken by any Surveyor as aforesaid, in Upper Canada, shall be reduced to writing, and shall be read over to the person giving the same and be signed by such person, or if he cannot write, he shall acknowledge the same as correct before two witnesses, who shall sign the same as also the Surveyor; and such evidence shall, and any document or plan prepared and sworn to as correct before a Justice of the Peace, by any Surveyor, with reference to any survey by him performed may, be filed and kept in the Registry Office of the County in which the lands to which the same relates are situate, subject to be produced thereafter in evidence in any Court of Law or Equity within Upper Canada: and 12 V. c. 35, s. 47.

Allowance therefor.

1. For receiving and filing the same, the Registrar shall be entitled to twenty-five cents; and

Who to pay.

2. The expense of filing the same shall be borne by the parties in the same manner as other expenses of the survey. 12 V. c. 35, s. 47.

Wilful false swearing under this Act to be perjury.

**52.** If any person, in any part of this Province, wilfully swears or affirms falsely concerning any matter with regard to which an oath may be required under this Act, such person shall be deemed guilty of wilful and corrupt perjury, and being thereof convicted before any competent Court shall be liable to be punished accordingly. 12 V. c. 35, s. 48.

As to cases in Upper Canada where from unskillful survey, a party may have improved lands afterwards

**53.** In case an action of ejectment be brought in Upper Canada, against any person, who, after any line or limit has been established according to this Act, may be found, in consequence of unskillful survey, to have improved on lands not his own, the Judge of Assize before whom such action is tried,

tried, shall direct the Jury to assess damages for the defendant for any loss he may sustain in consequence of any improvement made before the commencement of such action, and also to assess the value of the land to be recovered; and if a verdict be found for the claimant, no Writ of Possession shall issue until such claimant has tendered or paid the amount of such damages, or has offered to release the said land to the defendant provided the said defendant before the fourth day of the ensuing term, pays or tenders to the claimant the value of the land so assessed. 12 V. c. 35, s. 49.

found to belong to his neighbour.

**54.** In all cases in which the Jury before whom any action of ejectment may be tried in Upper Canada, assess damages for the defendant as provided in the next preceding section, for improvements made upon land not his own in consequence of unskilful survey, and when it satisfactorily appears that the defendant does not contest the claimant's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishment of the lines according to law, the Judge before whom such action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the claimant had been non-suited on the trial, or a verdict had been rendered for the defendant; provided the defendant, at the time of appearing, gave notice in writing to the claimant in such ejectment, or to his Attorney named on the Writ, of the amount claimed for such improvements, and that on payment of such amount the defendant or person in possession would surrender the possession to such claimant, and that the said defendant did not intend at the trial to contest the title of the claimant; and if on the trial it be found that such notice was not given as aforesaid, or if the jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant had refused to surrender possession of the land after tender made of the amount claimed, then in any such case the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the claimant; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the claimant. 12 V. c. 35, s. 50.

Claimant not to have costs in such cases from the time defendant offers to give up the lands on receiving the value of his improvements, stating the amount.

Unless the jury shall assess the improvements, at less than the sum demanded.

When no proof of claimant's title required.

## TITLE 12.

## CRIMINAL LAW.

*See also same Title in the Consolidated Statutes of Canada.*

## CAP. XCIV.

An Act respecting the Criminal Law of Upper Canada.

Preamble.

WHEREAS the Criminal Law of England was, by an Act of the Parliament of Great Britain, passed in the fourteenth year of the reign of King George the Third, intituled, *An Act for making more effectual provision for the Government of the Province of Quebec, in North America*, introduced and established as the Criminal Law of the Province of Quebec, which Province was afterwards divided into the Provinces of Upper and Lower Canada; And whereas the said Criminal Law, as it stood on the day hereinafter named, was afterwards established as the Criminal Law of Upper Canada; And whereas divers amendments and improvements were afterwards made in the same by the Mother Country, some of which it has been deemed expedient to introduce and adopt in Upper Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: 40 G. 3, c. 1.

The Criminal Law of England as it stood on the 17th day of September, 1792, continued.

1. The Criminal Law of England, as it stood on the seventeenth day of September, in the year of our Lord, one thousand seven hundred and ninety-two, and as the same has since been repealed, altered, varied, modified or affected by any Act of the Imperial Parliament having force of law in Upper Canada, or by any Act of the Parliament of the late Province of Upper Canada, or of the Province of Canada, still having force of law, or by the Consolidated Statutes relating to Upper Canada exclusively, or to the Province of Canada, shall be the Criminal Law of Upper Canada.

## CAP. XCV.

An Act respecting the apprehension of Criminals, escaping from any of Her Majesty's Provinces and Governments in North America, into Upper Canada.

Preamble.

FOR the apprehension of felons and other malefactors who, having committed crimes in some of Her Majesty's Provinces and Governments in North America, escape into Upper Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: 37 G. 3, c. 15, s. 1,—16 V. c. 179, s. 7.

1.

1. If any person against whom a warrant has been issued by the Chief Justice of the Queen's Bench, or by any other Magistrate having competent authority in any of Her Majesty's Provinces or Governments in North America respectively, for any felony or other crime of a high nature, escapes into or is found in any part of Upper Canada, any Justice of the Peace of the County, City or place where such person resides or is supposed to be, may, upon due proof being made of the hand-writing of the Magistrate who issued the warrant, endorse his the said Justice's name thereon, and such warrant so endorsed shall be a sufficient authority to all persons to whom such warrant was originally directed, and also to all Constables of the County, City or place where such warrant has been so endorsed, to execute the same, by apprehending the person against whom such warrant has been granted, and to convey him into the Province from which such warrant was originally issued, to be dealt with according to law. 37 G. 3, c. 15, s. 1.

Warrants issued within Her Majesty's other Governments in North America against criminals escaping therefrom, may be executed within Upper Canada being duly endorsed.

2. Before any such warrant is so endorsed, the person applying for its endorsement shall enter into a recognizance with sufficient sureties, in a sum not less than two hundred dollars, to indemnify this Province, and every part thereof, against any expense that may arise or accrue from the apprehension of such offender, and also to bring the said offender or cause him to be brought to trial; and the Magistrate to whom such application is made, is hereby authorized to take such recognizance. 37 G. 3, c. 15, s. 2.

Security being previously given to indemnify the Province against any expense and to bring the offender to trial.

## C A P . X C V I .

An Act respecting the apprehension of fugitive offenders from Foreign Countries, and delivering them up to Justice.

**F**OR the apprehending and delivering up felons and other malefactors, who, having committed crimes in foreign countries, seek an asylum in Upper Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. In case murder, forgery, larceny or other crime punishable by the laws of Upper Canada with death or confinement at hard labor, be charged to have been committed within the jurisdiction of a Foreign Country, by a person who has fled to or sought refuge in Upper Canada,—and in case a requisition for the surrender of such person be made by the Government of such Country or by its Ministers or Officers authorized to make the same, then upon such evidence of criminality as would warrant his apprehension and commitment for trial had the offence been committed in Upper Canada, the Governor may, in his discretion, by and with the advice of the  
 GGG  
 Executive  
 Government authorized to deliver up to justice persons who may have fled from other Countries into this Province, charged with heinous offences.

Executive Council, deliver such person up to justice and direct his transmission to the custody of such Foreign Government. 3 W. 4, c. 6, s. 1.

Persons charged with offences committed in foreign countries may be committed until an application can be made to the Government for delivering up such offender.

2. For preventing the escape of any person so charged before an order for his transmission can be obtained from the Governor, any Judge or Justice of the Peace in Upper Canada, acting within his jurisdiction, upon such evidence on oath as satisfies him that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof, may issue his warrant for the apprehension and commitment of such person in order that he may be detained in secure custody until application can be made to the Governor for his surrender and until an order can be made thereon. 3 W. 4, c. 6, s. 2.

Such surrender discretionary, and to be within a reasonable time.

3. But it shall not be incumbent upon the Governor in Council to deliver up any person so charged if for any reason he deems it inexpedient, and if any person committed under this Act be detained in custody beyond the time reasonably required for carrying the provisions hereof into effect, such person may be discharged upon *habeas corpus*. 3 W. 4, c. 6, s. 3.

## C A P . X C V I I .

An Act relating to High Treason, to Tumults and Riotous Assemblies, and to other offences.

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

High Treason.

1. If any person compasses or imagines the death of our Lady the Queen, or levies war against Her Majesty, in Upper Canada, or be adherent to the Queen's enemies in Upper Canada, giving to them aid and comfort, therein or elsewhere, and be thereof provably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of treason, and shall suffer death. 3 W. 4, c. 3, s. 1.

If an officer or soldier corresponds with the enemy, he is guilty of High Treason.

2. If any Officer or Soldier in Her Majesty's army holds correspondence with any rebel, or enemy of Her Majesty, or gives them advice or intelligence, either by letters, messages, signs or tokens, or in any manner of way whatsoever, or treats with such rebels or enemies, or enters into any condition with them without Her Majesty's license, or the license of the General, Lieutenant-General or Chief Commander, every such person so offending is guilty of high treason, and shall suffer death. 3 W. 4, c. 3, s. 14.

Sentence to be pronounced in

3. In all cases of high treason, the sentence or judgment to be pronounced against any person convicted and adjudged guilty

guilty thereof shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead ; and that afterwards the body of such person shall be dissected and anatomized. 3 W. 4, c. 3, s. 19.

cases of High Treason.

4. If any person by force, sets at liberty or rescues, or attempts to rescue or set at liberty, any person out of prison, who has been committed for or found guilty of murder ; or rescues, or attempts to rescue, any person convicted of murder going to execution or during execution, such offender is guilty of felony, and shall suffer death, and any accessory before the fact to any such offence is guilty of felony, and shall suffer death. 3 W. 4, c. 3, s. 4.

Rescuing persons convicted of murder or committed for murder.

5. Any person indicted for any offence made capital by this or any other Statute, shall be liable to the same punishment, whether he be convicted by verdict or confession, or be outlawed upon indictment ; and this, as well in the case of accessories as of principals. 3 W. 4, c. 3, ss. 16, 25.

Persons confessing or outlawed to be punished in the same manner as if convicted by verdict.

6. In case any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace, be by Proclamation, in the Queen's name, made in the form in this Act directed, by any one or more Justice or Justices of the Peace, or by the Sheriff of the County, or his Deputy Sheriff, or by the Mayor, or other head officer, or Justice of the Peace of any city or town corporate, where such persons are so assembled, required or commanded to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, and in case such persons to the number of twelve or more, (notwithstanding such Proclamation made) unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or request, such continuing together to the number of twelve or more, after such command or request so made by Proclamation, is felony, and the offenders shall suffer death. 3 W. 4, c. 3, s. 13.

The Riot Act, 1 Geo. 1, c. 5, adapted to Upper Canada.

Justices of the Peace may enjoin persons riotously assembled to disperse.

7. The order and form of the Proclamation to be made by the authority of this Act shall be as follows, that is to say : The Justice of the Peace, or other person authorized to make the said Proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while Proclamation is making ; and after that, shall openly and with a loud voice make, or cause to be made, Proclamation in these words, or like in effect :

Form of Proclamation.

“ Our Sovereign Lady the Queen chargeth and commandeth  
 “ all persons being assembled immediately to disperse them-  
 “ selves, and peaceably to depart to their habitations or to their  
 GGG<sup>2</sup> “ lawful

“lawful business, upon the pains contained in the Act relating to High Treason, to tumults and riotous assemblies and to other offences.—God save the Queen. 3 W. 4, c. 3, s. 13.

Justices of the Peace, Sheriffs, Mayors, &c., to repair to place of riot, and there make Proclamation.

**8.** Every such Justice and Justices of the Peace, Sheriff, Deputy Sheriff, Mayor and other Head Officer, within the limits of their respective jurisdictions, shall, on notice or knowledge of any such unlawful, riotous and tumultuous assembly of persons to the number of twelve or more, resort to the place where such unlawful, riotous and tumultuous assembly is, and there make, or cause to be made, Proclamation in manner aforesaid. 3 W. 4, c. 3, s. 13.

Consequences of persons riotously assembled not dispersing in obedience to the Proclamation.

**9.** If twelve or more of the persons so unlawfully, riotously and tumultuously assembled, continue together, after Proclamation made in manner aforesaid, and do not disperse themselves within one hour, then every Justice of the Peace, Sheriff and Deputy Sheriff of the County where such assembly may be, and also every High and Petty Constable, and other Peace Officer within such County, and also every Mayor, Justice of the Peace, Sheriff and other Head Officer, High or Petty Constable, and other Peace Officer, of any city or town corporate where such assembly may be, and any person or persons commanded to assist such Justice of the Peace, Sheriff or Deputy Sheriff, Mayor, Bailiff, or other Head Officer aforesaid, (who may command all Her Majesty's subjects of age and ability to be assisting to them therein), shall seize and apprehend the persons so unlawfully, riotously and tumultuously continuing together, after Proclamation made as aforesaid, and shall forthwith carry the persons so apprehended before one or more of Her Majesty's Justices of the Peace of the County or place where such persons are so apprehended, in order to their being proceeded against for such their offences according to law. 3 W. 4, c. 3, s. 13.

Persons suppressing riot justified—even though death of a rioter ensues.

**10.** If in the dispersing, seizing or apprehending or endeavoring to disperse, seize or apprehend any of the persons so unlawfully, riotously and tumultuously assembled, any such persons happen to be killed, maimed or hurt, by reason of their resisting the persons dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, then every such Justice of the Peace, Sheriff, Deputy Sheriff, Mayor, Head Officer, High or Petty Constable, or other Peace Officer, and all persons who were aiding and assisting them, or any of them, shall be free, discharged and indemnified, as well against the Queen's Majesty, as against all and every other person and persons, of, or concerning, the killing, maiming or hurting, of any such person or persons so unlawfully, riotously and tumultuously assembled, as aforesaid. 3 W. 4, c. 3, s. 13.

Consequences of any person

**11.** If any person or persons with force and arms, wilfully and knowingly oppose, obstruct, or in any manner let, hinder



or hurt, any person or persons who begin to proclaim, or go to proclaim, according to the Proclamation hereby directed to be made, whereby such Proclamation cannot be made, then every such opposing, obstructing, letting, hindering or hurting such person or persons so beginning or going to make such Proclamation, as aforesaid, is felony, and the offenders shall suffer death, and every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve, or more, as aforesaid, to whom Proclamation should or ought to have been made, if the same had not been hindered, as aforesaid, who, to the number of twelve or more, continue together, and do not disperse themselves within one hour after such let or hindrance so made, having knowledge thereof, are guilty of felony, and shall suffer death. 3 W. 4, c. 3, s. 13.

opposing Peace Officer and others suppressing riots.

**12.** No person or persons shall be prosecuted by virtue of this Act, for any offence or offences committed contrary to the last six sections, unless such prosecution be commenced within twelve months after the offence committed. 3 W. 4, c. 3, s. 13.

Prosecutions for acts under this statute to be commenced within 12 months.

**13.** If any person within Upper Canada, wilfully and maliciously sets on fire or burns, or otherwise destroys or causes to be set on fire or burnt, or otherwise destroyed, or aids, procures, abets or assists, in the setting on fire or burning, or otherwise destroying, of any of Her Majesty's ships or vessels of war, whether on float or building, or begun to be built in any of Her Majesty's dock yards, or building or repairing by contract in any private yard for the use of Her Majesty, or any of Her Majesty's arsenals, magazines, dock yards, rope yards, victualling offices, or any of the buildings erected therein or belonging thereto, or any timber or materials there placed, for building, repairing or fitting out of ships or vessels, or any of Her Majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places where any such military, naval, or victualling stores, or other ammunition of war is, or are, kept, placed or deposited, such offender is guilty of felony, and shall suffer death. 3 W. 4, c. 3, s. 14.

Punishment for setting fire to any of H. M. dock-yards, ships, &c.

## C A P . X C V I I I .

An Act to protect the Inhabitants of Upper Canada against lawless aggressions from Subjects of Foreign Countries at peace with Her Majesty.

**F**OR the protection of the inhabitants of Upper Canada against lawless aggressions from Subjects of Foreign Countries at peace with Her Majesty : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

**1.** In case any person, being a citizen or subject of any Foreign State or Country at peace with Her Majesty, be or continues

Citizens or subjects of a foreign State or Country at peace with Her Majesty, be or continues in

reign power taken in arms in this Province ;

May be tried by a Militia Court Martial ;

And if convicted be sentenced to death or other punishment.

Any subject levying war in this Province with foreigners ;

Or committing such felony as aforesaid—

With intent to aid such persons ;

May be tried and punished in like manner.

Any such foreigners may be tried before a Court of Oyer and Terminer.

in arms against Her Majesty, within Upper Canada, or commits any act of hostility therein, or enters Upper Canada with design or intent to levy war against Her Majesty, or to commit any felony therein, for which any person would by the laws of Upper Canada be liable to suffer death, then the Governor may order the assembling of a Militia General Court Martial for the trial of such person, agreeably to the Militia Laws ; and upon being found guilty by such Court Martial of offending against this Act, such person shall be sentenced by such Court Martial to suffer death, or such other punishment as shall be awarded by the Court. 3 V. c. 12, s. 2.

2. If any subject of Her Majesty, within Upper Canada, levies war against Her Majesty, in company with any of the subjects or citizens of any Foreign State or Country then at peace with Her Majesty, or enters Upper Canada in company with any such subjects or citizens with intent to levy war on Her Majesty, or to commit any such act of felony as aforesaid, or if with the design or intent to aid and assist he joins himself to any person or persons whatsoever, whether subjects or aliens, who have entered Upper Canada with design or intent to levy war on Her Majesty, or to commit any such felony within the same, then such subject of Her Majesty may be tried and punished by a Militia Court Martial, in like manner as any citizen, or subject of a Foreign State or Country at peace with Her Majesty, is liable under this Act to be tried and punished. 3 V. c. 12, s. 3.

3. Every citizen or subject of any Foreign State or Country who offends against the provisions of this Act, is guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any Court of Oyer and Terminer and General Gaol Delivery in and for any County in Upper Canada, in the same manner as if the offence had been committed in such County, and upon conviction shall suffer death as a felon. 3 V. c. 12, s. 4.

## C A P. X C I X .

An Act to prevent the unlawful training of persons in Military evolutions, and the use of Fire Arms ; and to authorize the seizure of Fire Arms collected for purposes dangerous to the public peace.

Preamble.

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

Meetings of persons for the purpose of be-

1. All meetings and assemblies of persons for the purpose of training or drilling, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, or evolutions,

evolutions, without lawful authority, are prohibited, and every person who attends any such meeting or assembly, for the purpose of training or drilling any other person or persons to the use of arms, or to the practice of military exercise or evolution, or who trains or drills any other person or persons to the use of arms, or to the practice of military exercise or evolution as aforesaid, or who aids or assists therein, is guilty of a Misdemeanor, and shall be confined in the Penitentiary for the term of two years, or be punished by fine and imprisonment in the Common Gaol of the County in which the conviction takes place, for any period less than two years; and every person who attends any such meeting or assembly, for the purpose of being, or who at any such meeting or assembly is trained or drilled to the use of arms, or to the practice of military exercise or evolutions, is guilty of a misdemeanor and shall be punished by fine and imprisonment in the Common Gaol, for any period less than two years, at the discretion of the Court. 1 V. c. 11, s. 1, See 14, 15 V. c. 2, s. 2.

ing drilled to the use of arms, prohibited.

Punishment of persons engaged in drilling.

Punishment of persons present at such drilling, &c.

2. Any Justice of the Peace, or any Constable or Peace Officer, or any person acting in their aid, may disperse any such unlawful meeting or assembly as aforesaid, and arrest and detain any person present at, or aiding, assisting or abetting, any such assembly or meeting; and the Justice of the Peace who arrests any such person, or before whom any person so arrested is brought, may commit him for trial, unless such person gives bail for his appearance at the then next Assizes, to answer to any indictment which may be preferred against him, for any such offence against this Act. 1 V. c. 11, s. 2.

Justices, &c., authorized to disperse such unlawful meetings of persons, and to commit offenders.

3. This Act shall not prevent any prosecution, by indictment or otherwise, for any thing that is an offence within the intent and meaning hereof, and which might have been so prosecuted if this Act had not been made, unless the offender has been prosecuted for such offence under this Act, and convicted or acquitted thereof. 1 V. c. 11, s. 3.

Act not to prevent prosecution by indictment, &c.

4. All Justices of the Peace in and for any County in Upper Canada, shall have concurrent jurisdiction as Justices of the Peace, with the Justices of any other County, in all cases as to the carrying into execution the provisions of this Act, and as to all matters and things relating to the preservation of the Public Peace, as fully and effectually as if each of such Justices were in the Commission of the Peace for each of such Counties. 1 V. c. 11, s. 7.

Concurrent jurisdiction given to Justices of different Counties in carrying this Act into effect.

5. The Governor, by and with the advice of the Executive Council, may, by Proclamation, declare that this Act shall be no longer in force in any particular County therein specified; and from and after the period specified in such Proclamation, the powers of this Act shall no longer be in force in such County; And the Governor, upon such advice as aforesaid, may,

Governor may declare by Proclamation that this Act is no longer in force in any particular County, and may again de-

clare the same  
in force.

may, by Proclamation, declare any such County to be again within the powers of this Act. 3 V. c. 11, s. 9.

All prosecu-  
tions for offen-  
ces committed  
against this Act  
to be commen-  
ced in six  
months.

6. No person shall be prosecuted for any offence done or committed contrary to the provisions of this Act, unless the prosecution be commenced within six months next after the offence committed. 3 V. c. 11, s. 10.

Actions against  
Justices, &c.,  
for any thing  
done under this  
Act to be commen-  
ced within  
six months.

7. Any action or suit brought against any Justice of the Peace, Constable, Peace Officer, or other person, for any thing done or acted in pursuance of this Act, must be commenced within six months next after the fact committed, and not afterwards; and the venue in any such action or suit shall be laid in the proper County where the fact was committed, and not elsewhere; and the defendant may plead the general issue, and give this Act and the special matter in evidence in any trial to be had thereupon; and if such action be brought after the time limited for bringing the same, or if the venue be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant; and in such case, or if the plaintiff becomes non-suit, or discontinues his action after appearance by the defendant, or if the jury find a verdict for the defendant upon the merits, or if upon demurrer judgment be given against the plaintiff, the defendant shall have double costs, as between Attorney and Client, to be recovered in the same manner as in other cases. 1 V. c. 11, s. 8.—See 14, 15 V. c. 54, s. 7.

Other protec-  
tion to Justices  
&c.

## C A P C .

An Act for the punishment of any persons who seduce Soldiers or Sailors to desert Her Majesty's Service.

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

Any person  
procuring sol-  
diers or sailors  
to desert to be  
liable to impris-  
onment in the  
Common Gaol  
or Penitentiary  
and to a fine, in  
the discretion  
of the Court.

1. If any person other than an enlisted Soldier in Her Majesty's Service, or a Sailor engaged in the Naval Service of Her Majesty, by words or with money, or by any ways, methods or means whatsoever, directly or indirectly, persuades, encourages, prevails upon, or procures any such Soldier or Sailor to desert or leave Her Majesty's Military or Naval Service, such offender is guilty of a Misdemeanor, and upon conviction before any Court of Oyer and Terminer and General Gaol Delivery in Upper Canada, shall be punished by fine and imprisonment in the Common Gaol of the County in which the conviction takes place, for such period, being less than two years, as the said Court may impose, or by imprisonment at hard labor in the Penitentiary, for a period not less than two years, in the discretion of the Court. 3 V. c. 3, s. 2. See 14, 15 V. c. 2, s. 2.

2. If any person other than an enlisted Soldier, or a Sailor engaged in the Naval Service of Her Majesty, conceals, receives or assists any deserter from Her Majesty's Naval or Military Service, knowing him to be a deserter, the person so offending is guilty of a Misdemeanor, and upon conviction before any such Court as aforesaid shall be liable to the same punishments mentioned in the preceding section of this Act. 3 V. c. 3, s. 3.

Any person harboring a deserter liable to the same penalties.

## C A P. C I.

### An Act respecting Forgery and Perjury in certain cases.

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

#### I—FORGERY.

1. Any person who forges any seal, stamp or signature of any document mentioned or referred to in the Act respecting Witnesses and Evidence, or who tenders in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, is guilty of felony, and shall be imprisoned in the Penitentiary for any term not exceeding ten years, or be imprisoned in any Common Jail or house of correction with hard labor for any term not exceeding one year, nor less than two months. 16 V. c. 19, s. 11.

Punishment of persons forging documents, &c., or using them knowing them to be forged.

2. Whenever any such document has been admitted in evidence, the Court or the person who has admitted the same, may, at the request of any party against whom the same has been admitted in evidence, direct that the same shall be impounded and be kept in the custody of some Officer of the Court or other proper person, for such period and subject to such conditions as to the said Court or person seems meet. 16 V. c. 19, s. 11.

Documents may be impounded on request of party against whom it may have been used.

3. Any person who forges the seal or any process of any Division Court, or serves or enforces any such forged process, knowing the same to be forged, or who delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of any such Court, knowing the same to be false, or who acts or professes to act under any false color or pretence of the process of any such Court, is guilty of felony. 13, 14 V. c. 53, s. 86.

Offence of persons forging the seals of any Division Courts.

4. Any person who forges any signature to any affidavit made or taken under the Common Law Procedure Act, or who uses or tenders in evidence any such affidavit with any false, forged or counterfeited signature thereto, knowing the same to be false, forged or counterfeit, is guilty of felony, and shall be imprisoned

Punishment for forging signatures, &c.

imprisoned at hard labor in the Penitentiary for any term not more than ten years nor less than four years. 19 V. c. 43, s. 40.

Penalty on persons forging debentures, &c.

**5.** Any person who forges or counterfeits any Debenture issued under the authority of any Act, providing for the accommodation of the Superior Courts, or any stamp, indorsement or writing thereon or therein, or who demands to have such counterfeited debenture, or any debenture with such counterfeited writing or other indorsement thereon or therein, exchanged for money by any person, liable or required to exchange the same, or by any other person, knowing the debenture so tendered or the indorsement or writing thereon or therein to be so forged or counterfeited, with intent to defraud Her Majesty, or the person appointed to pay the same, or any other person or persons, body or bodies politic, or corporate, is guilty of felony, and shall suffer such punishment as may be adjudged in that behalf, not exceeding imprisonment in the Penitentiary for seven years. 9 V. c. 33, s. 3,—22 V. c. 31. (1859).

Forging certificates in case of criminal points reserved.

**6.** Any person who forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate, or copy, certified under the Act respecting the reservation of points of law in Criminal cases tried at any Assizes, Quarter Sessions, or Recorder's Court, by a Chief Justice or Senior Judge, or by a Clerk of Assize, Clerk of the Peace or Recorder's Clerk, with intent to cause any person to be discharged from custody, or otherwise to prevent the course of justice, is guilty of felony, and shall be imprisoned in the Penitentiary for any period not more than seven nor less than three years. 14, 15 V. c. 13, s. 6.

Where offenders to be tried.

**7.** Every person charged with committing any felony under this Act, may be dealt with, indicted, tried, and, if convicted, be sentenced, and the offence may be laid and charged to have been committed in the county or place in which he may be apprehended or is in custody. 19 V. c. 43, s. 40.

Accessories.

**8.** Every accessory before or after the fact to any such offence, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in any county or place in which the principal offender may be tried. 16 V. c. 19, s. 11,—19 V. c. 43, s. 40.

## 2—PERJURY.

Trial, punishment, &c., for making false affidavits out of Upper Canada.

**9.** Any person who wilfully and corruptly makes any false affidavit out of Upper Canada, before any Chief Justice or other Officer or Functionary authorized to take the same under the Common Law Procedure Act, shall be deemed guilty of perjury, in like manner as if such false affidavit had been made

made in Upper Canada before competent authority, and he may be dealt with, indicted, tried, and, if convicted, be sentenced, and the offence may be laid and charged to have been committed in that county or place where he has been apprehended or is in custody. 19 V. c. 43. s. 40.

## C A P . C I I .

### An Act respecting the punishment of Persons illegally solemnizing Marriage in Upper Canada.

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

**1.** Any person who, not being a Clergyman or Minister of a religious denomination existing in Upper Canada, solemnizes or pretends to solemnize matrimony in Upper Canada, or falsely personates any Clergyman or Minister for the purpose of officiating at any such ceremony, is guilty of a misdemeanor, and shall be imprisoned in the Penitentiary for a period not less than two years, or suffer such other punishment, either by fine, or imprisonment less than two years, or by both, as may be deemed meet and just; and it shall rest upon the person accused of such offence to prove the fact of his being a duly ordained or appointed Minister or Clergyman of the religious denomination to which he professes to belong, and that such denomination had, at the time of the solemnization of the marriage, a known existence in Upper Canada. 20 V. c. 66, s. 5.

Punishment of persons not being Ministers pretending to solemnize marriage.

**2.** Any person who knowingly procures any other person not being a Minister or Clergyman of some religious denomination existing in Upper Canada, to perform the ceremony of matrimony, or knowingly aids or abets any such pretended Clergyman or Minister in performing such ceremony, is guilty of a misdemeanor, and shall be liable to the punishment expressed in the preceding section of this Act. 20 V. c. 66, s. 6.

Punishment of persons procuring persons not Ministers to pretend to marry, &c.

**3.** Any Clergyman or Minister, legally authorized to solemnize marriage within Upper Canada, who knowingly or wilfully solemnizes marriage therein without publication of bans, or without license of marriage first had and obtained from some person having authority to grant the same, is guilty of a misdemeanor, and shall be punished accordingly; But such offence shall not be cognizable at any Court of Quarter Sessions. 2 G. 4, c. 11, s. 1.

Quarter Sessions not to have jurisdiction over such offence.

**4.** No prosecution for any offence against the last section of this Act shall be commenced after two years from the time of the offence committed; and in every such prosecution, wherein the legal authority of any person to solemnize marriage within Upper Canada comes in question, the proof of authority shall be upon the defendant. 2 G. 4, c. 11, ss. 1, 2.

Prosecution must be within two years.

Proof of legal authority to solemnize marriage shall be on defendant.

## C A P. C I I I .

## An Act respecting Slander and Libel.

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

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed.

**1.** On the trial of any action, indictment or information, for the making or publishing any libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, indictment or information, and shall not be required or directed by the Court or Judge before whom such action, indictment or information is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action, indictment or information ; but the Court or Judge before whom such trial is had, shall, according to the discretion of such Court or Judge, give the opinion and directions of such Court or Judge to the jury on the matter in issue, as in other cases ; and the jury may on such issue find a special verdict, if they think fit so to do, and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act. 13, 14 V. c. 60, s. 1.

Averments in actions for slander or libel.

**2.** 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 averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander ; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient. 19 V. c. 43, s. 110.

Defendant may prove in mitigation that he offered a written apology.

**3.** In any action for defamation when the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on demurrer, he may give in evidence in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation, before the commencement of the action, or in case the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. 13, 14 V. c. 60, s. 2.

Defendant may plead that the libel was inserted without malice or gross negligence, and that he published or offered

**4.** In an action for libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or other periodical publication, without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper



paper or other periodical publication, a full apology for the said libel, or if the newspaper, or periodical publication in which the said libel appeared, be one ordinarily published at intervals exceeding one week, that he offered to publish such apology in any newspaper or periodical publication to be selected by the plaintiff in the action. 13, 14 V. c. 60, s. 3.

to publish an apology.

**5.** Any defendant, upon filing such plea, may pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment shall be of the same effect, and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs, and the form of pleading, (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant,) as payment of money into Court in other cases, and to such plea the plaintiff may reply generally, denying the whole of the plea. 13, 14 V. c. 60, s. 3.

And may pay money into Court as amends.

**6.** Any person who publishes or threatens to publish any libel upon any other person, or directly or indirectly—

Punishment for extorting money by threatening to publish or promising to prevent the publication of a libel.

1. Threatens to print or publish, or

2. Proposes to abstain from printing or publishing, or

3. Offers to prevent the printing or publishing, of any matter or thing touching or concerning any other person, with intent to extort any money or security for money, or any valuable thing, from such or from any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, such offender shall on conviction be fined in a sum not exceeding four hundred dollars, and be imprisoned in the Common Gaol for any period less than two years. 13, 14 V. c. 60, s. 4,—14, 15 V. c. 2, s. 2.

**7.** Any person who maliciously publishes any defamatory libel, knowing the same to be false, shall, being convicted thereof, be fined not more than two hundred dollars, and be imprisoned in the Common Gaol for a period not exceeding one year. 13, 14 V. c. 60, s. 5.

Punishment for publishing a libel knowing it to be false.

**8.** Any person who maliciously publishes any defamatory libel, shall, being convicted thereof, be fined not exceeding the sum of one hundred dollars, or be imprisoned not exceeding six months, or both, as the Court may award. 13, 14 V. c. 60, s. 6.

Punishment for publishing any libel.

**9.** To any indictment or information for a defamatory libel, it shall be a good defence for the defendant to plead the truth of the matters charged by way of justification in the manner required in pleading a justification to an action for defamation, and that it was for the public benefit that such matters should be published, and to such plea the prosecutor may reply generally, denying the whole thereof. 13, 14 V. c. 60, s. 7.

When the truth may be pleaded and in what manner.

Replication.

The truth not to be inquired into unless specially pleaded.

**10.** Without such plea, the truth of the matters charged as libellous in such indictment or information, or that it was for the public benefit that such matters should have been published, shall in no case be inquired into. 13, 14 V. c. 60, s. 7.

When such a plea may aggravate or mitigate the sentence.

**11.** If after such plea the defendant be convicted on such indictment or information, the Court, in pronouncing sentence, may consider whether the guilt of the defendant is aggravated or mitigated by such plea, and by the evidence given to prove or disprove the same. 13, 14 V. c. 60, s. 7.

No defence under the plea of not guilty affected.

**12.** In addition to such plea of justification, the defendant may plead not guilty, and no defence otherwise open to the defendant under the plea of not guilty, shall be taken away or prejudiced by reason of such special plea. 13, 14 V. c. 60, s. 7.

In certain cases defendant may prove publication without his authority, &c.

**13.** Whenever upon the trial of any indictment or information for the publication of a libel, to which the plea of not guilty has been pleaded, evidence is given which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, the defendant may prove, and if proved, it shall be a good defence, that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part. 13, 14 V. c. 60, s. 8.

Private prosecutor if successful entitled to costs, and so of defendant.

**14.** In the case of an indictment or information by a private prosecutor, for the publication of any defamatory libel, if judgment be given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information; and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information.

By whom costs to be taxed.

**15.** The costs in such cases shall, at the option of the party in whose favor the same are to be taxed, be taxed by either of the Clerks of the Crown and Pleas at Toronto, or by the Deputy Clerk of the Crown in the County where such trial took place.

How recoverable.

**16.** Process of contempt, and arrest for non-payment of costs, having been abolished by the fourth and tenth sections of the Act passed in the twenty-second year of Her Majesty's Reign, chapter thirty-three, (A. D. 1859,) to extend the provisions of the Act for the abolition of Imprisonment for Debt, and as provided in the third and thirteenth sections of the Consolidated Statute for Upper Canada, chapter twenty-four, respecting arrest and imprisonment for Debt.—Therefore the costs mentioned in the two last preceding sections of this Act, shall be recoverable on any rule or order of the Court of Queen's Bench or Common Pleas, or of any Judge of either of the said Superior Courts of Common Law, or on the rule or order of the County Court in the County in which such indictment or information was tried, or of any Judge of such County Court,

Proceedings for recovery, how entitled.

Court, in the manner provided in the nineteenth section of the said Consolidated Statute, and subject to the other provisions of the said Consolidated Statute so far as material and applicable, and such proceedings shall be had on any such rule or order as may, at the time this Act takes effect, be had in any case for non-payment of costs, pursuant to an order or rule of either of the said Superior Courts, and all proceedings for the recovery of such costs shall be entitled in the Court of Oyer and Terminer for the County in which the trial was had. 13, 14 V. c. 60, s. 9,—22 V. c. 33, ss. 4, 10, 12.

## C A P . C I V .

### An Act to prevent the Profanation of the Lord's Day, in Upper Canada.

**W**HEREAS it is expedient to enact a Law against the Profanation of the Lord's Day, commonly called Sunday, which day ought to be duly observed and kept holy: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** It is not lawful for any Merchant, Tradesman, Artificer, Mechanic, Workman, Labourer or other person whatsoever, on the Lord's Day to sell or publicly shew forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business or work of his ordinary calling, (conveying Travellers or Her Majesty's Mail, by land or by water, selling Drugs and Medicines, and other works of necessity, and works of charity, only excepted). 8 V. c. 45, s. 1.

No sale to take place on Sunday.

**2.** It is not lawful for any person on that day to hold, convene or to attend any public political meeting, or to tittle, or to allow or permit tittle in any Inn, Tavern, Grocery or House of Public Entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance, or annoyance to Her Majesty's peaceable subjects.

Political meetings, tittle, &c., prohibited on Sunday.

**3.** It is not lawful for any person on that day to play at skittles, ball, foot-ball, rackets, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort. 8 V. c. 45, s. 1.

Games and amusements, prohibited.

**4.** Except in defence of his property, from any wolf or other ravenous beast or a bird of prey, it is not lawful for any person on that day to go out hunting or shooting, or in quest of, or to take, kill or destroy, any deer or other game, or any wild animal, or any wild fowl or bird, or to use any dog, gun, rifle or other engine, net or trap, for the above mentioned purpose. 8 V. c. 45, s. 1.

Exception.

Hunting and shooting.

Fishing.

5. It is not lawful for any person on that day to go out fishing or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine for that purpose. 8 V. c. 45, s. 1.

Bathing.

6. It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated City or Town, or within view of any place of Public Worship, or private residence. 8 V. c. 45, s. 1.

Penalty.

7. Any person convicted before a Justice of the Peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view had of the offence by the said Justice himself, shall, for every such offence, be fined in a sum not exceeding forty dollars, nor less than one dollar, together with the costs and charges attending the proceedings and conviction. 8 V. c. 45, s. 3.

Sales and agreements made on Sunday to be void.

8. All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever, made by any person or persons on the Lord's Day, shall be utterly null and void. 8 V. c. 45, s. 2.

Justice to summon accused party.

9. When any person has been charged upon oath or otherwise, in writing, before any Justice of the Peace, with any offence against this Act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such Summons, and if such person fails or neglects to appear accordingly, then (upon proof of due service of the Summons upon such person, by delivering or leaving a copy thereof at his house, or usual or last place of abode, or by reading the same over to him personally,) the said Justice may either proceed to hear and determine the case *ex parte*, or issue his Warrant for apprehending such person, and bringing him before himself, or some other Justice of the Peace having jurisdiction within the same County or Municipality; and the Justice before whom the person charged appears or is brought, shall proceed to hear and determine the case, or the said Justice, on view of the offence, may verbally order, or if on the complaint of a third party, then may, in writing, order the offender to be at once committed (although it be on the Lord's Day) to the common gaol of the place, or into other safe custody, there to remain until the morrow, or some other day, according to circumstances, until the case be heard and disposed of. 8 V. c. 45, s. 4.

Commitment.

Form of conviction.

10. The Justice before whom any person is convicted of any offence against this Act, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect, as the case may require, that is to say: 8 V. c. 45, s. 5.

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, eighteen \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_, (or at the City of \_\_\_\_\_, as the case may be,) A. B., of \_\_\_\_\_, is convicted before me, C. D., one of Her Majesty's Justices of the Peace for the said County, (or City, as the case may be,) for that he the said A. B. did (specify the offence, and the time and place, when and where the same was committed, as the case may be;) and I, the said C. D., adjudge the said A. B., for his offence to pay (immediately, or on or before the \_\_\_\_\_ day of \_\_\_\_\_,) the sum of \_\_\_\_\_, and also the sum of \_\_\_\_\_, for costs; and in default of payment of the said sums respectively, to be imprisoned in the common gaol of the said County (or City, as the case may be,) for the space of \_\_\_\_\_ months, unless the said sums be sooner paid; and I direct that the said sum of \_\_\_\_\_ (the penalty) shall be paid as follows, that is to say: one moiety thereof to the party charging the offence, and the other moiety to the Treasurer of the County, (naming the one in which the offence was committed, or Chamberlain, of the said City, as the case may be,) to be by him applied according to the provisions of the Act, (insert the title of this Act).

Given under my hand and seal, the day and year first above mentioned.

C. D., J. P. [L. S.]

**11.** A conviction under this Act shall not be quashed for want of form; nor shall any Warrant of Commitment be held void by reason of any defect therein, if it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the commitment. S V. c. 45, s. 6. Conviction and commitment not to be void for want of form.

**12.** In default of payment of any fine imposed under this Act, together with the costs attending the same, within the period by the Justice of the Peace before whom such conviction takes place, specified for the payment thereof at the time of conviction, such Justice of the Peace (if he deems it expedient so to do) may issue his Warrant directed to any Constable to levy the amount of such fine and costs within a certain time, to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount be found, he may commit the offender to the Common Gaol of the County wherein the offence was committed, for any term not exceeding three months, unless the fine and costs be sooner paid. S V. c. 45, s. 7. In default, may levy fine.

**13.** The prosecution for any offence punishable under this Act, must be commenced within one month after the commission of the offence, and not afterwards; and the evidence of any inhabitant of the County or Municipality in which the offence Commitment. Limitation of time for prosecution.

offence has been committed, shall be admitted and receivable, notwithstanding the fine incurred by the offence may be payable for the benefit of such Municipality; but the party who makes the charge in writing before the Justice, shall not be admitted as a witness in the case. 8 V. c. 45, s. 8.

Who may be witnesses.

Appeal to the Quarter Sessions.

**14.** In case a person thinks himself aggrieved by any conviction or decision under this Act, then, in case such person, within six days after such conviction or decision, and ten days at least before the first Court of General Quarter Sessions of the Peace, or in Cities before the first Recorder's Court, (if there be a Recorder's Court) to be held not sooner than twelve days next after such conviction or decision, may appeal in the manner provided in and subject to the provisions of the Act respecting Appeals in cases of Summary Conviction. 8 V. c. 45, s. 9.

Justices to transmit the conviction to the Quarter Sessions.

**15.** Every Justice of the Peace before whom any person is convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions, or Recorder's Court (as the case may be) to be held for the County or City wherein the offence was committed, there to be kept by the proper officer among the records of the Court. 8 V. c. 45, s. 10.

Where actions, &c., are to be tried.

**16.** All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and must be commenced within six months after the fact committed, and not afterwards; and notice in writing, of such action, and of the cause thereof, must be given to the Defendant one month at least before the action; and in any such action the Defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon. 8 V. c. 45, s. 11.

Defendant may plead general issue.

Tender of amends, &c.

**17.** No Plaintiff shall recover in such action, if tender of sufficient amends be made before such action brought, or if a sufficient sum of money be paid into Court after such action brought, by or on behalf of the Defendant; and if a verdict passes for the Defendant, or the Plaintiff becomes non-suit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment be given against the Plaintiff, the Defendant may recover his full costs, as between Attorney and Client, and have the like remedy for the same as any Defendant hath by law in other cases. 8 V. c. 45, s. 11.

Defendant if successful to have full costs.

Distribution of penalties.

**18.** All sums of money awarded or imposed as fines or penalties, by virtue of this Act, shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing before the Justice, and the other moiety to the Treasurer of the County or City wherein the

the offence was committed, to be by him accounted for in the same manner as for other moneys deposited with or paid over to him. 8 V. c. 45, s. 12.

19. This Act is not to extend to the people called Indians. 8 V. c. 45, s. 14.

Not to extend to Indians.

## C A P . C V .

### An Act respecting Petty Trespasses in Upper Canada.

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

1. Any person who unlawfully enters into, comes upon, or passes through, or turns any Horse, Cattle, Sheep or Swine upon, or permits any such to go or range at large upon, or in any way trespass upon any land or premises whatsoever, being wholly or in part inclosed and being the property of any other person, shall be liable to a penalty of not less than one dollar nor more than ten dollars for every such offence, irrespective of any damage having or not having been occasioned thereby ; and such penalty may be recovered with costs in every case of conviction before any one Justice of the Peace, who shall decide the matter in a summary way, and award costs in case of conviction, which may be had either on view, or on confession of the party complained against, or on the oath of one credible witness ; but nothing herein contained 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, or to any case within the meaning of the twenty-eighth section of the Consolidated Statutes of Canada respecting Arson and other malicious injuries to property. 22 V. c. 98, s. 1. (1858.)

Not person to enter, or to allow his cattle, &c., to enter on the land of another without permission.

Penalty for so doing ; and how recoverable.

2. Any person found committing any such trespass as aforesaid, may be apprehended without a warrant by any Peace Officer, or by the owner of the property on which it is committed, or the servant, or any person authorized by him, and be forthwith taken to the nearest Justice of the Peace, to be dealt with according to law. 22 V. c. 98, s. 2.

Proprietor or his servant may arrest trespasser without warrant, and bring him before a Justice.

3. Except as herein otherwise provided, all proceedings under this Act shall be subject to and in accordance with the provisions of the Consolidated Statutes of Canada, respecting *the duties of Justices of the Peace out of Sessions in relation to summary convictions and orders*, which shall apply to cases arising under this Act. 22 V. c. 98, s. 3.

Provisions of the Act respecting duties of J. Ps. in cases of summary convictions, to apply to proceedings under this Act.

4. Nothing in this Act contained shall authorize any Justice of the Peace to hear and determine any case of trespass in which the title to any land, or any interest therein or accruing thereupon,

Justice of the Peace not to try titles to land under colour of this Act.

thereupon, shall be called in question or affected in any manner howsoever; but every such case of trespass shall be dealt with according to law in the same manner, in all respects, as if this Act had not been passed. 22 V. c. 98, s. 4.

## C A P . C V I .

### An Act respecting County Attorneys.

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

#### 1. Every County Crown Attorney shall—

To receive and examine informations, &c.

To secure attendance of witnesses.

To institute and conduct prosecutions at Quarter Sessions ;

And Recorder's Courts.

Watch over certain cases brought by private prosecutors.

To deliver papers connected with criminal business at Assizes to Crown Officer.

When to officiate thereat.

First—Receive and examine all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges which the Magistrates and Coroners of the County are hereby required to transmit to him—and when necessary, he shall cause such charges to be further investigated, and additional evidence to be collected if required,—and shall also sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions at the Assizes and Quarter Sessions may not be unnecessarily delayed or fail through want of proof that might be secured ;

Secondly—He shall institute and conduct on the part of the Crown prosecutions for felonies and misdemeanors at the Court of Quarter Sessions for the County he is appointed to, in the same manner as the Law Officers of the Crown institute and conduct similar prosecutions at the Assizes and with like rights and privileges, except as to the right of entering a *nolle prosequi*, and generally he shall attend to all criminal business at the Court of Quarter Sessions,—and perform also the like duties in the Recorder's Court in those Cities wherein such Courts exist ;

Thirdly—He shall watch over the conduct of cases at the Court of Quarter Sessions, wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private injury than a public offence ; and without unnecessarily interfering with private individuals who wish in such cases to prosecute, may assume wholly the conduct of the case where justice towards the accused seems to demand his interposition ;

Fourthly—He shall deliver to the Crown Officer or Counsel appointed by the Attorney-General, all papers connected with the criminal business at the Assizes on or before the opening of the Court ; he shall be present at such Court, and if required, shall assist such Crown Officer or Counsel with the Criminal business, and in the absence of the Law Officers of the Crown and of such Counsel, he shall represent the Crown and



and take the charge and conduct of the criminal business to be done at the Assizes for his County ;

Fifthly—If required by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained—he shall institute and conduct proceedings before Justices of the Peace under any Act or Law conferring summary powers to convict for offences in relation to the Public Revenue, the Public Property, the Public Domain, the Public Peace, the Public Health, and any other matter made punishable on summary conviction before Justices of the Peace, and the County Attorney is hereby empowered to institute such proceedings, on a complaint in writing, or as Public Prosecutor, in cases wherein the public interests require the exercise of such office ;

To institute and conduct summary proceedings before Magistrates where the Public Revenue, &c., is concerned.

Sixthly—If by any Justice of the Peace requested in writing containing a Statement of the particular case, he shall advise and instruct such Magistrate in respect to criminal offences brought before him for preliminary investigation or for adjudication ; 20 V. c. 59, s. 5.

To advise Magistrates at their request.

Seventhly—He shall perform all such duties and services as the Governor, by regulations in Council, from time to time, prescribes and directs for carrying out the provisions of any Act imposing duties upon County Attorneys, and also touching the office of County Attorneys and the prosecution of Criminal offenders. 20 V. c. 59, s. 5, No. 7.

To perform duties to be assigned by Regulations in Council.

**2.** No County Attorney shall be qualified to act as such until he has taken, before some County Judge, the following oath, that is to say :

County Attorney to take oath of office.

“ I do swear that I will truly and faithfully, according to the best of my skill and ability, execute the several duties, powers and trusts of County Attorney for the County of \_\_\_\_\_ without favor or affection to any party. So help me God.” 20 V. c. 59, s. 6.

The Oath.

**3.** In every case of misdemeanor tried at the Court of Quarter Sessions, in which costs are or may be ordered to be paid by a Defendant, the County Attorney shall be entitled to fees as Attorney and Counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow ; such fees in case of conviction to form part of the costs payable by a Defendant. 20 V. c. 59, s. 7.

Fees in cases conducted by him at trial, where costs are paid by defendant.

**4.** In all cases of felony tried as aforesaid, and in all cases of misdemeanor in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the Defendant, the County Attorney shall be entitled to receive for the services rendered

And in case of felony or misdemeanor when costs are not paid by defendant.

rendered by him in each such case the sum of five dollars, to be paid upon certificate of the Chairman of the Court of Quarter Sessions, and to form a portion of the expenses of the administration of Criminal Justice in Upper Canada. 20 V. c. 59, s. 7.

Account to be rendered by him.

5. The County Attorney shall, on or before the tenth day of February in each year, render an account to the Minister of Finance, under oath, of all emoluments received by him by virtue of his office for the then preceding year. 20 V. c. 59, s. 7.

Governor in Council to make regulations as to duties of County Attorney, &c.

6. The Governor in Council may from time to time make such general regulations as to him seems expedient, for carrying out the provisions of any Act, imposing duties upon County Attorneys, and also touching the office of County Attorney, and for the prosecution of offenders against the criminal laws of this Province, and may from time to time alter such regulations. 20 V. c. 59, s. 8,—and s. 5 No. 7.

Clerks of the Peace to be Barristers and shall be *ex-officio* County Attorneys.

7. No person shall after this Act takes effect be appointed a Clerk of the Peace for any County, who is not a Barrister at law of not less than three years' standing at the Upper Canada Bar; and such Clerk of the Peace shall be *ex-officio* County Attorney for the County of which he is Clerk of the Peace. 20 V. c. 59, s. 9.

Case of unavoidable absence or illness of County Attorney provided for.

8. In case of the illness or unavoidable absence of the County Attorney, the Judge of the County Court of the County may appoint some Barrister at law to act for such County Attorney during such illness or absence, and notice of the appointment and of the cause thereof shall be sent by such County Attorney to the Governor, who may at any time annul such appointment. 20 V. c. 59, s. 10.

Justices committing or bailing on criminal charges, to deliver informations, depositions, &c., to County Attorney who shall be "the proper officer."

9. In every case where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing, shall deliver or cause to be delivered without delay to the County Attorney for the County, the informations, depositions, examinations, recognizances and papers connected with the charge; and the County Attorney shall be deemed the "proper officer" of the Courts within the meaning of the Consolidated Statutes of Canada, *respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with indictable offences*, and in every case of inquisition found before Coroners, the inquisition and every recognizance taken before them, with the written information (if any), and the depositions and statements (if any) of the accused, shall be forthwith delivered to the County Attorney of the County in which such inquisition has been found; and in every case in which an information has been laid or complaint made before a Justice of the Peace, whether proceedings have been taken therein or not, such Justice shall hand over to the County Attorney

Like provision in case of inquisitions before Coroners.

And in other cases on requisition of County Attorney.

Attorney all papers connected therewith, on being by him required so to do. 20 V. c. 59, s. 11.

**10.** The County Attorney shall be allowed a percentage of four dollars on every one hundred dollars of all public moneys coming into his hands. 20 V. c. 59, s. 15.

Four per cent to be allowed to County Attorney on money coming into his hands.

**11.** In citing, pleading, or otherwise referring to this Act, it shall, in all cases, be sufficient to use the expression "The Local Crown Attorneys' Act," or words of similar import. 20 V. c. 59, s. 18.

Short Title of Act.

**12.** Unless there be something in the context repugnant to such construction, the word "Assizes," when used in this Act, shall be understood to mean the Courts of Assize, Nisi Prius, Oyer and Terminer and General Gaol Delivery, and the Sitzings of these Courts. 20 V. c. 59, s. 19.

Interpretation clause.

## C A P. C V I I .

An Act respecting proceedings to outlawry in criminal cases.

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

**1.** The Courts of General Quarter Sessions of the Peace in the several Counties of Upper Canada, shall be in the place and stead of the County Courts of England, as far as respects any purpose of outlawry, or any proceedings therein. 55 G. 3, c. 2, s. 2.

In Outlawry Courts of Q. S. substituted for County Courts in England.

**2.** The process upon every indictment to bring the person indicted into Court, shall be a *capias*, in the usual form, issued from the Court before which the indictment is found, directed to the Sheriff of the County wherein the said Court is sitting, commanding him to take the person indicted and to bring him before the said Court; and if the person cannot be taken during the sitting of the said Court, then so soon after as he can be taken, to bring or cause him to be brought, before some Justice of the Peace of the County, to be dealt with according to law.

The first process in Outlawry, shall be a *capias* or Bench warrant.

**3.** The *capias* shall be made returnable in the Court of Queen's Bench or Common Pleas, on the first day of the term next after the sitting of the Court before which the indictment is found; and if upon the return of the writ the Sheriff of the said County returns that the person therein named is not to be found in his County, then an alias writ of *capias* shall issue from the Court of Queen's Bench or Common Pleas, under the seal of the Court, tested of the first day of the term,

Returnable in the Court of Queen's Bench or Common Pleas.

Then an Alias.

term, if in term time, or on the last day of the preceding term, if in vacation, returnable before such Court, on the first day of the next ensuing term. 55 G. 3, c. 2, s. 3.

If returned *non est inventus*, then a Writ of Exigent.

4. If to the said writ of alias *capias* the Sheriff returns that the person therein named is not to be found in his County, then upon motion in Court, or before a Judge in vacation, a writ of exigent shall issue under the seal of the Court, tested on the first day of the term, if in term time, or on the last day of the preceding term, if in vacation, directed to the Sheriff of the County into which the said writs of *capias* issued; which writ of exigent shall be returnable on the first day of the fifth term from that in which the same is awarded, and may be in the form following, that is to say :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the County—Greeting :

We command you, that you cause A. B., late of \_\_\_\_\_, to be demanded from General Quarter Sessions to General Quarter Sessions in your County until, according to the law of Upper Canada, he be outlawed if he doth not appear, and if he doth appear, then that you take him and cause him to be safely kept, so that you may have his body before us, in our Court of \_\_\_\_\_, at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_ term next (*the return of the writ*) to answer to a certain bill of indictment found against him for \_\_\_\_\_ (*whatsoever the crime may be*) and have then there this writ.

Witness, the Honorable \_\_\_\_\_ Chief Justice, (*or Senior Judge*) at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our reign. 55 G. 3, c. 2, s. 4.

How the Sheriff shall proceed thereon.

5. The Sheriff to whom the said writ of exigent issues shall, at three successive Courts of General Quarter Sessions of the Peace, to be holden in and for his County, before the return of the said writ, in open Court, immediately after the charge to the Grand Jury, make or cause to be made proclamation of the person named in the said exigent, requiring him to render himself to answer to the said indictment. 55 G. 3, c. 2, s. 5.

Return thereof.

6. If the person so demanded does not appear, the Sheriff to whom the said writ of exigent is directed, shall indorse upon the said writ of exigent a return in the following form :

By virtue of the within writ, to me directed, at the Court of General Quarter Sessions of the Peace, held at \_\_\_\_\_, in and for the County of \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year within written, the within named A. B. was

was a first time demanded, and did not appear; And at the Court of General Quarter Sessions of the Peace, held at aforesaid, for the County aforesaid, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, (*or as it may be*) the said A. B. was a second time demanded, and did not appear; And at the Court of General Quarter Sessions of the Peace held at aforesaid, for the County aforesaid, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, (*or as it may be*) the said A. B. was a third time demanded, and did not appear; therefore the said A. B., according to the law of Upper Canada, is outlawed.

The answer of

C. D. Sheriff.

55 G. 3, c. 2, s. 6.

7. In all criminal cases wherein any writ of exigent is awarded under this Act, against any person described in the indictment, as being lately conversant in any other County of Upper Canada than that in which the said exigent is so awarded, a writ of proclamation shall be awarded and made out of the same Court, or by order of a Judge in vacation, having day of teste and return as the writ of exigent has, and shall be directed and delivered to the Sheriff of the County in which the person indicted is in the said indictment described as having lately been conversant, which writ of proclamation may be in the following form:

When a Writ of Proclamation shall be awarded.

Victoria, &c., &c., &c.

To the Sheriff of the

County—Greeting:

Whereas by a writ, we lately commanded our Sheriff of the County of \_\_\_\_\_ that he should cause A. B. late \_\_\_\_\_ to be demanded from General Quarter Sessions to General Quarter Sessions, until, according to the law of Upper Canada he should be outlawed if he did not appear, and if he did appear, then that he should take him and cause him to be safely kept, so that he might have his body before us in our Court of \_\_\_\_\_, at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_ term then next, to answer to a certain bill of indictment found against him for \_\_\_\_\_; therefore, we command you, that in pursuance of the Statute in that behalf, you cause the said A. B. to be proclaimed upon three several days according to the form of the said Statute, that he render himself to our Sheriff of \_\_\_\_\_, so that he may have his body before us, at the time and place aforesaid, to answer to the said indictment, and have there then this writ.

Witness, the Honorable \_\_\_\_\_ day of \_\_\_\_\_, in the

, at Toronto, this \_\_\_\_\_ year of Our reign.

And

And the Sheriff to whom the said writ of proclamation issues shall, at three successive Courts of General Quarter Sessions of the Peace before the return of the said writ, in open Court, on the first day of the said Court, make or cause to be made proclamation of the person named in the said writ of proclamation, according to the command of the said writ. 55 G. 3, c. 2, s. 7.

Return to.

8. When the said writ of proclamation has been executed as aforesaid, the Sheriff to whom the same is directed, shall indorse thereon a return in the following form :

By virtue of the within writ to me directed, I caused the within named A. B. to be proclaimed three several days, according to the effect of the within mentioned Statute, as it is within commanded me. 55 G. 3, c. 2, s. 8.

The answer of

C. D. Sheriff

Consequences of non-appearance.

9. After the return of the said writ of exigent, and of the writ of proclamation, when required to be issued in manner aforesaid, the person against whom the same issued, shall, in default of appearance, incur and suffer the same forfeiture and disabilities, and the like process shall be had thereupon, as in cases of outlawry for the same offences by the criminal law of Upper Canada, as it stood immediately before this Act takes effect. 55 G. 3, c. 2, s. 9.

Proceedings to be had against persons indicted for High Treason, &c.

10. In case of an indictment being found by a Grand Jury, at any Court of competent jurisdiction in Upper Canada, against any person for High Treason, Misprision of Treason, or Treasonable Practices, and in case the Sheriff makes return to any warrant or *capias* issued thereupon, that such person is not to be found in his County, the Governor, by and with the advice and consent of the Executive Council, may, immediately upon the making of such return, issue a Proclamation, to be published not less than six weeks in the *Canada Gazette*, calling upon and requiring the person against whom such indictment has been found, to surrender himself to the custody of the Sheriff of the County within which the Court was held, before which such indictment was found by a day to be named in the said Proclamation, such day not being less than three months from the first publication of such Proclamation in the *Gazette*; and if such person does not, by the day in such Proclamation named, surrender himself to the custody aforesaid, and submit to justice, then and in such case, after the day in such Proclamation named, he shall stand and be adjudged attainted of the crime expressed and set forth in such indictment, and shall suffer and forfeit, as a person attainted of such crime by the laws of the land, ought to suffer and forfeit. 1 V. c. 9, s. 1.

Proclamation to issue calling upon person indicted to surrender himself.

Justices of Oyer and Terminer

11. The Justices of every Court of Oyer and Terminer and General Gaol Delivery, at which any such indictment may be found

found as aforesaid, shall, upon the return of the Sheriff that the person named in such indictment is not to be found within his County, certify the said indictment, and the proceedings thereon, into the Court of Queen's Bench or Common Pleas; and every such Sheriff, at the expiration of the time limited in such Proclamation, shall make a return to the said Court of Queen's Bench or Common Pleas, of the name of the person, who being named in any such Proclamation as aforesaid, has not surrendered himself to the custody of the said Sheriff, pursuant to the exigency of such Proclamation; and the said Court of Queen's Bench or Common Pleas shall, during the term in or before which such last mentioned return is made, direct judgment of Attainder against such person to be entered on record. 1 V. c. 9, s. 2.

to certify into the Court of Queen's Bench the indictment and return of the Sheriff that the party has not been arrested.

**12.** If any person against whom any such Judgment of Attainder has been entered does within three months next after the day of entry of such Judgment, surrender himself to the custody of the Sheriff of the County of York, and by the oath of two credible witnesses, establishes to the satisfaction of the said Court of Queen's Bench or Common Pleas, that such person was actually and *bonâ fide* prevented from surrendering himself, pursuant to the exigency of such Proclamation, by reason of absence beyond seas, sickness or other inevitable necessity, then the said Court may reverse the said Judgment of Attainder, and transmit the indictment to any Court of Oyer and Terminer, to be held in and for the County wherein such indictment was found; and such person so surrendering shall be tried for the offence charged in such indictment in like manner as if no such Judgment of Attainder had been entered. 1 V. c. 9, s. 3.

In case party surrenders himself.

The Court may reverse the Outlawry.

## C A P . C V I I I .

### An Act respecting Prosecutions in cases of Misdemeanor.

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

**1.** In case any person be prosecuted in Her Majesty's Court of Queen's Bench or of Common Pleas for Upper Canada, for any misdemeanor, by information there filed or by indictment there found, or removed into such Court, and appears therein in term time, in person, or in case of a corporation by Attorney, to answer to such information or indictment, such defendant, upon being charged therewith, shall not imparle to a following term, but shall plead or demur thereto, within four days from the time of his appearance, and in default of his pleading or demurring within four days aforesaid, judgment may be entered against such defendant for want of a plea. 20 V. c. 62, s. 1.

Defendant in misdemeanor not allowed to postpone trial by imparlance in the Queen's Bench or Common Pleas.

Time to plead may be allowed upon cause shewn.

2. In case such defendant appears to such information or indictment by Attorney, such defendant shall not imparle to a following term, but a rule, requiring him to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered, in the same manner as might have been done formerly in cases where the defendant had appeared to such information or indictment by Attorney in a previous term; but the Court or any Judge of either of the said Courts, upon sufficient cause shewn for that purpose, may allow further time for such defendant to plead or demur to such information or indictment. 20 V. c. 62, s. 1.

Traverse at Sessions, abolished.

Court may on cause shewn allow defendant time for preparing defence.

3. No person prosecuted, shall traverse or postpone the trial of any indictment found against him at any Session of Oyer and Terminer and Gaol Delivery or at any Session of the Peace or Recorder's Court; but if the Court upon his application or otherwise be of opinion that the defendant ought to be allowed a further time either to prepare for his defence or otherwise, such Court may adjourn the trial to the next subsequent Session, upon such terms as to bail or otherwise, as to such Court seems meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case such prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent Session, without entering into any fresh recognizances for that purpose. 20 V. c. 62, s. 2.

In Crown prosecutions for misdemeanor not brought to trial in 12 months after plea of not guilty, Court may order trial unless *nolle prosequi* be entered.

4. In case any prosecution for misdemeanor instituted by Her Majesty's Attorney or Solicitor General, in any of the Courts aforesaid, be not brought to trial within twelve months next after the plea of not guilty has been pleaded thereto, the Court in which such prosecution is depending, upon application made on behalf of any defendant in such prosecution, of which application twenty days' previous notice is to be given to Her Majesty's Attorney or Solicitor General, may make an Order, authorizing such defendant to bring on the trial of such prosecution; and thereupon such defendant may bring on such trial accordingly, unless a *nolle prosequi* be entered to such prosecution. 20 V. c. 62, s. 3.

## C A P . C I X .

An Act to facilitate the Despatch of Business before Grand Juries.

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

Witnesses need not be sworn in Court.

1. It shall not be necessary for any person to take an oath in open Court in order to qualify him to give evidence before any Grand Jury. 20 V. c. 4, s. 2.



**2.** The Foreman of every Grand Jury empannelled in Upper Canada, may administer an oath to every person who, under the circumstances hereafter enacted, appears before such Grand Jury to give evidence in support of any Bill of Indictment; and every such person may be sworn and examined upon oath by such Grand Jury, touching the matters in question.

Witnesses examined before Grand Juries may be sworn in the presence of the jurors.

**3.** The name of every witness examined, or intended to be so examined, shall be endorsed on the Bill of Indictment; and the Foreman of the Grand Jury shall write his initials against the name of each witness sworn by him and examined touching such Bill of Indictment.

The names to be endorsed on the Bill and marked with the initials of the Foreman.

**4.** The name of every witness intended to be examined on any Bill of Indictment shall be submitted to the Grand Jury by the Crown Counsel at the Assizes, and by the prosecuting officer acting on behalf of the Crown at all other Courts, and none others shall be examined by or before such Grand Jury, unless upon the written order of the presiding Judge.

The names to be submitted to the Grand Jury by the Queen's Counsel, and none others examined without special order.

**5.** Nothing in this Act shall affect any Fees by law payable to any Officer of any Court for swearing witnesses, but such Fees shall remain payable as if the Witnesses had been sworn in open Court. 20 V. c. 4, s. 1.

Fees to officers for swearing witnesses to be paid as usual.

**6.** The word "Foreman" shall include any member of the Grand Jury who may, for the time being, act on behalf of the Foreman in the examination of witnesses in support of any Bill of Indictment, and the word "Oath" shall include affirmation, where, by law an affirmation is required or allowed to be taken in lieu of an oath. 20 V. c. 4, s. 3.

Interpretation of terms.

## C A P . C X .

An Act to allow to any person indicted a Copy of the Indictment.

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

**1.** Any person indicted in any of Her Majesty's Courts in Upper Canada, for any felony or misdemeanor, may apply to such Court for a copy of the indictment, and the same shall, with all convenient expedition, be made out and delivered to such person, upon payment to the Clerk or officer at the rate of fifteen cents for every one hundred words contained in such indictment; but such copy shall not be received in evidence upon any trial for a malicious prosecution. 6 W. 4, c. 44, s. 2.

Copy of indictment to be delivered to prisoner on payment of certain charges.

## C A P . C X I .

## An Act respecting Amendments at Trial.

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

Courts of record including Courts of Oyer and Terminer and General Gaol Delivery, Quarter Sessions and Recorder's Courts may amend certain variances at the trial, &c.

**1.** Every Court of Record holding plea in Civil Actions, every Judge sitting in *Nisi Prius*, every Court of Oyer and Terminer and General Gaol Delivery, and every Court of General Quarter Sessions of the Peace, including Recorder's Courts, in Upper Canada, may cause the record on which any trial may be pending before any such Court or Judge upon any indictment or information for any misdemeanor, when any variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party as such Court or Judge may think reasonable, and thereupon the trial shall proceed as if no such variance had appeared ; and in case such trial be had at *Nisi Prius*, the order for the amendment shall be endorsed on the postea and returned with the record, and thereupon the papers, rolls and other records of the Court, from which such record issued, shall be amended accordingly. 1 W. 4, c. 1, s. 1.

## C A P . C X I I .

## An Act respecting the reservation of Points of Law in Criminal Cases.

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

Any Question of law may be reserved by certain Courts for the opinion of one of the Superior Courts of Law, &c.

**1.** When a person has been convicted of treason, felony or misdemeanor before any Court of Oyer and Terminer, Gaol Delivery, or Quarter Sessions, including Recorder's Courts, the Judge, Recorder or Justices of the Peace before whom the case was tried, may, in his or their discretion, reserve any question of law which arose on the trial, for the consideration of the Justices of Her Majesty's Superior Courts of Common Law, and thereupon may respite execution of the judgment on such conviction, or postpone the judgment, until such question has been considered and decided, and in either case, the Court at which the trial took place shall in its discretion, commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient sureties, in such sum as the Court thinks fit, conditioned for his appearance at such time as the Court directs, to receive judgment or to render

render himself in execution, as the case may be. 14, 15 V. c. 13, s. 1.

**2.** The Judge, Recorder, or Chairman of the Court of Quarter Sessions, shall thereupon state in a case to be signed by such Judge, Recorder or Chairman, the question or questions of law so reserved, with the special circumstances upon which the same arose; and such case shall be transmitted by such Judge, Recorder or Chairman to one or other of the said Superior Courts on or before the last day of the first week of the Term of such Superior Courts next after the time when such trial was had. 14, 15 V. c. 13, s. 2.

Case to be stated and certified to such Superior Court.

**3.** The Justices of either of the Superior Courts to which the case may be transmitted as aforesaid, shall hear and finally determine the said questions, and reverse, affirm or amend any judgment given on the indictment or inquisition on the trial whereof such questions arose, or shall avoid such judgment, or order an entry to be made on the record, that in the judgment of the said Justices the party convicted ought not to have been convicted, or shall arrest the judgment, or if no judgment has been given, shall order judgment to be given thereon at some future Session of Oyer and Terminer or Gaol Delivery, or Sessions of the Peace or Recorder's Court, or shall make such other order as justice may require. 14, 15 V. c. 13, s. 2.

Powers of the Judges of such Superior Court.

**4.** The judgment and order of the said Justices shall be certified under the hand of the Chief Justice or Senior Judge of such Court to the Clerk of Assize, or to the Clerk of the Peace, or Recorder's Clerk, as the case may be, who shall enter the same on the original record in proper form, and a certificate of such entry, under the hand of the Clerk of Assize, or the Clerk of the Peace, or the Recorder's Clerk, as the case may be, in the form as near as may be, or to the effect mentioned in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted is, and the said certificate shall be sufficient warrant to such Sheriff or Gaoler, and all other persons, for the execution of the judgment, as so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment, or if the judgment has been reversed, avoided or arrested, the person convicted shall be discharged from further imprisonment, and the next Court of Oyer and Terminer or Gaol Delivery, or Sessions of the Peace, or Recorder's Court, shall vacate the recognizance of bail, if any; or if the Court below be directed to give judgment, such Court shall proceed to give judgment at the next Session. 14, 15 V. c. 13, s. 2.

Judgment to be certified to the Court below: its consequences.

How the judgment of the Superior Court shall be delivered.

5. The judgments of the Justices of the said Superior Courts shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or person convicted thinks it fit that the case should be argued, in like manner as the judgments of the said Superior Courts are delivered. 14, 15 V. c. 13, s. 3.

Case may be sent back for amendment.

6. The said Justices of the said Superior Courts, when a case has been reserved for their opinion, may, if they think fit, cause the case or certificate to be sent back for amendment, and judgment may be delivered after it has been amended. 14, 15 V. c. 13, s. 4.

### SCHEDULE.

Whereas at the Session of the Peace, for the County (or United Counties or City) of \_\_\_\_\_, held on \_\_\_\_\_ before \_\_\_\_\_ and others, their fellows (or at the Session of Oyer and Terminer and Gaol Delivery, held for the County (or United Counties) of \_\_\_\_\_, on \_\_\_\_\_ before the Honorable \_\_\_\_\_, one of the Justices of the Court of \_\_\_\_\_, and others, his fellows, Justices of Oyer and Terminer and Gaol Delivery,) A. B., late of \_\_\_\_\_, having been found guilty of felony, and judgment thereon given, that (*state the substance*;) the Court before whom he was tried reserved a certain question of law for the consideration of the Justices of one of the Superior Courts of Common Law, and execution was thereupon respited in the meantime (*as the case may be*); This is to certify that the Justices of the Court of Queen's Bench (or Common Pleas) having met at Toronto, in \_\_\_\_\_ Term, or the sittings after \_\_\_\_\_ Term, it was considered by the said Justices there, that the Judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the Judgment of the said Justices, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

(Signed, E. F.

Clerk of the Peace for the County (or United Counties of \_\_\_\_\_) (or Recorder's Clerk of the City of \_\_\_\_\_, or Clerk of Assize of \_\_\_\_\_, as the case may be.)

To the Sheriff of \_\_\_\_\_, and }  
 the Gaoler of \_\_\_\_\_, and }  
 all others whom it may concern. }

## C A P. C X I I I .

## An Act respecting new Trials and Appeals and Writs of Error in Criminal Cases in Upper Canada.

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

**1.** When a person has been convicted of any treason, felony or misdemeanor, before a Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions, such person may apply for a new trial upon any point of law or question of fact, in as ample a manner as any person may apply to the Superior Courts of Common Law for a new trial in a civil action. 20 V. c. 61, s. 1.

Persons convicted of treason, felony or misdemeanor, may apply for a new trial, and to what Court.

**2.** When the conviction takes place at a Court of Oyer and Terminer or Gaol Delivery, the application shall be to one of the Superior Courts of Common Law; but shall not be entertained unless made on or before the last day of the first week of the Term next succeeding the Court of Oyer and Terminer or Gaol Delivery at which the conviction takes place. 20 V. c. 61, ss. 1, 3.

To one of the Superior Courts if convicted of the Assizes.

**3.** In such case if the conviction be affirmed by the Superior Court, the person convicted may appeal to the Court of Error and Appeal; Provided the appeal be allowed by the Superior Court, or by two of the Judges thereof, in term or vacation; But such allowance shall not be granted nor the appeal heard except within six months after the conviction has been affirmed, unless otherwise ordered by the Court of Error and Appeal. 20 V. c. 61, s. 4. See ante c. 13, s. 29, p. 67.

If the Superior Court affirm the conviction, the person convicted may apply to the Court of Error and Appeal.

**4.** Any rule or order of the Court of Error and Appeal shall be final. 20 V. c. 61, s. 4.

Rules or orders of Court of Appeal final.

**5.** In a case of capital felony, no sentence of death shall be passed to take effect until after the expiration of the Term of the Superior Courts of Common Law next succeeding the sitting of the Court at which the sentence of death is passed. 20 V. c. 61, s. 5,—22 V. c. 9.

Delay of execution of sentence of death.

**6.** When the conviction takes place at a Court of Quarter Sessions, the application for a new trial shall be to such Court. 20 V. c. 61, s. 1.

If convicted at a Court of Quarter Sessions, application to be to that Court.

**7.** In such case, if the conviction be affirmed, a further appeal shall lie to either of the Superior Courts of Common Law. 20 V. c. 61, s. 2.

Appeal to the Superior Courts of Common Law.

Case to be stated by the Court appealed from.

**8.** In the event of such an Appeal, the Court of Quarter Sessions shall state in a case to be prepared by the Appellant, and approved by the Court, and signed by the Chairman or Recorder, the question or questions of law or fact upon which the new trial was applied for, together with the circumstances upon which the same arose, and the judgment of the Court with the reasons therefor. 20 V. c. 61, s. 2.

When and how such case shall be transmitted.

**9.** The case shall be transmitted by the Court of Quarter Sessions to one of the Superior Courts of Common Law on or before the first day of the Term of the Superior Court next after the time when the rule or order appealed from was made. 20 V. c. 61, s. 2.

Judgment final.

**10.** The judgment of the Superior Court on the appeal from the Quarter Sessions shall be final. 20 V. c. 61, s. 2.

#### GENERAL POWERS.

Court to have power to hear and determine all questions of law, &c.

**11.** The Court to which an application for a new trial is made, either in the first place or by way of Appeal, shall have power to hear and determine the questions of law and fact involved in the application, and shall affirm the conviction or order a new trial, or otherwise, as justice requires. 20 V. c. 61, s. 2.

If new trial granted.

**12.** In case a new trial be granted, the same proceedings shall take place as to any future trial or the commitment or bailing of the person convicted, as if no conviction had taken place. 20 V. c. 61, s. 1.

Court to make order, &c.

**13.** In case a new trial be refused, the Court shall make such order for carrying out the sentence already passed, or for passing sentence if none has been passed, or for the discharge of the person so convicted on bail, or otherwise, as justice requires. 20 V. c. 61, ss. 2, 4.

Court may make rules.

**14.** The Court may in every case make such other rules and orders as are necessary to carry into effect any judgment pronounced under this Act. 20 V. c. 61, ss. 2, 3.

Judges to make rules for giving effect to this Act.

**15.** The Judges of the Superior Courts of Common Law, or a majority of them, and the Court of Error and Appeal, respectively, may from time to time make such general rules and orders as they consider necessary more effectually to carry out the provisions of this Act. 20 V. c. 61, s. 6.

Writs of Error when and from what Courts issuable.

**16.** When by the Law of England a Writ of Error might on the twenty-fourth day of February, one thousand eight hundred and thirty-five, have been sued out of Chancery returnable in the Court of King's Bench, for removing the Record of the Judgment of an Inferior Court of Record, in order to its examination

examination upon Errors assigned, each of the Courts of Queen's Bench and Common Pleas in Upper Canada, may in similar cases, and for the like purpose, issue a Writ of Error, which Writ shall run in the name of the Queen, and be tested and returnable like other Writs of the Court. 5 W. 4. c. 2, s. 1.

**17.** Whenever in a criminal case any Writ of Error has been brought upon any judgment or any indictment, information, presentment or inquisition, and the Court of Error reverses the judgment, the Court of Error may either pronounce the proper judgment, or remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment or inquisition. 14, 15 V. c. 13, s. 5.

What judgment may be pronounced by a Court of Error.

**18.** In this Act the words "Quarter Sessions," include Recorder's Courts. 20 V. c. 61, s. 2.

Interpretation.

## C A P . C X I V .

### An Act respecting Appeals in cases of Summary Conviction.

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

**1.** In case a person complainant or defendant, thinks himself aggrieved by an order, decision or conviction before any Justice or Justices of the Peace, Mayor, or Police Magistrate, in any matter cognizable by such Justice or Justices of the Peace, Mayor or Police Magistrate, not being a crime, then in case within four days after the conviction, order or decision, and eight days before the first Quarter Sessions of the Peace, to be held not sooner than twelve days next after such order, decision or conviction, the party aggrieved gives to the other party, or leaves with the convicting Justice for him, a notice in writing of his intention to appeal and of the cause and matter thereof, and in case of an appellant in custody if he either remains in custody until such Sessions, or enters into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned to appear at the said Quarter Sessions, and try such appeal and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded, or in case the appellant be on bail, if he enters into such recognizance as aforesaid, such appellant may appeal to such Court of Quarter Sessions, and such Court shall at such Sessions hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the Court seems meet ; and in case of the dismissal of the appeal or of the affirmance of the order, decision or conviction, the Court shall order and adjudge the order, decision or conviction to be enforced and the appellant

Appeal given in every case where the matter is not a crime.

Court to hear and determine the matter.

to pay such costs as may be awarded, and shall if necessary issue process for enforcing the judgment of the Court. 13, 14 V. c. 54, s. 1.

In what case Justice may liberate parties.

**2** In case a party in custody has given notice of appeal and entered into a recognizance according to the provisions of the foregoing section, then the Justice before whom such recognizance was entered into shall liberate such party.

Jury to be empannelled on the request of either party to appeal.

**3** Whenever any appeal is made from the decision, order or conviction of any Justice, Mayor or Police Magistrate, the Court of Quarter Sessions, appealed to, shall, at the request of either appellant or respondent, empanel a Jury to try the matter on which such decision has been made, and shall administer to such Jury the following oath :

“ You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F. and a true verdict give according to the evidence. So help you God.”

And the Court on the finding of such Jury shall thereupon give such Judgment as the circumstances of the case require, not however exceeding the amount of penalty or period of imprisonment that might have been imposed or awarded under any law giving cognizance to the convicting Justice, Mayor, or Police Magistrate. 13, 14 V. c. 54, s. 2.

Appeal may be abandoned.

Proceedings in such case.

**4** Any appellant may abandon his appeal by giving the opposite party notice of such intention in writing six days before the Sessions appealed to, and thereupon the convicting Justice, Mayor or Police Magistrate may tax the respondent's additional costs if any, and add the same to the original costs, and proceed on the original order, decision or conviction, in the same manner as if there had been no appeal thereon. 13, 14 V. c. 54, s. 3.

Appeals to lie in cases under By-laws of a Municipality.

**5** An appeal shall lie in like manner from all decisions, orders and convictions made by any Justice of the Peace, or by any person authorized to act in that capacity upon complaints against any person for committing any offence against any By-Law of any Municipal Council. 16 V. c. 178, s. 26.

“ Quarter Sessions ” to include Recorder's Courts.

**6** In this Act the words “ Quarter Sessions ” include Recorder's Courts.



## C A P . C X V .

An Act respecting the punishment of certain offences, and the Commuting of Sentence of Death in certain cases.

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

**1.** In case of the conviction of any person for a felonious rescue or for assaulting with any weapon a Sheriff, or other Peace Officer, in the execution of his duty ; or of perjury ; or of fraud ; or cheating ; or conspiracy ; or of assisting in or attempting to effect the escape of a prisoner confined for a felony or other crime, whether before or after conviction—the person convicted of any such offence may be sentenced to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement in the Common Gaol or House of Correction, for any period less than two years, or may be imprisoned at hard labour in the Penitentiary, for any term not less than two and not exceeding seven years. 7 W. 4, c. 6, s. 1.

Persons convicted of a felonious rescue, &c., how punished.

**2.** The Governor may commute the Sentence of Death passed upon any person convicted of a capital crime, other than high treason or murder, and with authority from Her Majesty, upon any person convicted of high treason or murder, to solitary confinement or to confinement with or without hard labour in the Common Gaol or House of Correction for any period less than two years or in the Penitentiary either during life or for any term of years not less than two years ; and an Instrument under the hand and seal of the Governor, declaring such commutation of sentence, shall be sufficient authority to any of Her Majesty's Judges or Justices in Upper Canada, having jurisdiction in such cases, to make such orders, and give such directions, under his hand and seal, as may be requisite for the change of custody of such convict, and for his conduct to and delivery at such Gaol, House of Correction or Penitentiary, and his detention therein, according to the terms on which his sentence has been commuted. 7 W. 4, c. 6, s. 3.

Governor may commute sentence of death.

When in cases of high treason or murder.

## C A P . C X V I .

An Act respecting Corruption of Blood.

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

**1.** Except in cases of High Treason, and of abetting, procuring or counselling the same, an attainder for felony, shall not extend

Except for high treason, no at-

remainder to disinherit the heir-at-law.

extend to the desinheriting of any heir, nor to the prejudice of the right or title of any person, other than the right or title of the offender during his natural life only.

After death of the person attainted, the heir may enter.

2. Every person to whom, after the death of any such offender, the right or interest to or in any lands, tenements or hereditaments should or would have appertained if no such attainer had taken place, may enter into the same. 3 W. 4, c. 4.

## C A P . C X V I I .

### An Act respecting Estreats.

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

All fines, &c., shall within 21 days from adjournment of Court be entered on a roll by Clerk of Assize.

1. Unless otherwise provided, all fines, issues, amerciaments and forfeited recognizances, set, imposed, lost or forfeited, by or before any Court of Oyer and Terminer, or General Gaol Delivery, or before any Court of Assize and Nisi Prius, shall, within twenty-one days from the adjournment of such Court, be fairly entered and extracted on a roll, by the Clerk of Assize, or in case of his death or absence, by any other person under the direction of the Judge who presided at such Court; which roll shall be made in duplicate, and be signed by the Clerk of Assize, or in case of his death or absence, by such Judge. 7 W. 4, c. 10, s. 1.

One copy of roll to be sent to Clerk of the Crown within time mentioned, and the other to the Sheriff of the County.

2. One of the said rolls shall be transmitted to the office of the Clerk of the Crown and Pleas of the Court of Queen's Bench on or before the first day of the term next succeeding the Court, by or before which such fines and forfeitures were imposed or forfeited, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of Assize, or in case of his death or absence, shall be sent by such Judge as aforesaid, with a Writ of Fieri Facias and Capias, according to the form to this Act annexed, to the Sheriff of the County in and for which such Court was holden; and such Writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County, until satisfaction be made, or until the Court of Queen's Bench or Common Pleas, upon cause shewn by the party as hereinafter mentioned, makes an order in

Mode of proceeding to levy fine, &c.

in the case, and until such order has been fully complied with.  
7 W. 4, c. 10, s. 2.

**3.** All fines, issues, amerciaments and forfeited recognizances, not otherwise provided for, set, imposed, lost or forfeited, by or before any Court of General Quarter Sessions of the Peace, shall, within twenty-one days after the adjournment of such Court, be fairly entered and extracted on a roll by the Clerk of the Peace, which roll shall be made out in duplicate, and shall be signed by the Clerk of the Peace. 7 W. 4, c. 10, s. 3.

Fines, &c., incurred at General Quarter Sessions to be entered and extracted on a roll in duplicate.

**4.** One of the said rolls shall remain deposited in the office of the Clerk of the Peace, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of the Peace, with a Writ of Fieri Facias and Capias, according to the form to this Act annexed, to the Sheriff of the County in which such Court of Quarter Sessions was held.

How rolls disposed of and execution issued.

**5.** Such Writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County until satisfaction be made, or until the Court of General Quarter Sessions of such County, upon cause shewn by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with. 7 W. 4, c. 10, s. 4.

Duty of Sheriff under the execution.

**6.** Except in the cases of persons bound by recognizance for their appearance or for whose appearance any other person has become bound to prosecute or give evidence, and for which provision is made in the Consolidated Statute of Canada, respecting the Procedure in Criminal Cases, in every case of default whereby a recognizance has become forfeited, if the cause of absence be made known to the Court in which the party was bound to appear, the Court, on consideration of such cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated and all fines imposed by any Court, for the non-attendance of any Juror or Constable, or of any public officer bound to attend at such Court, if it appears to the satisfaction of the Judge who presided at such Court, or in the case of proceedings before any Court of General Quarter Sessions of the Peace, if it appears to the Chairman and any two of the Justices who presided at such Court, that the absence of the person for whose appearance any recognizance was entered

Court may forbear estreating recognizance under certain circumstances.

entered into, or that the absence of any person fined for non-attendance, was owing to circumstances which rendered such absence justifiable, such Judge or the Chairman and Justices aforesaid may make an order directing that the sum forfeited upon such estreated recognizance, or the fine imposed in any such case as aforesaid, shall not be levied. 7 W. 4, c. 10, s. 5.

Judge of Assize or Chairman may direct Sheriff to forbear levying fines, &c., under certain circumstances.

**7.** And for such purpose, the Clerk of Assize, or Clerk of the Peace, before sending to the Sheriff any roll, with a Writ of Fieri Facias and Capias, as directed by this Act, shall submit the same to the Judge who presided at the Assizes, or to the Chairman who presided at the Court of Quarter Sessions, for his revision; and such Judge, or such Chairman taking to his assistance two of the Justices who presided with him at the Sessions, may make a minute on the said roll and Writ of any such forfeited recognizances and fines as he or they think fit to direct not to be levied; and the Sheriff shall observe the direction in such minute written upon such roll and Writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine. 7 W. 4, c. 10, s. 5.

Mode of proceeding where lands are seized for payment of fines, &c.

**8.** If upon any Writ issued under this Act, the Sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the Writ came to the hands of the Sheriff. 7 W. 4, c. 10, s. 6.

Clerk of Assize or of the Peace to make affidavit.

**9.** The Clerk of Assize, or Clerk of the Peace, shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

Oath to be taken and subscribed at foot of roll by Clerk of Assize or Clerk of the Peace.

“ I, A. B., (*describing his office*), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciements, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the Court therein mentioned, and which in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God.”

Which oath any Justice of the Peace for the County is hereby authorized to administer. 7 W. 4, c. 10, s. 7.

Conditions upon which a party or the goods of a

**10.** If any person on whose goods and chattels a Sheriff, Bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said Sheriff or other officer,

officer, for his appearance at the return day mentioned in the Writ, in the Court into which such Writ is returnable, then and there to abide the decision of such Court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the Court, such Sheriff or officer shall discharge such person out of custody; and in case such person does not appear in pursuance of his undertaking, the Court may forthwith issue a Writ of Fieri Facias and Capias against the surety or sureties of the person so bound as aforesaid. 7 W. 4, c. 10, s. 9.

party in custody of the Sheriff may be released.

**11.** The Court of Queen's Bench or Common Pleas, or Court of General Quarter Sessions, into which any Writ of Fieri Facias and Capias, issued under this Act, is returnable, may inquire into the circumstances of the case, and may, in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as may to such Court appear just; and such order shall accordingly be a discharge to the Sheriff, or to the party, according to the circumstances of the case. 7 W. 4, c. 10, s. 10.

Court under certain circumstances may discharge forfeited recognizances, &c.

**12.** The Sheriff to whom any Writ is directed under this Act, shall return the same on the day on which the same is made returnable, and shall state on the back of the roll attached to such Writ, what has been done in the execution thereof; and such return shall be filed in the Court into which such return is made.

Manner of return by Sheriff, &c.

**13.** A copy of such roll and return, certified by the Clerk of the Peace, or by the Clerk of the Crown, (as the case may be,) shall be forthwith transmitted to the Receiver General of the Province, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the Court, in the whole or in part, or directed to be forborne, under the authority of this Act. 7 W. 4, c. 11, s. 11.

Copy of roll and return to be sent to Receiver General.

**14.** The Sheriff shall, without delay, pay over all moneys by him collected to the Receiver General, or other person entitled to receive the same. 7 W. 4, c. 11, s. 12.

Sheriff to pay to Receiver General or person entitled.

**15.** This Act is not to affect the provisions of the Consolidated Statute of Canada, respecting the Procedure in Criminal Cases relating to the *Estreat* of the recognizance of any person bound for his appearance or for the appearance of any other person to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault or to articles of the Peace. 4, 5 V. c. 24, s. 49.

This Act not to affect the provisions of the Consolidated Statute, c. 99, ss. 119, 120.

**16.** The words "Quarter Sessions" include "Recorder's Court."

Quarter Sessions to include "Recorder's Court."

FORM.

## FORM.

Victoria, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, Greeting :

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons mentioned in the roll or extract to this Writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified ; and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements being to be found belonging to the said parties, respectively, then and in all such cases, that you take the bodies of such parties, and keep them safely in the Gaol of your County, there to abide the judgment of our Court of Queen's Bench (or Common Pleas or Court of General Quarter Sessions, *as the case may be,*) upon any matter to be shewn by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said Court, on the return day hereof, for which you will be held answerable ; and what you do in the premises make appear (before us in our Court of Queen's Bench) (or Common Pleas at Toronto, or at the next Court of General Quarter Sessions of the Peace, *as the case may be,*) on the \_\_\_\_\_ day of \_\_\_\_\_ term next, and have then and there this Writ. Witness, &c., A. B., Clerk of Assize, at the last Assizes, (or C. D., Clerk of the Peace or Clerk of the Recorder's Court) for the County or City of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

## CAP. CXVIII.

An Act respecting the appropriation of Fines in certain cases.

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

The portion of all fines distributed by the Law of England to the poor shall be paid to the Treasurers of the Counties or Cities for the purposes of such Counties or Cities.

**1.** In all cases not otherwise provided for in which, by the criminal law of England in force in Upper Canada, the whole or any part of a fine or penalty imposed for the punishment of any offence is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of Upper Canada, such fine or penalty, or the part thereof so appropriated, shall when received be paid to the Treasurer of the County or Chamberlain of the City in which the conviction has taken place, to be appropriated to the purposes thereof, and accounted for in the same manner as the

the general rates and assessments levied therein are applicable and accountable by law. 11 G. 4, c. 1.

**2.** Every fine and penalty imposed for the punishment of any offence prohibited by any Statute having force of law in Upper Canada only, and for the appropriation of which fine or penalty no other provision is made, and any duty or sum of money and the proceeds of any forfeiture by any such Statute given to the Crown shall be paid into the hands of the Receiver General and shall form part of "The Consolidated Revenue Fund." 7 W. 4, c. 14, s. 5.

What fines, &c., shall be paid to the Receiver General in aid of the Consolidated Revenue Fund.

**3.** All fines and penalties imposed upon and levied in the several Counties in Upper Canada, not payable to the Receiver General or to any Municipal Corporation, and all fines upon Jurors for non-attendance levied therein, shall be paid to the Treasurers of each of the said Counties respectively, and shall form part of the fund for the payment of Petit Jurors. 22 V. c. 100, s. 149.

Certain fines to go towards payment of jurors.

## C A P . C X I X .

### An Act respecting the Fees of Counsel and other Ministers of Justice.

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

**1.** When not otherwise provided by law, the Courts of Queen's Bench and Common Pleas may from time to time jointly determine and by rule or order declare the fees to be allowed to any Clerk of the Crown, Counsel, Attorney, Sheriff, or other officer or person for or in respect of any business done or transacted in either of the said Courts in Criminal Prosecutions, and in all matters, causes and proceedings which regard the Queen's Revenue, and in all Prosecutions, matters and proceedings under any Commission or Court of Oyer and Terminer and General Gaol Delivery, or under any Special Commission or Court of Oyer and Terminer. 2 G. 4, c. 1, s. 45.

The Superior Courts of Law to frame tariff of fees to be allowed in Criminal and Exchequer cases.

**2.** The table of fees for services rendered in the administration of justice, and for other County purposes, by Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, heretofore framed by the Justices of the Peace of their respective Counties in quarter sessions assembled and confirmed by the Judges of the Court of Queen's Bench at Toronto, is to continue until otherwise appointed, and the Chief Justices and other Judges of the Superior Courts of Common Law at Toronto may, from time to time, as occasion requires, by rule or rules by them made in term time, appoint the fees to be taken and received by

Fees fixed by Quarter Sessions, and approved of by the Judges continued.

Until altered.

by such Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, for such services as aforesaid. 8 V. c. 38, s. 1.

Mode of levying fees.

**3.** All per centage, fees or allowances, on levying fines and recognizances, may be levied over and above the amount of such fines and recognizances, and all fees on services in the nature of a civil remedy, for individuals at whose instance and for whose private benefit the same are performed, shall be paid by such individuals, and the Judges shall, in tables to be by them framed as aforesaid, distinguish the fee to be paid by private individuals, and except as herein or otherwise provided by law, all other fees shall be paid out of the County funds. 8 V. c. 38, s. 2.

By whom costs in prosecution for assault and battery to be paid.

**4.** In case any person be convicted before any Court of Quarter Sessions of any assault and battery, or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the Court, but in case any Defendant or Defendants be acquitted, the costs of the prosecution, when not otherwise provided by law, shall be paid out of the County funds. 8 V. c. 38, s. 3.

In case of felony, costs to be paid out of the County funds.

**5.** When any person is prosecuted or tried for felony and convicted or acquitted, or otherwise discharged, the costs of prosecution when not otherwise provided by law shall be paid out of the County funds. 8 V. c. 38, s. 3.

Fees for services not mentioned therein.

**6.** Nothing herein contained shall deprive any of the before mentioned Officers of such fees as are allowed by any Act of Parliament, for other services not herein provided for. 8 V. c. 38, s. 3.

County Treasurer's duty.

**7.** The Treasurer of every County shall, without further authority, pay the amount of the fees, which are payable out of County funds, when duly allowed by the Magistrates in Quarter Sessions assembled, as in the order prescribed by law for the payment of the expenses of the administration of justice, that is to say, after the expenses of levying and collecting and managing the rates and taxes imposed in any County are paid; all sums of money payable out of the funds of any County to the Sheriff, Coroner, Gaoler, Surgeon of the County Gaol, or to any other Officer or person, for the support, care or safe keeping of the prisoners in the County Gaol, or for the repairing and maintaining of the Court House or Gaol, or for any other purpose whatever connected with the administration of justice within the County, shall be paid out of the County funds by the Treasurer before and when not otherwise provided by law in preference to all other charges. 8 V. c. 38, s. 5,—4, 5 V. c. 10, s. 59. 22 V. c. 15, s. 2, No. 3, (1859.)

Penalty for any officer taking higher fees for

**8.** If any Officer hereinbefore mentioned wilfully and knowingly demands or receives any other or greater fee or allowance than



than the fee and allowance established as aforesaid, for any of the services performed by them respectively, unless allowed by some other Act of Parliament for other services as aforesaid, he shall, for every such offence, forfeit and pay the sum of forty dollars, to any person who sues therefor, in any Court having competent jurisdiction to hear and determine the same. S V. c. 38, s. 4.

the said services.

9. All such suits and actions must be brought before the end of six months after the offence committed, and not otherwise. S V. c. 38, s. 6.

Limitation of suits for penalties.

10. Nothing in this Act is to affect the provisions of the Act respecting the expenses of the administration of Justice in criminal matters in Upper Canada. (See next Chapter.)

11. The following fees, and no others, shall be taken by Justices of the Peace in Upper Canada, or by their Clerks, for the duties and services hereinafter mentioned, that is to say : 14, 15 V. c. 119, s. 2.

Fees receivable by Justices of the Peace.

For an information and Warrant for apprehension, or for an information and Summons for assault, trespass, or other misdemeanor, fifty cents ;

For each copy of Summons to be served on defendant or defendants, ten cents ;

For a *Subpœna*, ten cents,—only one on each side being charged for in each case, and which may contain any number of names ; and if the justice of the case requires it, additional *Subpœnas* shall be issued without charge ;

For every Recognizance, twenty-five cents,—only one to be charged in each case ;

For every Certificate of Recognizance under the Act respecting Estreats, twenty-five cents ;

For information and Warrant for surety of the peace for good behaviour, to be paid by complainant, fifty cents ;

For Warrant of Commitment for default of surety to keep peace or good behaviour, to be paid by complainant, fifty cents.

12. The costs to be charged in all cases of convictions, where the fees are not expressly prescribed by any Statute, shall be as follows, that is to say : 14, 15 V. c. 119, s. 3.

Fees in cases not expressly provided.

For information and Warrant for apprehension, or for information and Summons for service, fifty cents ;

For every copy of Summons to be served upon defendant or defendants, ten cents ;

For every *Subpoena* to a Witness, (as provided in the eleventh section of this Act,) ten cents ;

For hearing and determining the case, fifty cents ;

For Warrant to levy penalty, twenty-five cents ;

For making up every Record of Conviction when the same is ordered to be returned to the Sessions, or on *certiorari*, one dollars ;

For copy of any other paper connected with any trial, and the Minutes of the same if demanded,—every folio of one hundred words, ten cents.

As to summary proceedings.

**13.** But in all cases which admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than twenty dollars can be imposed, the sum of fifty cents only shall be charged for the Conviction, and twenty-five cents for the Warrant to levy the penalty ; and in all cases where persons are *subpoenaed* to give evidence before Justices of the Peace in cases of assault, trespass or misdemeanor, the Witness shall be entitled, in the discretion of the Magistrate, to receive at the rate of fifty cents for every day's attendance, where the distance travelled in coming to and returning from such adjudication does not exceed ten miles, and five cents for each mile above ten.

Bill of costs if required.

**14.** Every Bill of Costs shall, when demanded, be made out in detail, and when so made, ten cents. 14, 15 V. c. 119, s. 3.

Fees not allowed to witnesses in cases above misdemeanor, unless specially ordered.

**15.** This Act shall not authorize any claim being made by the Justices aforesaid, for Fees of any description connected with cases above the degree of misdemeanor ; nor shall Witnesses in cases above such degree be allowed any thing for their attendance or travel, except under the order of the Court before which the trial of the case is had. 14, 15 V. c. 119, s. 6.

## C A P . C X X .

## An Act respecting the expenses of the Administration of Justice in Criminal matters in Upper Canada.

**I**T being expedient to provide that the expenses of the Administration of Justice in Upper Canada, paid by local taxation, immediately before the ninth day of June, one thousand eight hundred and forty-sixth, should be paid out of the Public Funds of the Province under the provisions hereinafter made : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** The whole of the expenses of the administration of Criminal Justice in Upper Canada shall be paid out of the Consolidated Revenue Fund of this Province. 9 V. c. 5S, s. 1.

How expenses of criminal justice payable.

**2.** All accounts of or relative to the said expenses shall be examined, audited, vouched, and approved under such regulations as the Governor in Council, from time to time, directs and appoints. 9 V. c. 5S, s. 2.

Accounts to be audited in such manner as the Governor in Council appoints.

**3.** The several heads of expense mentioned in the Schedule to this Act, shall be deemed expenses of the administration of Criminal Justice within the meaning of this Act. 9 V. c. 5S, s. 3.

What shall be deemed such expenses.

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 SCHEDULE .

## CLERK OF THE PEACE.

Furnishing annually Lists of Constables to the Sheriff and Coroner—

Making up Lists of persons qualified by law to serve as Jurors, residing within the limits of each Division Court, specifying the place of residence and addition of each person, including the certificate and the transmission of the list to the Clerk of each Division Court—

Copies of Depositions or Examinations furnished to Prisoners or Defendants, or their Counsel, when proper to be furnished, and required by the party or his Counsel—

*If payable by the Crown ; and to be paid by the Crown, or by the party applying, according to the nature of the case.*

Receiving and filing each Presentment of the Grand Jury—

*If*

*If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.*

Arraigning each Prisoner or Defendant indicted, and recording plea—

Empannelling and Swearing the Jury in every case, whether Criminal or otherwise, where by law a trial by Jury is to be had at the Quarter Sessions; and where no fee is fixed by Statute—

Swearing each Witness for the prosecution, upon any trial by a Jury, or to go before the Grand Jury—

Filing each Exhibit upon a trial—

Charging the Jury with the Prisoner or Defendant, upon each indictment—

Receiving and Recording each verdict of a Jury, in any case of trial by Jury—

Recording each Judgment or Sentence of the Court, upon verdict or confession—

Making out and delivering to the Sheriff a Calendar of the Sentences at each Court—

Certified Copy of Sentences sent with the Prisoners to the Penitentiary, after each Session—

Making up Record of Conviction or Acquittal, in any case where it may be necessary—

*If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.*

Discharging any Prisoner by Proclamation—

Drawing out and taking each Recognizance to appear, either of Prosecutor, Defendant or Witness—

Calling parties on their Recognizance and recording their non-appearance—

Making out Lists of forfeited Recognizances and Fines, to submit to the Justices after each Quarter Sessions, in order to their being estreated—

Entering any Order of Sessions to remit an estreat, and recording an entry of the same—

*If payable by the Crown; and to be paid by the Crown, or by the party relieved, as the Justices may order.*

Drawing Order of the Justices to estreat and put in process—

Entering and extracting upon a Roll, in duplicate, the Fines, Issues, Amerciaments and forfeited Recognizances, recorded in each Session, making oath to the same, and transmitting it to the Sheriff—

Making out and delivering to the Sheriff the Writ of *feri facias* and *capias* thereon—

Making out and certifying copy of Roll and Return of Sheriff, and transmitting it to Receiver General—

Making up Books of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts—

Making out and transmitting a copy thereof to the Government—

Making out and transmitting copies (with letter) to the Clerk of each Division Court, of the Divisions made by the Quarter Sessions—

Drawing Orders of Sessions for altering the limits of Division Courts—

Making out and transmitting copies of such Orders to the Government—

Making out and transmitting copies of such Orders to each Division Court affected by the alteration—

For each Copy of Schedule of Division Courts, with the Order of Sessions for publication—

Swearing each party to an Affidavit, where no charge is elsewhere provided for it—

*If payable by the Crown; and to be paid by the Crown, or by the party for whom the Affidavit is sworn, according to the nature of the case.*

SHERIFF.

Notice of appointment to the Associate Justices of Oyer and Terminer—

Attending the Assizes—

JJJ

Attending

Attending the Quarter Sessions—

Summoning each Grand Jury for the Assizes or Quarter Sessions—

Summoning each Petit Jury for the Assizes or Quarter Sessions—

For every Prisoner discharged from Gaol, having been committed by Warrant for trial at the Assizes or Quarter Sessions, or Mayor's or Recorder's Court—

Bringing up each Prisoner for arraignment, trial and sentence, whether convicted or acquitted—

Drawing Calendar of Prisoners for Trial at the Assizes, including copies—

Drawing Calendar of Prisoners for trial at the Quarter Sessions, including copies—

Advertising the holding the Assizes or Quarter Sessions—

Every Annual or General Return, required by law, or by the Government, respecting the Gaol or the Prisoners therein—

Every other Return made to the Government or to the Sessions, required by Statute or by order of the Court—

Returning Precept to the Assizes or Sessions—

Conveying Prisoners to the Penitentiary, or to another County, and disbursements—

*If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.*

Arrest of each individual upon a Warrant—

Serving Subpœna for the Crown upon each person—

Conveying Prisoners on Attachment or *Habeas Corpus* to another County, and disbursements—

Making return upon Attachment or Writ of *Habeas Corpus*—

Levying Fines or Issues on Recognizances estreated, and mileage—

*According to the Statute for regulating the fees of County Officers and Justices of the Peace.*

Carrying into execution the Sentence of the Court in capital cases—

Attending

Attending and superintending the Execution in such cases—

Summoning each Constable to attend the Assizes or Sessions—

Keeping a Record of Jurors who have served at each Court—

All disbursements actually and necessarily made in guarding Prisoners, or in their conveyance to the Penitentiary, to any other County or elsewhere, or for other purposes in the discharge of the duties of the Office, (when not otherwise provided for,) to be allowed by the Justices in Sessions—

CORONER.

Precept to summon Jury—

Empannelling a Jury—

Summons for Witness—

Information or Examination of each Witness—

Taking every Recognizance—

Necessary travel to take an Inquest—

Taking Inquisition and making Return—

Every Warrant—

CONSTABLE.

Arrest of each individual upon a Warrant—

*If payable by the Crown; and to be paid by the Crown, or by the party, as the case may be.*

Serving Summons or Subpcena—

Mileage—

*If payable by the Crown; and to be paid by the Crown, or by the party, as the case may be.*

Attending Assizes or Sessions—

Attending any Justice on the examination of Prisoners charged with any crime—

*If payable by the Crown; and to be paid by the Crown, or by the party, as the case may be.*

Mileage in going to serve Summons or Warrant when the service has not been effected; the Justices in Session being satisfied that due diligence was used—

Taking Prisoners to Gaol,—and disbursements necessarily expended in their conveyance—

Summoning Jury for Inquest—

Attending Inquest for each day other than the first—

Serving notice of appointment of Constables, when personally served—

#### CRIER.

Making Proclamation for opening or adjourning the Courts of Assize and *Nisi Prius*, Oyer and Terminer, and General Gaol Delivery and Quarter Sessions—

Making every other Proclamation—

Calling and Swearing Grand Jury—

Calling and Swearing every Petit Jury—

Calling and Swearing every Witness or Constable—

Attending Assizes and Quarter Sessions—

#### OTHER MATTERS

The maintenance of Prisoners confined upon Criminal charges—

A proportion of the Salary of the Gaoler of each County Gaol, and of the payment of Turnkeys—

Medicines, Fuel and other similar necessaries for the Gaol, and the Prisoners confined on Criminal charges—

Disbursements in transporting Prisoners to the Penitentiary, and for carrying other Sentences of the Courts into effect—

Together with all other charges relating to Criminal Justice payable to the foregoing Officers specially authorized by any Act of the Legislature, and immediately before the ninth of June, one thousand eight hundred and forty-six, payable out of County funds.

### C A P . C X X I .

An Act respecting the Expenditure of County Funds, for certain purposes within Upper Canada.

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

When accounts  
to be audited by

1. All accounts or demands preferred by any person against the County, the approving and auditing of which belongs to the Court



Court of Quarter Sessions, shall be delivered to the Clerk of the Peace, on or before the first day of the Session in each Term, to be laid before the Bench. 7 W. 4, c. 18, s. 1. the Q. S. and to be delivered to the C. of the Peace.

2. No accounts shall be passed or audited at any Court of Quarter Sessions in any County of Upper Canada, unless at least seven Magistrates be present, and whose names shall be entered on the record. 7 W. 4, c. 18, s. 2. No accounts to be passed by less than 7 Magistrates.

3. The Court shall take the accounts into consideration on the second day of each Session, and dispose of the same as soon as practicable, and all orders or checks signed by the Chairman of the Quarter Sessions, except for the payment of Constables or services rendered during the sitting of the Court, shall express the Act of Parliament if any under which the expenditure is authorized. 7 W. 4, c. 18, s. 2. Accounts to be examined on the second day of each Session and orders given.

4. At the adjournment of each Court of Quarter Sessions, the Clerk of the Peace shall furnish the Treasurer with a list of the orders passed during such Session, according to their priority; and the Treasurer shall pay such orders according to the respective dates and numbers in which the same were passed at the said Session; But all sums necessary to defray the expenses of the custody and maintenance of prisoners, and the accounts of Public Officers, and Officers of the Court, shall be first paid. 7 W. 4, c. 18, s. 3. *See 22 V. c. 15, s. 2, No. 3. (1859.)* Clerks of the Peace to furnish Treasurers with lists of orders.

5. Except for debts actually due by a County, the Magistrates for such County shall not order or direct the payment of any sum of money by the Treasurer of such County, unless it appears by the Treasurer's accounts that there are sufficient funds in his hands to meet the payment of such order; and if any such order be made contrary to the provisions hereof, the person or persons in whose favor such order has been made, may recover the same against the Magistrates who sanctioned such order, in an action to be brought for that purpose, as for so much money had and received to the Plaintiff's use and benefit. 7 W. 4, c. 18, s. 5. Except for debts due, no orders to issue unless funds in hands.

C A P . C X X I I .

An Act respecting the support of insane destitute Persons.

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

1. The Clerk of the Peace shall, once in each year, lay before the Grand Jury of the Quarter Sessions, in each County, an account in detail of all sums of money expended during Clerk of the Peace to lay before the Grand Jury of the

the Quarter Sessions an account of money necessary for maintaining insane persons.

the last preceding twelve months, or necessary to be advanced during the next ensuing twelve months, for the purpose of maintaining and supporting insane destitute persons, received into the Gaol of the County, and the said Grand Jury may at such Quarter Sessions present such just and reasonable sum as they in their discretion think necessary for the purpose of maintaining and supporting insane destitute persons, either in the Gaol or some other place, within the County, for the year next ensuing the said Sessions; which presentment shall be made once in each year, and in each year the like account in detail of the moneys expended during the past year, shall be laid before the Grand Jury as aforesaid. 11 G. 4, c. 20, ss. 1, 2,—3 W. 4, c. 45, s. 2.

The sum of money presented to be paid by the Treasurer.

2. The Chairman of the Quarter Sessions may, from time to time, issue his warrant for the payment of such sum of money to the amount, but not exceeding the amount so presented, and such money shall be payable by the Treasurer of the County, out of the moneys of the County in his hands and unappropriated, and the account, so laid before the Grand Jury from time to time, so far as the same has been approved of, and the said warrant, shall be a sufficient discharge and indemnity to all persons concerned in the expenditure of such sum of money. 11 G. 4, c. 20, ss. 2, 3.

Witnesses may be summoned before the Grand Jury.

3. The Courts of Quarter Sessions respectively shall from time to time, by writ of subpœna, call before them any person required by the Grand Jury, and shall swear such person in open Court true answer to make to all such questions as may be asked of him by the Grand Jury, touching and concerning insane destitute persons in the County, and their maintenance and support, and every such person shall be examined on the said oath before the Grand Jury. 11 G. 4, c. 20, s. 4.

## C A P . C X X I I I .

### An Act respecting the costs of levying Distresses for Small Rents and Penalties.

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

Fees to be charged and services for which the same may be charged.

1. No person making any distress for rent or for any penalty when the sum demanded and due does not exceed the sum of eighty dollars, in respect of such rent or penalty, and no person employed in making such distress, or doing any act in the course of such distress, or for carrying the same into effect, shall take or receive, from any person or out of the produce of the chattels distrained upon and sold, any other costs in respect of such distress, than such as are set forth in the Schedule hereunto annexed,

annexed, and no person shall make any charge, for any thing mentioned in the said Schedule, unless such thing has been really done. 1 V. c. 16, s. 1.

2. If any person offends against any of the provisions in the foregoing section contained, the party aggrieved thereby may apply to any Justice of the Peace for the County, City or Town, where the offence was committed, for the redress of such grievance, whereupon such Justice shall summon the person complained of to appear before him, at a reasonable time to be fixed in the summons, and the Justice shall examine into the matter of such complaint, and also hear the defence of the person complained of; and if it appears to the Justice that the person complained of has so offended, such Justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the offender to the party aggrieved. 1 V. c. 16, s. 2. Penalty for extortion.

3. In case of non-payment of any money or costs so adjudged to be paid, the Justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party convicted rendering to him the overplus, if any. 1 V. c. 16, s. 2. How penalty to be levied.

4. In case no sufficient distress can be had, the Justice shall, by warrant under his hand and seal, commit the party to the common Gaol within the limits of his jurisdiction, there to remain until the order or judgment be satisfied. 1 V. c. 16, s. 2. Commitment.

5. The Justice, at the request of the party complaining, or complained against, may summon all persons as witnesses, and may administer an oath to them, touching the matter of such complaint, or the defence against it. Justices may summon witnesses.

6. If any person so summoned neglects to obey the summons, without any reasonable or lawful excuse, or refuses to be examined upon oath (or affirmation, as the case may be), he shall forfeit a sum not exceeding eight dollars, to be adjudged, levied and paid in such manner, and by such means and with such power of commitment, as hereinbefore directed with respect to orders and judgments made or given at the instance of original complaints, excepting as regards the form thereof which may be made in such form as the Justice thinks fit. 1 V. c. 16, s. 3. Penalty for disobeying.

7. If the Justice finds that the complaint of the party aggrieved is not well founded, he may order and adjudge costs, not exceeding four dollars, to be paid by the complainant to the party complained against, which order shall be carried into effect and levied and paid in such manner as is hereinbefore directed as to the order and judgment founded on the original complaint. 1 V. c. 16, s. 4. For preferring unfounded complaint.

Justices not to make orders against landlord, &c.

8. Nothing hereinbefore contained shall empower the Justice to make any order or judgment against the landlord for whose benefit any such distress has been made, unless the landlord personally levied the distress. 1 V. c. 16, s. 4.

Party aggrieved by distress for rent not barred of his action, &c.

9. No person aggrieved by any distress for any rents or penalty, or by any proceedings had in the course thereof, or by any costs or charges levied upon him in respect of the same, shall be barred from any suit or remedy which he might have had before the passing of this Act, excepting so far as any complaint preferred under this Act has been determined by the order and judgment of the Justice before whom it has been heard and determined, and in case the matter of such complaint be made the subject of an action, the order and judgment may be given in evidence, under the plea of the general issue. 1 V. c. 16, s. 4.

Orders and judgments to be made according to Schedule annexed.

10. Orders and judgments on such complaints shall be made in the form in the Schedule hereunto annexed; and may be proved before any Court, by proof of the signature of the Justice to such orders and judgments. 1 V. c. 16, s. 5.

Persons levying distress to give copy of charges to party distrained.

11. Every person who makes and levies any distress, shall give a copy of demand, and of all the costs and charges of the distress signed by him, to the person on whose goods and chattels the distress is levied, although the amount of the rent or penalty demanded exceeds the sum of eighty dollars. 1 V. c. 16, s. 6.

SCHEDULE REFERRED TO IN THIS ACT.

*Form of the Order and Judgment of the Justice before whom complaint is preferred when the Order and Judgment is for the complainant.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of the Consolidated Statute for Upper Canada, intituled, *An Act (insert the title of this Act)*, I, E. F., a Justice of the Peace for the \_\_\_\_\_, do order and adjudge, that the said C. D. shall pay to A. B. the sum of \_\_\_\_\_, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for (*as the case may be*), and the further sum of \_\_\_\_\_ for costs in this complaint.

(Signed) E. F.

*Form of the Order and Judgment of the Justice when he dismisses the complaint as unfounded, with or without costs, as the case may be.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of the Consolidated Statute for Upper Canada,

Canada, intituled, *An Act (insert the title of this Act)*, I, E. F., a Justice of the Peace in and for the \_\_\_\_\_, do order and adjudge that the complaint of the said A. B. is unfounded; (*if costs are given*) and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of \_\_\_\_\_.

(Signed) E. F.

*Schedule of Costs and Charges on Distresses for small Rents and Penalties.*

Levying distresses under eighty dollars : one dollar ;

Man keeping possession, per diem : seventy-five cents ;

Appraisement, whether by one Appraiser or more : two cents in the dollar on the value of the goods ;

If any printed advertisement, not to exceed in all one dollar ;

Catalogues, Sale and Commission, and delivery of goods : five cents in the dollar on the net produce of the Sale.

C A P . C X X I V .

An Act respecting the return of Convictions and Fines by Justices of the Peace and of Fines levied by Sheriffs.

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

*Justices of the Peace to make return of convictions and of moneys received.*

1. Every Justice of the Peace before whom any trial or hearing is had under any law, giving jurisdiction in the premises, and who convicts and imposes any fine, forfeiture, penalty or damages upon the Defendant, shall make a return thereof in writing under his hand to the next ensuing General Quarter Sessions of the Peace, for the County in which such conviction takes place, and of the receipt and application by him of the moneys received from the Defendant, and in case the conviction takes place before two or more Justices, such Justices, being present and joining in such conviction, shall make an immediate Return thereof, as nearly as circumstances permit as set forth in the following Form : 4, 5 V. c. 12, s. 1.

Justices of the Peace to make returns to the Quarter Sessions of all convictions and fines in cases adjudicated by them and of the application of moneys received.

*Return*

Return of Convictions made by me (or us, as the case may be)  
in the month of, 18

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.

A. B. Convicting Justice,

or

A. B. and C. D. Convicting Justices, (as the case may be)

And the Justices to whom any such moneys may be afterwards paid, shall make a Return of the receipts and application thereof, to the next General Quarter Sessions, which Return shall be filed by the Clerk of the Peace, with the records of his office. 4, 5 V. c. 12, s. 1.

Penalty for Justices of the Peace neglecting to comply with the provisions of this Act.

2. In case the Justice or Justices, before whom any such conviction takes place or who receives any such moneys, neglect or refuse to make such return thereof, or in case any such Justice or Justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than by law authorized to be received, in every such case, such Justice or Justices, and each and every of them so neglecting, or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person who sues for the same by action of debt or information in any Court of Record in Upper Canada, one moiety whereof shall be paid to the party suing, and the other moiety into the hands of Her Majesty's Receiver General to and for the public uses of the Province. 4, 5 V. c. 12, s. 2.

Actions for penalties under this Act limited to six months after cause.

3. All prosecutions for penalties arising under the provisions of this Act, must be commenced within six months next after the cause of action accrues, and the same shall be tried in the County wherein such penalties have been incurred, and if a verdict passes for the Defendant, or the Plaintiff becomes nonsuit, or discontinues the action after issue joined, or if upon demurrer, or otherwise, judgment be given against the Plaintiff, the Defendant shall recover his full costs of suit, as between Attorney and Client, and shall have the like remedy, for the same, as any Defendant hath by law in other cases. 4, 5 V. c. 12, s. 3.

4.

4. The Clerk of the Peace of the County in which any such returns are made shall, within seven days after the adjournment of the next ensuing General Quarter Sessions, cause to be published the said returns in one public Newspaper in the County, or if there be no such Newspaper, then in a Newspaper of an adjoining County, and shall also fix up in the Court House of the County, and also in a conspicuous place in the Office of such Clerk of the Peace, for public inspection, a Schedule of the returns so made by such Justices; and the same shall continue to be so fixed up, and exhibited until the end of the next ensuing General Quarter Sessions of the Peace, and for every Schedule so made and exhibited by the said Clerk of the Peace, he shall be allowed in his accounts with the said County, the Fee of four dollars, besides the expense of publication, all of which shall be paid by the Treasurer thereof. 4, 5 V. c. 12, s. 4.

Clerk of the Peace to publish and put up in Court House the returns so made to Quarter Sessions.

Fee for so doing.

5. The Clerk of the Peace of each County within twenty days after the end of each Quarter Sessions of the Peace, shall transmit to the Minister of Finance of the Province a true copy of all such returns made within his County. 4, 5 V. c. 12, s. 5.

Copy of returns to be sent to Minister of Finance.

6. Nothing herein contained shall exonerate Justices of the Peace from duly returning to the General Quarter Sessions of the Peace of their respective Counties, any convictions, or records of convictions, which are by Law required to be so returned, or to prevent any person aggrieved, from prosecuting by Indictment, a Justice of the Peace, for any offence, the commission of which would subject him to Indictment at the time of the passing of this Act. 4, 5 V. c. 12, ss. 6, 7.

This Act not to dispense with other necessary returns or to deprive persons aggrieved of the right to prosecute a Justice of the Peace liable to be indicted for any offence.

#### SHERIFFS TO MAKE RETURN OF FINES LEVIED.

7. Every Sheriff shall, quarterly and within twenty days after the expiration of each quarterly period, transmit to the Minister of Finance of the Province a just, true and faithful account, to be verified upon oath, of all fines, penalties and forfeitures, which he has been required and commanded to levy and make by any lawful authority, and of the receipt and application of the same, or of the reason why the same have not been received and applied, and each Sheriff shall pay over to the proper officer or person lawfully entitled to receive the same, the several sums collected by him as aforesaid, within twenty days next after the expiration of the period within which the same have been collected; and every Sheriff neglecting or refusing to transmit such quarterly account, or to pay over any such sum of money within the period hereby prescribed, shall incur and be subject to the like penalty, and may be sued for the same in the same manner as is hereinbefore provided and declared with regard to Justices of the Peace neglecting or refusing to make the returns required by this Act. 4, 5 V. c. 12, s. 8.

Sheriffs to transmit quarterly accounts to Minister of Finance.

## CAP. CXXV.

## An Act respecting Inquests by Coroners.

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

In what cases only inquests shall be held.

**1.** No Inquest shall be held on the body of any deceased person by any Coroner until it has been made to appear to such Coroner that there is reason to believe that the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others under such circumstances as require investigation and not through mere accident or mischance. 13, 14 V. c. 56, s. 1.

Proceedings in case of the death of any prisoner or person confined in a Lunatic Asylum.

**2.** But upon the death of any prisoner, or of any Lunatic confined in any Lunatic Asylum, the Warden, Gaoler, Keeper or Superintendent of any Penitentiary, Gaol, Prison, House of Correction, Lock-up house, House of Industry or Lunatic Asylum in which such prisoner or Lunatic dies, shall immediately give notice thereof to some Coroner of the County or City in which such death has taken place, and such Coroner shall proceed forthwith to hold an Inquest upon the body. 13, 14 V. c. 56, s. 2.

Penalty on persons summoned to attend inquests and not attending.

**3.** If any person, having been duly summoned as a juror to serve, or as a witness to give evidence upon any Coroner's Inquest, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, the Coroner may impose a fine upon the delinquent person not exceeding four dollars; and shall thereupon make out and sign a certificate, containing the name, residence and trade or calling of such person, the amount of the fine imposed, and the cause of the fine, and shall transmit such certificate to the Clerk of the Peace of the County in which such person resides, on or before the first day of the Quarter Sessions of the Peace then next ensuing, and shall cause a copy of such certificate to be served upon such person by leaving it at his residence, within a reasonable time after the Inquest.

And how enforced.

**4.** The fine so certified shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if it had been part of the fines imposed at such Quarter Sessions.

Former powers of the coroner not to be affected.

**5.** Nothing herein contained shall affect any power otherwise by law vested in any Coroner for compelling any person to appear and give evidence before him, or for punishing any person for contempt of Court, in not so appearing and giving evidence or otherwise. 13, 14 V. c. 56, s. 3.



6. No Inquisition found upon or by any Coroner's Inquest, nor any judgment recorded upon or by virtue of any such Inquisition, shall be quashed, stayed or reversed for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical words of mere form, and in all cases of technical defect, either of the Superior Courts of Common Law, or any Judge thereof, or any Judge of Assize or Gaol Delivery, may, upon any such inquisition being called in question before them or him, order the same to be amended. 13, 14 V. c. 56, s. 4.

Omission of unnecessary words, &c., not to vitiate any inquisition.

7. Whenever upon the summoning or holding of any Coroner's Inquest, the Coroner finds that the deceased was attended during his or her last illness or at his or her death, by any legally qualified medical practitioner, the Coroner may issue his order for the attendance of such practitioner as a witness at such inquest in the form following:

Coroner may summon a medical practitioner to attend at any inquest.

CORONER'S INQUEST AT \_\_\_\_\_, UPON THE BODY OF \_\_\_\_\_

By virtue of this my order, as Coroner for \_\_\_\_\_, you are required to appear before me and the Jury, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, to give evidence touching the cause of death of \_\_\_\_\_, (and when the witness is required to make or assist at a post mortem examination, add) and make or assist in making a *post mortem* examination of the body, with (or without) an analysis, (as the case may be), and report thereon at the said Inquest.

Signed,

13, 14 V. c. 56, s. 5.

Coroner.

8. If the Coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death happened; and the Coroner may, at any time before the termination of the Inquest, direct a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such Inquest; But if any person states upon oath before the Coroner, that in his belief the death was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person shall not assist at the *post mortem* examination. 13, 14 V. c. 56, s. 5.

If the Coroner finds that the deceased was not so attended, &c.

9. Whenever it appears to the majority of the Jurymen sitting at any Coroner's Inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses examined in the first instance, such

A majority of the jurymen may require the Coroner to summon an-

other medical practitioner.

such majority may name to the Coroner in writing, any other legally qualified medical practitioner or practitioners, and require the Coroner to issue his order in the form hereinbefore mentioned for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examination as in the last preceding section mentioned, and whether before performed or not; and if the Coroner refuses to issue such order, he is guilty of a misdemeanor, and shall be punishable by a fine not exceeding forty dollars, or by imprisonment not exceeding one month, or by both fine and imprisonment. 13, 14 V. c. 56, s. 6.

Penalty on Coroner refusing.

Allowance to such medical practitioner.

**10.** Where any legally qualified medical practitioner has attended in obedience to any such order as aforesaid, he shall receive for such attendance, if without a *post mortem* examination, five dollars; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, ten dollars; if with such analysis, twenty dollars, together with the sum of twenty cents per mile, for each mile he has to travel to and from such inquest, such travel to be proved by his own oath to the Coroner, who may administer the same; and the Coroner shall make his order on the Treasurer of the County in which the inquest is holden, in favor of such medical practitioner, for the payment of such fees or remuneration, and such Treasurer shall pay the sum mentioned in such order, to such medical witness out of any funds he may then have in the County Treasury. 13, 14 V. c. 56, s. 7.

To be paid on Coroner's order, and by whom.

Penalty on practitioners summoned and failing to attend.

**11.** Where any such order for the attendance of any medical practitioner has been personally served, or if not personally served, has been received by him or left at his residence in sufficient time for him to have obeyed such order, and he has not obeyed the same, he shall forfeit the sum of forty dollars upon complaint by the Coroner who held or by any two of the Jury who sat on the Inquest, made before any two Justices of the Peace of the County where the Inquest has been held, or of the County where such medical practitioner resides; and such Justices shall proceed to hear and adjudicate upon the complaint; and if such medical practitioner does not shew a sufficient reason for not having obeyed such order, they shall enforce the said penalty by distress and sale of the offender's goods in the same manner as they are empowered to do by the Consolidated Statute of Canada respecting the duties of Justices of the Peace out of Sessions in relation to Summary Convictions and Orders. 13, 14 V. c. 56, s. 8.

## C A P . C X X V I .

## An Act to protect Justices of the Peace and other Officers from Vexatious Actions.

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

**1.** Every Action brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction as such Justice, or against any other officer or person fulfilling any public duty for any thing by him done in the performance of such public duty, whether any of such duties arise out of the Common Law or be imposed by Act of Parliament, either Imperial or Provincial, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause ; and if at the trial of any such Action, upon the general issue pleaded, the Plaintiff fails to prove such allegation, he shall be non-suit, or a verdict shall be given for the Defendant. 16 V. c. 180, ss. 1, 16. See 14, 15 V. c. 54, s. 2.

Actions for things done within the jurisdiction of a Justice of the Peace or by other officers, to be on the case as for a tort, and malice and want of probable cause must be alleged and proved.

**2.** For any act done by a Justice of the Peace in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any Conviction or Order made or Warrant issued by such Justice in any such matter, any person injured thereby may maintain an action against such Justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause. 16 V. c. 180, s. 2.

Actions when the Justice has exceeded his jurisdiction may lie without such allegation.

**3.** No such Action shall be brought for any thing done under such Conviction or Order until the Conviction or Order has been quashed, either upon appeal or upon application to one of the Superior Courts of Common Law for Upper Canada ; nor shall any such Action be brought for any thing done under any Warrant issued by such Justice to procure the appearance of the party, and which has been followed by a Conviction or Order in the same matter, until the Conviction or Order has been quashed as aforesaid. 16 V. c. 180, s. 2.

But not for an act done under a conviction or order until the same be quashed.

**4.** If such last mentioned Warrant has not been followed by a Conviction or Order, or in case it be a Warrant upon an information for an alleged indictable offence, if a Summons was issued previously to such Warrant, and such Summons was served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such

Nor for an act done under a warrant to compel appearance if a summons were previously served and not obeyed.

such Summons, in such case no such Action shall be maintained against the Justice for any thing done under such Warrant. 16 V. c. 180, s. 2.

If one Justice make a conviction, &c., and another grant a warrant, action must be against the former.

**5.** Where a Conviction or Order has been made by one or more Justice or Justices of the Peace, and a Warrant of distress or of commitment has been granted thereon by some other Justice of the Peace *bonâ fide* and without collusion, no Action shall be brought against the Justice who granted such Warrant by reason of any defect in the Conviction or Order, or for any want of jurisdiction in the Justice or Justices who made the same, but the Action (if any be brought,) shall be against the Justice or Justices who made the Conviction or Order. 16 V. c. 180, s. 3.

If a Justice refuse to do any act, either of the Superior Courts of Common Law or a County Judge may order him to do it, and no action shall then lie against him for doing it.

**6.** In all cases where a Justice or Justices of the Peace refuse to do any act relating to the duties of his or their Office as such Justice or Justices, the party requiring such act to be done may, upon an affidavit of the facts, apply to either of the Superior Courts of Common Law in Upper Canada, or to the Judge of the County Court of the County or United Counties in which such Justice or Justices reside, for a rule calling upon such Justice or Justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule, good cause be not shown against it, the said Court may make the same absolute, with or without or upon payment of costs, as may seem meet; and the Justice or Justices, upon being served with such rule absolute, shall obey the same, and shall do the act required; and no action or proceeding shall be commenced or prosecuted against such Justice or Justices for having obeyed the rule and done the act required as aforesaid. 16 V. c. 180, s. 4.

After conviction, &c., confirmed on appeal, no action to lie for an act done under a warrant upon it.

**7.** In case a Justice of the Peace has granted a Warrant of Distress, or a Warrant of Commitment upon any Conviction or Order which, either before or after the granting of the Warrant, has been confirmed upon appeal, no Action shall be brought against such Justice by reason of any defect in such Conviction or Order for any thing done under the Warrant. 16 V. c. 180, s. 5.

If an action be brought contrary to this Act, Judge may set aside the proceedings.

**8.** In case any Action be brought, where by this Act it is enacted that no such action shall be brought under the particular circumstances, a Judge of the Court in which the Action is pending shall, upon application of the Defendant, and upon an affidavit of facts, set aside the proceedings in such Action, with or without costs, as to him seems meet. 16 V. c. 180, s. 6.

Limitation of actions.

**9.** No Action shall be brought against any Justice of the Peace for any thing done by him in the execution of his Office, unless the same be commenced within Six Months next after the act complained of was committed. 16 V. c. 180, s. 7.

**10.** No such Action shall be commenced against any Justice of the Peace until one month at least after a notice in writing of the intended Action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence the Action, or by his Attorney or Agent, in which notice the cause of Action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or of business of his Attorney or Agent, if the notice be served by such Attorney or Agent. 16 V. c. 180, s. 8.

Notice of action to be given, and how.

**11.** In every such Action the venue shall be laid in the County where the act complained of was committed, and in Actions in County or Division Courts the Action must be brought in the County or Division within which the act complained of was committed or in which the Defendant resides, and the Defendant may plead the General Issue and give any special matter of defence, excuse or justification in evidence under such plea, at the trial of the Action. 16 V. c. 180, s. 9.

Venue how to be laid.

Defendant may plead the general issue and give the special matter, &c., in evidence.

**12.** No Action shall be brought in any County or Division Court against a Justice of the Peace for any thing done by him in the execution of his office if the Justice objects thereto; and if within six days after being served with a notice of any such Action, such Justice or his Attorney or Agent, gives a written notice to the Plaintiff in the intended Action that he objects to being sued in such County or Division Court for such cause of action, no proceedings shall afterwards be had in such County or Division Court in any such Action, but it shall not be necessary to give another notice of Action in order to sue such Justice in any other Court. 16 V. c. 180, s. 9.

Action not to be brought in County or Division Court, if the Justice objects.

**13.** In every such case after notice of Action has been given as aforesaid, and before an Action has been commenced, the Justice to whom such notice has been given may tender to the party complaining, or to his Attorney or Agent, such sum of money as he thinks fit as amends for the injury complained of in such notice; and after the Action has been commenced, and at any time before issue joined therein, such Defendant, if he has not made a tender, or in addition to the tender, may pay into Court such sum of money as he thinks fit, and such tender and payment of money into Court, or either of them, may afterwards be given in evidence by the Defendant at the trial under the General Issue. 16 V. c. 180, s. 10.

Tender and payment of money into Court by Justice.

**14.** If the jury at the trial be of opinion that the Plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, they shall give a verdict for the Defendant, and the Plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much thereof

If Jury thinks plaintiff entitled to no greater damages, they shall give a verdict for the defendant.

thereof as is sufficient to pay or satisfy the Defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff. 16 V. c. 180, s. 10.

If the plaintiff accepts the money.

**15.** In case money be paid into Court in any such Action, and the Plaintiff elects to accept the same in satisfaction of his damages in the Action, he may obtain from any Judge of the Court in which the Action has been brought, an order that the money shall be paid out of Court to him, and that the Defendant shall pay him his costs to be taxed, and thereupon the said Action shall be determined, and such order shall be a bar to any other Action for the same cause. 16 V. c. 180, s. 10.

If plaintiff fail to prove certain things, he shall be nonsuited or verdict given for the defendant.

**16.** If at the trial of any such Action the Plaintiff does not prove—1. That the Action was brought within the time hereinbefore limited in that behalf, and 2. That such notice as aforesaid was given one month before the Action was commenced, and 3. The cause of Action stated in such notice, and 4. Does not prove that the cause of Action arose in the County or place laid as venue in the margin of the declaration, and 5. When the plaintiff sues in a County or Division Court that the cause of action arose within the County or United Counties for which such Court is holden, 6. Then and in any such case such Plaintiff shall be nonsuit, or the Jury shall give a verdict for the Defendant. 16 V. c. 180, s. 11.

Damages limited in certain cases.

**17.** In case the Plaintiff in any such Action is entitled to recover, and he proves the levying or payment of any penalty or sum of money under any Conviction or Order as parcel of the damages he seeks to recover, or if he proves that he was imprisoned under such Conviction or Order, and seeks to recover damages for such imprisonment, and it be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and with respect to such imprisonment that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of three cents as damages for such imprisonment, or any costs of suit whatsoever. 16 V. c. 180, s. 12.

If plaintiff recovers verdict, &c., to be entitled to costs.

**18.** If the Plaintiff in any such Action recovers a verdict, or the Defendant allows judgment to pass against him by default, the plaintiff shall be entitled to costs in the same manner as if this Act had not been passed. 16 V. c. 180, s. 13.

If malice and want of probable cause be

**19.** If in any such case it be stated in the declaration, or in the Summons and particulars if he sues in the Division Court,

Court, that the Act complained of was done maliciously and without reasonable and probable cause, the Plaintiff, if he recovers a verdict for any damages or if the Defendant allows judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between Attorney and Client; and in every action against a Justice of the Peace for any thing done by him in the execution of his Office, the Defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between Attorney and Client. 16 V. c. 180, s. 13.

alleged and plaintiff recovers, he shall be entitled to full costs.

When Defendant is entitled to Costs, &c.

**20.** So far as applicable, the whole of this Act shall apply for the protection of every officer and person mentioned in the first section hereof, for anything done in the execution of his office as therein expressed. 16 V. c. 180, s. 16.

This Act to apply to every Officer, &c., mentioned in s. 1.

## C A P . C X X V I I .

### An Act respecting Court Houses, Gaols and Houses of Correction.

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

#### THE CARE OF GAOLS AND COURT HOUSES, &c.

**1.** The Sheriff shall have the care of the County Gaol, Gaol offices and yard, and Gaoler's apartments, and the appointment of the keepers thereof. 22 V. c. 99, s. 398.

Custody of Gaols and Court Houses.

**2.** The County Council shall have the care of the Court House and of all offices and rooms connected therewith, whether the same forms a separate building or is connected with the Gaol, and shall have the appointment of the keepers thereof; and shall from time to time provide all necessary and proper accommodation for the Courts of Justice other than the Division Courts and for all officers connected with such Courts of Justice. 22 V. c. 99, s. 399.

County Council to appoint keepers, &c.

**3.** In any City not being a separate County for all purposes, but having a Gaol or Court House separate from the County Gaol or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council. 22 V. c. 99, s. 400.

City Gaols to be regulated by By-law.

**4.** No license shall be granted for retailing spirituous liquors within any Gaol or Prison; and if any Gaoler, keeper or Officer, of any Gaol or Prison, sells, lends, uses or gives away, or knowingly permits or suffers any spirituous liquors or strong waters to be sold, used, lent or given away, in such Gaol or Prison,

No license to be granted for retailing spirituous liquors within Gaols.

Prison, or to be brought into the same, other than such spirituous liquors or strong waters as may be prescribed by or given by the prescription and direction of a regular Physician, Surgeon or Apothecary, such Gaoler, keeper or other Officer, shall, for every such offence, forfeit the sum of eighty dollars, one moiety thereof to Her Majesty, for the public uses of the Province, and the other moiety, with full costs of suit, to the person who sues for the same in any of Her Majesty's Courts of Record in Upper Canada; and in case any Gaoler or other officer having been so convicted, offends again in like manner, and be thereof a second time convicted, such second offence shall be a forfeiture of his office. 32 G. 3, c. 8, s. 15.

Penalty on Gaolers transgressing in this respect.

Gaoler to have a yearly salary in place of all fees, perquisites or impositions whatever.

5. The Justices of the Peace within the limits of their respective Counties in Quarter Sessions assembled, shall appoint a reasonable yearly Salary, according to their discretion, to be paid to the Gaoler, and such Salary shall be in place of all fees, perquisites or impositions of any sort or kind whatever; and no Gaoler or Officer belonging to the Gaol, shall demand or receive any fee, perquisite or other payment from any Prisoner confined within the Gaol or Prison. 32 G. 3, c. 8, s. 17.

Penalty on persons supplying spirits to a prisoner in Gaol.

6. If any person gives, conveys or supplies to any prisoner confined in any common Gaol or House of Correction in Upper Canada, any rum, brandy, whiskey or other spirituous liquors, contrary to the rules and regulations from time to time established by law, such offender, being duly convicted thereof before two Justices of the Peace, shall be fined a sum not exceeding twenty dollars. 3 V. c. 14, s. 1.

Any one justice may summon the party accused.

And in default of appearance, may proceed *ex parte*.

7. In case any person be charged on the oath of one credible witness before any one Justice of the Peace, with any offence against this Act, such Justice may summon the person charged to appear at a time and place to be named in such summons; and if he do not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally) any two Justices of the Peace for the County where the offence is alleged to have been committed, may either proceed to hear and determine the case *ex parte*, or issue their warrant for apprehending such person, or any one of the said Justices may, if he thinks fit, without any previous summons, issue such warrant. 3 V. c. 14, s. 2.

Power to summon witnesses.

8. Such Justices may summon witnesses, either in support of the prosecution or for the defendant; and if any person having been personally summoned to attend as a witness, neglects or refuses to attend, or fails to shew some reasonable excuse for his non-attendance, he may be fined for such non-attendance by the Justices assembled to try the offence, in any sum not exceeding twenty dollars, to be enforced in manner and form mentioned in the last preceding Section. 3 V. c. 14, s. 4.



**9.** In default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of the conviction by the Justices before whom such conviction has taken place, such Justices may issue their warrant, directed to any Constable, to levy the amount of such fine and costs of the goods of the offender within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount can be found, they may commit the offender to the Common Gaol or House of Correction of the County wherein the offence was committed, for any time not exceeding one month, unless the fine and costs be sooner paid. 3 V. c. 14, s. 5.

In default of payment of fine and costs.

Offender may be committed.

**10.** No conviction under this Act shall be quashed for want of form, and no warrant of committal shall be held void by reason of any defect therein, if it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. 3 V. c. 14, s. 3.

No conviction or committal to be quashed for want of form.

#### GAOLS TO BE HOUSES OF CORRECTION.

**11.** Until separate Houses of Correction be erected in the Several Counties in Upper Canada, the Common Gaol in each County respectively shall be a House of Correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a House of Correction, shall, unless otherwise provided by law, be committed to the said Common Gaols respectively. 50 G. 3, c. 5.

Until houses of correction be erected, the Common Gaols in each respective County are constituted Houses of Correction.

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## TITLE 13.

### ADMINISTRATION OF JUSTICE IN UNORGANIZED TRACTS.

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## CAP. CXXVIII.

An Act respecting the administration of Justice in the unorganized tracts.

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

**1.** The Governor may from time to time by proclamation, declare that from and after a day to be named therein, certain parts of the unorganized tracts of Country bordering on and adjacent to Lakes Superior and Huron, including the Islands in

Governor may erect certain unorganized tracts into temporary judicial districts.

in those Lakes which belong to this Province, and also all other parts of Canada not included within the settled limits of any County or District, shall form a temporary Judicial District or temporary Judicial Districts, and in such proclamation define the limits of such temporary Judicial District or Districts, and name the same respectively; and the Governor may divide each of such Districts into two or more Divisions, and define the limits and extent of every such Division, and number such Divisions, beginning at number one; and may from time to time alter the limits and extent of such Districts and the Divisions thereof respectively. 20 V. c. 60, s. 1.

And define limits.

Tracts not included in townships may be annexed to such districts.

2. A portion or portions of any County in Upper Canada not included in any Township may, for all purposes connected with the administration of Justice under this Act, be included within the limits of any such temporary Judicial District as aforesaid, and may again be separated therefrom by the Governor. 20 V. c. 60, s. 2.

Stipendiary Magistrate may be appointed in and for each such district.

3. The Governor may from time to time appoint in and for every such temporary Judicial District, a fit and proper person to be the Stipendiary Magistrate thereof, who shall hold office during pleasure, and exercise within such District, the magisterial, judicial and other functions hereinafter expressed and who shall reside in such place within the District for which he is appointed as the Governor directs. 20 V. c. 60, s. 3.

Salary of such Magistrate.

4. Every such Stipendiary Magistrate shall be paid, out of the Consolidated Revenue Fund of this Province, the yearly sum of one thousand two hundred dollars, to be paid half yearly on the thirtieth day of December and the thirtieth day of June in each year, by equal portions, and may moreover have and take to his own use the fees authorized to be taken by Justices of the Peace in Upper Canada, or by their Clerks in cases of summary conviction. 20 V. c. 60, s. 4.

Such Magistrate to be a Justice of the Peace; powers as such; &c.

5. Every such Stipendiary Magistrate shall be *ex officio* a Justice of the Peace for the temporary Judicial District for which he is appointed, and shall have all the powers, jurisdiction and authority, and shall perform all the duties which a Justice of the Peace in any County in Upper Canada now has, and is required to perform within any such County; and all the protections and provisions of law applicable to such Stipendiary Magistrate acting within the limits of his temporary Judicial District; and such Stipendiary Magistrate may and shall act in the execution of the office of Justice of the Peace for such temporary Judicial District, although he has not such qualification by estate in lands, tenements and hereditaments, as is required by the Consolidated Statute of Canada, intituled, *An Act respecting the qualification of Justices of the Peace.* 20 V. c. 60, s. 5.

6. The Governor may appoint Justices of the Peace for such temporary Judicial Districts, or for all or any part of the unorganized tracts of Country in Upper Canada by commission as heretofore, and the name of any Stipendiary Magistrate may be inserted in any such commission. 20 V. c. 60, s. 5.

Governor may appoint J. Ps. for certain purposes.

7. Every such Stipendiary Magistrate shall from time to time appoint a sufficient number of fit and proper persons to serve in the office of Constable in his temporary Judicial District, and may at his pleasure remove any such Constable; and every Constable so appointed as aforesaid shall have and exercise and perform all the duties and powers, and shall be subject to all the responsibilities that Constables appointed by the Courts of Quarter Sessions in Upper Canada have and can perform and exercise and are subject to; and all the privileges, protections and provisions of law applicable to such Constables, shall extend and apply to Constables appointed by a Stipendiary Magistrate under this Act; and the lawful fees and expenses of such last named Constables, other than the fees they may be entitled to receive from parties, shall be audited by the Stipendiary Magistrate, and paid out of the Consolidated Revenue Fund of this Province in such manner as the Governor may from time to time direct. 20 V. c. 60, s. 6.

Stipendiary Magistrate to appoint constables; their powers.

Audit and payment of constables.

8. If any Constable appointed under the authority of this Act be guilty of any disobedience of orders, neglect of duty, or of any misconduct as such Constable, and be convicted thereof before the Stipendiary Magistrate for the temporary Judicial District, or before any Justice of the Peace acting therein, he shall forfeit a sum to be fixed by such Magistrate or Justice not exceeding forty dollars and costs, and in default of immediate payment thereof, shall suffer imprisonment for any time not exceeding three months unless such fine and costs be sooner paid; And any such person may be proceeded against by indictment for any offence committed by him as Constable, but not both by Indictment and also under this Act for the same offence. 20 V. c. 60, s. 7.

Punishment of constable misbehaving.

9. The Governor may from time to time direct that one or more suitable erections shall be provided by the Commissioner of Public Works in each temporary Judicial District for the safe custody of prisoners charged with crime or convicted of any offence, and every erection so provided shall be deemed a Common Gaol, and the Common Gaol of such temporary Judicial District; But criminal offenders fully committed for indictment and trial, shall as heretofore be committed to the Common Gaol of the proper County in this Province, to be dealt with according to law, and shall not be detained in the Common Gaol of any temporary Judicial District an unreasonable time, regard being had to the season of the year and the possibility of travelling at the time of his commitment as aforesaid; and until such erections are provided, offenders may be committed to

Temporary Gaols to be provided.

Provision against unnecessary detention therein.

to any suitable place within the temporary Judicial District.  
20 V. c. 60, s. 8.

Keeper of the  
Gaol.

**10.** The Stipendiary Magistrate shall from time to time appoint a Keeper to every Common Gaol in his temporary Judicial District, and such Gaol-keeper shall perform all the duties, and be under and subject to all the liabilities that the Gaoler of the Common Gaols in the several Counties in Upper Canada now perform and are subject to, and shall give such security for the due performance of the duties of his office as the Governor from time to time prescribes, and every such Gaol-Keeper shall be paid out of the Consolidated Revenue Fund, such sums of money annually as the Governor may think reasonable for the services performed. 20 V. c. 60, s. 9.

His remuneration.

Application of  
fines and forfeitures.

**11.** All moneys arising from penalties, forfeitures and fines imposed by any such Stipendiary Magistrate, or by any Justice of the Peace acting within his temporary Judicial District when paid and levied, shall, (if not directed by law to be otherwise appropriated) be from time to time paid to such Stipendiary Magistrate who shall account for the same, and pay over or disburse the moneys arising therefrom, at such times, in such manner, and to such person or persons, as the Governor may from time to time direct. 20 V. c. 60, s. 10.

Magistrate to  
keep minutes,  
accounts, &c.

**12.** Every such Stipendiary Magistrate shall keep minutes of every proceeding had by and before him, and shall keep such accounts, make such returns, and collect such information, with respect to the temporary Judicial District for which he is appointed and the state and condition thereof, as the Governor may from time to time prescribe and require. 20 V. c. 60, s. 11.

#### DIVISION COURTS.

Civil Court to  
be held in each  
Division.

**13.** In order to the administration of Justice between party and party, Courts of Civil Jurisdiction shall be held in every temporary Judicial District, and a Court shall be held in every Division declared and appointed as a Division under the first section of this Act, at such periods as the Governor may from time to time order; And the Court to be held in each such Division shall be known by the name and style of "The first (or other, as the case may be) Division Court for the temporary Judicial District of . . ." 20 V. c. 60, s. 12.

Style of Court.

Magistrate to  
hold such court.  
—powers.

**14.** The Stipendiary Magistrate for each temporary Judicial District shall preside over the several Division Courts, and to qualify him so to do he shall, in addition to his oath of office as a Justice of the Peace, take the following oath before some person authorized to administer the same, that is to say: 20 V. c. 60, s. 13.

"I do swear that I will truly and faithfully execute the several powers, duties and trusts committed to me by the Act respecting the Administration of Justice in unorganized tracts," without fear, without favor and without malice. So help me God."

Oath of office of Magistrate.

**15.** Such Magistrate shall be the sole Judge in all actions brought in the said Division Courts, and shall determine all questions as well of fact as of law in relation thereto in the summary manner authorized by this Act; But if he thinks fit to have any fact or facts controverted in a cause, tried by a Jury, a Jury of five persons present shall be returned instantly by the Clerk of the Court to try such fact or facts, and such magistrate may give judgment on the verdict of the Jury. 20 V. c. 60, s. 13.

Jury trial.

**16.** For every such Division Court, there shall be a Clerk and one or more Bailiffs, and the Stipendiary Magistrate may from time to time appoint and may, at his pleasure, remove the Clerks and Bailiffs of the Courts over which he presides, and every Clerk shall have an office at such place within the Division for which he is appointed as the Stipendiary Magistrate may direct.

Clerk and Bailiff of Division Courts.

**17.** In case the Stipendiary Magistrate removes any such Clerk or Bailiff and appoints another in his place, such Magistrate shall order the books, papers and all documents relating to the business or matters of the Division Court, to be delivered over to the newly appointed Clerk or Bailiff, and if any person having the custody of such books, papers or documents, refuses to obey such order, Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, or any Judge thereof in vacation, upon proof of service of the order upon such person, may, by rule or summons, call upon him to show cause why such books, papers or documents should not be delivered in conformity with the order of the said Stipendiary Magistrate; and upon due proof of the service of such rule or summons, or on hearing the parties, the said Court of Queen's Bench or of Common Pleas, or any Judge thereof in vacation, may order the issue of an attachment against such person, and in default of the delivering up of the said books, papers or documents, may make such order for the imprisonment or other punishment of such person, as the justice of the case to the said Court or Judge seems to require; and any other person unlawfully holding or getting possession of such books, papers or documents, or any of them, shall be guilty of a misdemeanor. 20 V. c. 60, s. 14.

Proceedings if Clerk or Bailiff be removed to compel delivery of papers, &c., to his successor.

**18.** Every Clerk and Bailiff appointed under the provisions of this Act shall give security by entering into a bond to Her Majesty in such sum, with so many sureties, and in such form as the Governor may direct for the due accounting for all fines and moneys by him, received, by virtue of his office, and also for the due and faithful performance of the duties of his office. 20 V. c. 60, s. 15.

Clerks and Bailiffs to give security by Bonds.

Also by Covenant.

**19.** Every such Clerk and Bailiff shall also give security for such sum and with so many sureties as the Stipendiary Magistrate for the temporary Judicial District directs, by entering into a joint and several covenant, according to the form given in the Schedule to this Act marked A, or in words to the same effect, which covenant shall be available to, and may be sued upon by any person suffering damages by the default, breach of duty or misconduct of any such Clerk or Bailiff, respectively, in any Court of competent Jurisdiction in Upper Canada.

Sureties to be subject to approval.

**20.** Such covenants shall not be accepted until the sureties therein mentioned have been approved of under the hand of such Stipendiary Magistrate, and declared sufficient for the sums for which they have respectively become bound.

Proof of bond.

**21.** Such covenants shall be executed in duplicate, one of which shall be filed in the office of the Minister of Finance of this Province, and the other with such Stipendiary Magistrate; and a copy of every such covenant, certified by the Minister of Finance, or by the Stipendiary Magistrate, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof, without any other proof whatever. 20 V. c. 60, s. 15.

Sittings of the Court, how notified, &c.

**22.** The Stipendiary Magistrate shall fix and appoint the days and places within every Division, when and at which the Division Court therefor shall be holden, and shall give due notice thereof; and whenever from illness of the Stipendiary Magistrate or from any casualty it happens that he does not arrive in time, or is not able to open any Court to be holden under this Act on the day appointed for that purpose, the Clerk or Deputy Clerk of such Court, shall, after the hour of eight o'clock in the afternoon of such day, adjourn by proclamation the Court which was appointed to be opened on that day, to an earlier hour to be named by him on the following day not being Sunday or a legal holiday, and so from day to day adjourning over any Sunday or holiday, until the Stipendiary Magistrate arrives to open the Court, or until he receives other directions from such Magistrate. 20 V. c. 60, s. 16.

Clerk may adjourn the Court in certain cases.

Jurisdiction of the Court.

**23.** Every Division Court, holden under the authority of this Act, shall have jurisdiction, power and authority to hold plea of all personal actions (save as hereinafter excepted) for or against any person, body corporate or otherwise, where the debt or damages claimed is not more than one hundred dollars, and the Stipendiary Magistrate presiding over such Court shall hear and determine such actions and matters in relation thereto in a summary way, and make such orders, judgments and decrees as appear to him just and agreeable to equity and good conscience; but the said Division Courts shall not have cognizance of any action for any gambling debt, or for any spirituous or malt liquors or other like liquors, nor for any action whether brought

Mode of proceeding.

Certain causes of action not cognizable.

by the payee or any other person on a note of hand, the consideration or any part of the consideration of which was for a gambling debt or for such liquors, nor of any action of ejectment or in which the title to any corporeal or incorporeal hereditaments, or to any toll, custom or franchise shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, nor of any action for malicious prosecution, or for libel or slander, or for criminal conversation or seduction or breach of promise of marriage; and nothing herein contained shall be construed to constitute the said Division Courts, Courts of Record. 20 V. c. 60, s. 17.

Not to be Courts of Record.

**24.** A Plaintiff shall not divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court holden under the authority of this Act, but any plaintiff, having a cause of action above the value of one hundred dollars, for which a suit might be brought under this Act, if the same were not above that sum, may abandon the excess in the first instance on the face of the claim sued on, and upon proving his case, may recover to an amount not exceeding one hundred dollars, and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly; but no unsettled account to a greater amount than two hundred dollars shall be sued for in any of the said Courts. 20 V. c. 60, s. 18.

Causes of action not to be divided in order to give jurisdiction; but excess may be abandoned.

**25.** Any executor or administrator may sue and be sued in any such Division Court, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like cases would be given or issued in any Superior Court; and any one under the age of Twenty-one years may prosecute a suit, in any such Court for any sum of money not exceeding one hundred dollars, due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age. 20 V. c. 60, s. 19.

Executor, &c., may sue and be sued.

Also Minors, for wages.

**26.** No privilege shall be allowed to any person to exempt him from the jurisdiction of the Division Courts created by this Act. 20 V. c. 60, s. 20.

No privilege allowed.

**27.** When any plaintiff has a debt or demand recoverable under this Act, against two or more persons partners in trade or otherwise jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, one or more of such persons may be served with the process as hereinafter directed, and judgment may be obtained, and execution issued against such person notwithstanding others jointly liable may not have been served or sued, reserving to the person against whom execution has issued, his right, if any, to demand contribution from any other person jointly liable with him. 20 V. c. 60, s. 21.

Actions against persons jointly liable in different divisions, &c.

In what division suits to be commenced.

**28.** All suits cognizable in a Division Court under this Act may be entered and tried in the Court holden for the Division in which the cause of action arose, or in the Court holden for the Division in which the defendant, or one of the defendants, if there be more than one, dwells or carries on business at the time of action brought, and in actions against Division Court Clerks, in the next adjoining Division within the temporary Judicial District; and with consent of both parties to a suit, the Stipendiary Magistrate may try such suit in any Division Court within the local limits of his jurisdiction. 20 V. c. 60, s. 22.

Each Court to have a seal.

Punishment for forging seal.

**29.** There shall be a seal for every Court holden under this Act, and all summonses and other process shall be sealed or stamped with the seal of the Court; and every person who forges the seal or any process of the Court, or who serves or enforces any such forged process knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court knowing the same to be false, or who acts or professes to act under any false color or pretence of the process of the said Court, shall be guilty of felony. 20 V. c. 60, s. 23.

Clerks to issue summonses, &c., and in what forms.

**30.** The Clerk of every Division Court holden under the authority of this Act, shall issue all summonses and furnish copies thereof, with the notices thereon, in the form given in the Schedule to this Act marked D, and particulars of the plaintiff's claim or demand and copy thereof, and of the defendant's set-off, which copy of demand, particulars, or set-off are to be furnished to the Clerk by the plaintiff and defendant, respectively, and he shall also issue all warrants, precepts and writs of execution, tax costs subject to the revision of the Stipendiary Magistrate, and enter and register a note of all summonses, orders, judgments, executions and returns, and of proceedings of the Court in a Procedure Book to be kept by him, and shall keep an account of all fines payable into Court, and of all suitor's moneys paid into and out of Court, and enter an account of all such fines and moneys in a Cash-book to be kept by him for that purpose, which said Books may be kept in the form given in the said Schedule, and such Clerk shall sign his name on every page of the said books respectively, and the same shall at all times be accessible to the Stipendiary Magistrate whose duty it shall be to inspect and examine the same at every sittings of the Court. 20 V. c. 60, s. 24.

Register to be kept, also accounts.

Certified copies of entries to be evidence.

**31.** The entries for the said Procedure book and Cash-book, respectively, or a copy thereof, signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries and of the proceedings referred to by such entries without any further proof. 20 V. c. 60, s. 24.



**32.** The Clerk and Bailiff of every such Division Court shall render to the said Stipendiary Magistrate such accounts and returns verified on oath as he may from time to time require. 20 V. c. 60, s. 24.

The Clerk to render accounts to the Magistrate.

**33.** The Bailiffs of the said Courts shall attend every sittings of the Courts, and shall serve all summonses, and execute all orders, warrants, precepts and writs of the said Courts, and each of such Bailiffs shall also exercise the power and authority of a constable and peace officer during the actual holding of the Division Court of which he is a Bailiff, with full power to prevent all breaches of the peace, riots or disturbances within the Court-room or building wherein the said Court is held, or in the public streets, squares or other places within hearing of such Court, and to arrest with or without any warrant all parties engaged in any such disorder or offending against the meaning of this clause, and to bring such offender before the nearest Justice of the Peace or any judicial officer having power to investigate the matter or adjudicate thereupon. 20 V. c. 60, s. 24

Duties of the Bailiffs.

Powers.

**34.** There shall be payable to the Clerks and Bailiffs on every proceeding in such Division Courts, such fees as are set down in the Schedule to this Act annexed marked B, and a table of such fees shall be hung up in some conspicuous place in the office of each Clerk, and the fee on every proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be had, on or before such proceeding, and if not so paid, the payment thereof may be enforced by order of the Stipendiary Magistrate, in the same way as any judgment of the Court can be recovered.

Fees to Clerks and Bailiffs.

**35.** If any Clerk, Bailiff or other officer employed in putting this Act or any of the powers thereof into execution, exacts, takes or accepts any fee or reward whatsoever, other than such fees as aforesaid, for or on account of any thing done by virtue of or relative to putting this Act into execution, every such person so offending shall, upon proof thereof before the said Court, be forever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall be also liable to damages to the party aggrieved. 20 V. c. 60, s. 25.

Penalty for exacting undue fees.

**36.** The plaintiff, in any suit brought in the said Division Courts, shall enter a copy, and if necessary, copies of his demand or claim in writing, which shall be numbered according to the order in which entered, and thereupon a summons, bearing the number of the demand or claim on the margin thereof, shall be issued, and it shall be in substance in the form to the Schedule to this Act annexed marked D, and a copy of such summons, to which shall be attached a copy of the plaintiff's account or of the particulars of his demand, as the case may be, and the notice in the said Schedule of such demand

Mode of commencing suits.

Particulars of demand.

Service of process, how made.

demand or account or claim, shall be served on the defendant ten days at least before the day on which the Division Court is to be holden at which the cause is to be tried; and the delivery of such copies of summons and account or demand to the defendant, or to his wife or servant, or to any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing, shall be deemed a good service of such summons, account or demand; But personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceed the sum of eight dollars. 20 V. c. 60, s. 26.

Personal service in certain cases.

Subpoenas for witnesses.

**37.** Either of the parties to a suit may obtain from the Clerk of the Division Court wherein the same has been brought, or from any Division Court Clerk within the temporary Judicial District, a summons in the form in Schedule marked D, requiring the attendance of a witness resident within the temporary Judicial District with or without a clause requiring the production of books, papers and writings in his possession or control; and in any such summons any number of names may be inserted, and service of any such summons by the bailiff of any Division Court or by any literate person, shall be valid and effectual. 20 V. c. 60, s. 27.

Service.

Penalty for disobeying subpoenas.

**38.** Every person on whom any such summons has been served, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his expenses were made on the scale of allowance given in the Schedule marked C to this Act, and who refuses or neglects without sufficient cause to appear before the Court or before arbitrators appointed under this Act, or to produce any books, papers or writings required by such summons to be produced, and also every person in Court called upon to give evidence, who refuses to be sworn or affirmed (where affirmation is by law allowed) and give evidence, shall forfeit and pay such fine not exceeding twenty dollars as the Stipendiary Magistrate may set on him, and shall moreover be liable to imprisonment by order of such Stipendiary Magistrate for any time not exceeding ten days. 20 V. c. 60, s. 27.

How to be levied and applied.

**39.** Such fine shall be levied and collected with costs in the same manner as upon a judgment of the Court, and the whole or any part of such fine, in the discretion of the Stipendiary Magistrate (after deducting the costs) shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall be paid over to the Stipendiary Magistrate, and accounted for by him as aforesaid. 20 V. c. 60, s. 27.

Clerk or Bailiff may receive confessions of judgment.

**40.** Any Bailiff or Clerk of the said Courts shall accept and take a confession or acknowledgment of debt, from the defendant in any suit hereafter to be brought in any Division Court  
who

who may be desirous of making the same, and such confession or acknowledgment shall be in writing, and in the form in the Schedule marked D., and shall be witnessed by the Bailiff or Clerk at the time of the taking thereof. 20 V. c. 60, s. 28.

**41.** Upon the production of such confession or acknowledgment to the Judge, and upon proof thereof by the oath or affidavit of the said Bailiff or Clerk, and which oath or affidavit shall also state that the party making it has not received and is not to receive any thing from the plaintiff or defendant, or any other person, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered, then judgment may be entered on such confession. 20 V. c. 60, s. 28.

Upon oath, &c., being made, judgment may be entered, &c.

**42.** Any defendant may avail himself of the law of set-off, the statute of limitations, or any other relief or discharge under any statute or law of Upper Canada, and may set up the same by way of defence on the hearing or trial; and in case of set-off, if the defendant's demand exceeds that of the plaintiff, the Stipendiary Magistrate may non-suit the plaintiff, or if the defendant's demand, after remitting any portion of it he pleases, does not exceed one hundred dollars, the Stipendiary Magistrate may give judgment for the defendant for the balance found to be in his favor.

Set-off, Statute of limitations, or other defence by Statute, available.

**43.** No statutory defence shall be admitted unless notice thereof in writing, and a copy of such debt or demand by way of set-off in the form in Schedule marked D, be delivered to the plaintiff or left at his usual place of abode if within the Division, or if living without the Division, to the Clerk of the said Court, at least six days before the trial or hearing.

No statutory defence admitted without notice.

**44.** When judgment is given in any case where a set-off has been set up, the judgment of the Stipendiary Magistrate on such set-off shall be a full discharge as well of the amount allowed to be set-off as the amount by which such claim of the defendant exceeded one hundred dollars, and such judgment shall be so entered accordingly. 20 V. c. 60, s. 29.

In case of set-off judgment of Stipendiary Magistrate to be a full discharge, &c.

**45.** On the day named in the summons, the plaintiff shall appear in the Division Court in person, or by some person in his behalf, and thereupon the defendant shall be required by himself or by some person on his behalf, to answer; and on answer being made in Court, the Stipendiary Magistrate shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue; and if the defendant does not appear as aforesaid, or sufficiently excuse his or her absence, or neglects to answer, the Judge, on proof of due service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment pronounced thereupon after hearing the evidence to be adduced on the part of plaintiff, shall be final and absolute, and as valid as if both parties had attended. 20 V. c. 60, s. 30.

Appearance of parties and mode of trial.

Default of defendant.

Judge may make an order for granting time, &c.

**46.** The Judge may make an order for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit; and in cases where the plaintiff does not appear in person or by some one on his behalf, or appearing, does not make proof of his demand to the satisfaction of the Stipendiary Magistrate, such Magistrate, may award the defendant such costs and such further sum of money by way of satisfaction for his trouble and attendance, as he in his discretion thinks proper, and which may be recovered as in other cases provided under this Act. 20 V. c. 60, s. 30.

Examination of witnesses, &c.

**47.** On the hearing or trial of any action, or in any other proceeding in the said Division Courts, the parties thereto, and all other persons, may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath (or affirmation, when allowed instead of an oath,) to be administered by the proper officer of the Court; But no party to a suit shall be summoned or examined except at the instance of the opposite party or of the Stipendiary Magistrate. 20 V. c. 60, s. 31.

As to examination of parties.

Affidavits may be received in certain cases.

**48.** In any suit for a debt or money demand not exceeding forty dollars brought in any such Division Court, the Stipendiary Magistrate, in his discretion, may receive the affidavit of any party or witness in such suit resident without the limits of his temporary Judicial District; But the said Stipendiary Magistrate before pronouncing judgment may, in his discretion, require any such party or witness to answer on affidavit any interrogatories that may be filed in the cause; and in such suits the Stipendiary Magistrate, upon proof of and being satisfied with the general correctness of the books, of either plaintiff or defendant may in his discretion, receive the same in evidence, and may give judgment on such evidence for any sum not exceeding forty dollars. 20 V. c. 60, s. 32.

Books of parties when receivable.

Evidence limited to demand stated.

**49.** No evidence shall be given by the plaintiff or defendant on the trial of any cause as aforesaid, of any cause of action, claim or set-off, except of such as has been stated and is contained in the demand, account, claim, or set-off entered as before directed; but the Stipendiary Magistrate may, if he thinks it conducive to the ends of justice, adjourn the hearing of any cause in order to permit either party to summon or produce further testimony, or to serve or give any notice which is necessary to enable such party to enter more fully into his case or defence, or from any other cause which said Stipendiary Magistrate deems reasonable, and upon such conditions as to the payment of costs and admission of evidence, or other equitable terms, as to him seems meet. 20 V. c. 60, s. 33.

Court may adjourn the case for further evidence, &c.

Affidavits, how sworn.

**50.** All affidavits to be used in the said Division Courts or before the Stipendiary Magistrate, may be sworn before him or before any Clerks of the said Division Courts, or before any Commissioner

Commissioner for taking affidavits in either of the Superior Courts of Common Law in Upper Canada, or before any Justice of the Peace. 20 V. c. 60, s. 34.

**51.** Every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Stipendiary Magistrate may non-suit the plaintiff in any case in which satisfactory proof is not given to him entitling either the plaintiff or the defendant to the judgment of the Stipendiary Magistrate, and any plaintiff may, at any time before verdict or judgment is pronounced, elect to be non-suited and insist thereon. 20 V. c. 60, s. 35.

Judgments to be final, but Court may non-suit plaintiff or allow new trial.

As to new trials.

**52.** The Stipendiary Magistrate, may in any case if he thinks fit, order a new trial to be had upon such terms as he thinks reasonable, and in the meantime may stay the proceedings; But a new trial must be applied for at furthest within fourteen days, and good ground be shown therefor by the party applying. 20 V. c. 60, s. 35.

As to new trials.

**53.** The costs of any action or proceeding under this Act shall be paid by or apportioned between the parties in such manner as the Stipendiary Magistrate thinks fit, and if not so apportioned, the costs shall abide the event of the action or proceeding. 20 V. c. 60, s. 35.

Costs discretionary, or to abide the event.

**54.** Every decision of the Stipendiary Magistrate shall be openly pronounced in Court as soon as may be after the hearing thereof, except that in any case where the Stipendiary Magistrate is not prepared to pronounce a decision *instanter*, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the Clerk's office, and at such day and hour the Clerk may read the judgment to the parties or their agents, if present, and if not, may enter the said judgment in their absence, and such judgment shall be as effectual as if rendered in Court at the trial; But the issuing of execution shall not be postponed without the consent of the party entitled to the same for a longer period than fifty days after the day of trial or hearing. 20 V. c. 60, s. 36.

Decisions to be pronounced in open Court, but Court may take time to consider it.

**55.** Whenever any judgment has been given or order made in the said Courts by the Stipendiary Magistrate for the payment of money, the party in whose favor the judgment has been given or such order made, or in whose favor judgment may be given in case of default or failure in payment thereof, may sue out execution against the goods and chattels of the party against whom such Judgment or order was given or made, and thereupon the Clerk of the Court, at the request of the party prosecuting such order or judgment, shall issue under the seal of the Court a Precept in the nature of a *feri facias*, in the form in Schedule marked D, which shall be dated on the day it actually issues,

Execution of judgments.

Precept to Bailiff.

be directed to the bailiff of the Court and be returnable into the Court from which it issued within thirty days from the date thereof. 20 V. c. 60, s. 37.

Seizure by Bailiff.

**56.** Such Bailiff by virtue thereof shall levy by distress and sale of any goods and chattels and by distress of any money or bank-notes within the Temporary Judicial District, belonging to the person against whom such execution issued, such sum of money and costs (together with interest thereon from the date of entry of judgment) as may be so ordered and past due, and shall pay the same over to the Clerk forthwith; But the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of twenty dollars, shall to that extent be protected from seizure. 20 V. c. 60, s. 37.

Exemptions.

Bailiff to give notice of sale.

**57.** The bailiff upon taking any goods or chattels into his custody by virtue of a writ of execution, shall endorse thereon the date of seizure, and shall immediately give public notice by advertisement signed by him, describing the goods and chattels taken, and stating the time and place within the Division when and where such goods will be exposed for sale, which notice shall be put up in three of the most suitable places within the Division, at least eight days before the time appointed for the sale; and no bailiff or other officer of any of the said Division Courts shall directly or indirectly purchase any goods or chattels sold under execution, and every purchase made in contravention of this enactment shall be absolutely void. 20 V. c. 60, s. 38.

Bailiff not to purchase.

Execution in cases of cross-judgments.

**58.** If there be cross-judgments between the parties, execution shall be taken out by the party only who obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums be equal, satisfaction shall be entered upon both judgments. 20 V. c. 60, s. 39.

Proceedings in suits against absconding debtors.

**59.** In case any person in any temporary Judicial District being indebted in any sum not exceeding one hundred dollars and not less than four dollars, for any debt or money demand arising upon any contract express or implied, or upon any judgment, absconds from this Province leaving personal property liable to seizure under execution for debt in such temporary Judicial District, or in case any such person attempts to remove his personal property out of such temporary Judicial District, or in case any such person keeps concealed therein to avoid service of process with intent and design in any such case to defraud his creditors, any creditor of such person, his servant or agent, may make application to the Clerk of any Division Court of the temporary Judicial District wherein the debtor was last domiciled, or where the debt was contracted, or to the Stipendiary Magistrate therein, and upon making or producing

producing an affidavit or affirmation to the purport of that in the Form in the Schedule to this Act annexed marked D, and upon then and there filing the said affidavit or affirmation with such Clerk or Stipendiary Magistrate, such Clerk or Stipendiary Magistrate may forthwith issue a warrant under his hand and seal, directed to the bailiff of the Division Court within which the same is issued, or to any constable, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person of what nature and kind soever, liable to seizure under execution for debt within such temporary Judicial District, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued; and upon receipt of such warrant the bailiff or constable to whom the same may be directed, shall forthwith execute the same, and make a just and true inventory of all personal estate and effects, seized and taken by him by virtue thereof, and he shall forthwith return the same to the Clerk of the Division Court of the Division within which such warrant was issued. 20 V. c. 60, s. 40

Warrant of Attachment to issue on proper affidavit.

Inventory to be made.

**60.** Proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this Section, in the Division Court of the Division within which the warrant of attachment issued; and when in any case proceedings were commenced before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings were so commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or in case such property has been sold as perishable, the proceeds thereof shall be applied in satisfaction of such judgment.

As to division in which the proceedings may be had, &c.

**61.** A plaintiff shall not divide any cause of action into two or more suits for the purpose of bringing the same within the provision of the last section, and any plaintiff having a cause of action above the value of one hundred dollars, for which an attachment might be issued under that section if the same were not above that value, may abandon the excess, and upon proving his case, may recover to an amount not exceeding one hundred dollars, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. 20 V. c. 60, s. 40.

Plaintiff not to divide his claim, but may abandon excess.

**62.** Whenever several attachments are issued against a party, the proceeds of the goods and chattels attached shall not be paid over to such attaching creditors according to priority, but shall be rateably distributed amongst the attaching creditors

In cases of several Attachments, proceeds to be distributed rateably, and among whom.

creditors who obtain judgment against the debtor in proportion to the amount of the sums really due upon such judgments, and no distribution shall take place until a time reasonable in the opinion of the Judge, has been allowed to the several creditors to obtain judgment; and if such goods and chattels are not sufficient to satisfy the claims of all the attaching creditors, none shall be allowed to share unless he sued out his attachment within one month from the issuing of the first attachment, and the costs of the first attaching creditor shall be paid in full. 20 V. c. 60, s. 41.

Custody of property attached.

**63.** All property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same. 20 V. c. 60, s. 42.

Attachment dischargeable by giving security by bond.

**64.** If any person against whose estate or effects any warrant of attachment as aforesaid has issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out such warrant, and files in the Division Court to which the warrant has been returned, a bond, with good and sufficient sureties, in the form in Schedule marked D, to be approved of by the Clerk of such Division Court, binding the obligors jointly and severally in double the amount of the sum claimed, with condition that the debtor or debtors (*naming him, or them*) will, in the event of the claim being proved and judgment being recovered thereon as in other cases where proceedings have been commenced against the person, pay the amount thereof, or the value of the property so taken and seized, to the claimant or claimants, or will produce such property whenever thereunto required to satisfy such judgment, such Clerk shall thereupon supersede the warrant, and all and singular the property which has been attached shall be restored. 20 V. c. 60, s. 43.

If more suits than one—a bond to be given in each suit.

**65.** In case more warrants than one have issued at the suit of separate creditors, a Bond similar to that mentioned in the last preceding section shall be given to the plaintiffs in such suits jointly, and the condition of such Bond shall be adapted to the circumstances. 20 V. c. 60, s. 43.

Sale of property attached if security be not given.

**66.** If after the period of one month from the seizure aforesaid, the party against whom the warrant or warrants issued, or some one on his behalf, does not appear and give such bond with sureties conditioned as above mentioned, then as soon as judgment has been obtained upon such claim or claims, execution thereupon may immediately issue, and the property seized upon such attachment or attachments, or enough of such property



property to satisfy the same, may be sold thereon according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same has been previously sold as perishable property under the provisions of this Act. 20 V. c. 60, s. 44.

**67.** In order to proceed in the recovery of any debt due by the person against whose property a warrant of attachment has issued under this Act, where process has not been previously served, such process may be served either personally or by leaving a copy at the last place of abode of the defendant, with any person there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings shall be conducted according to the usual course of practice and proceedings in the said Division Courts. 20 V. c. 60, s. 45.

Service of process in cases of Attachment as aforesaid.

**68.** If it appears to the satisfaction of the Stipendiary Magistrate in the trial of any cause, upon affidavit or other sufficient proof, that any creditor suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceeding, then such Stipendiary Magistrate shall order the disallowance of costs and in such case no costs shall be recovered by such creditor. 20 V. c. 60, s. 45.

If creditor had no reasonable cause of Attachment.

**69.** In case any horses, cattle, sheep or other perishable goods or chattels have been taken upon any warrant issued under this Act, the Clerk of the Court having custody or keeping thereof, may have the same valued by two indifferent persons, and at the request of the plaintiff suing out the warrant, may expose and sell the same at public auction to the highest bidder, giving at least eight days' notice, at the office of the Clerk of the said Division Court, and at two other public places within such Division, of the time and place of sale, if the articles seized will admit of that notice, otherwise he may sell the same at his discretion. 20 V. c. 60, s. 46.

Sale of perishable articles.

**70.** It shall not be compulsory upon the Bailiff or Constable to seize, nor upon the Clerk to sell such perishable articles, until the party suing out the warrant has given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as aforesaid) conditioned that the party directing such seizure or sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such seizure or sale, in case judgment be not obtained for the party who sued out such attachment, and such bond shall be filed with the papers in the cause. 20 V. c. 60, s. 46.

Security to be given by party seizing.

**71.** Any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the Temporary

As to suit on such bond.

Temporary Judicial District wherein the same was executed, and proceedings may be thereupon carried on to judgment and execution in such Court notwithstanding the penalty contained in such bond may exceed the sum of one hundred dollars. 20 V. c. 60, s. 46

Court may order bond to be enforced or surrendered, as the case may be.

**72.** Every such bond may be delivered up to the party entitled to the same, by the order and at the discretion of such Court, to be enforced or cancelled, as the case may require. 20 V. c. 60, s. 46.

Residue of proceeds, how dealt with.

**73.** Any residue remaining after satisfying the judgment with the costs thereupon, shall, by the officer in possession thereof, be delivered to the defendant, or to his agent or to the person in whose custody the same were found, whereupon the responsibility of the Clerk as respects such property shall cease. 20 V. c. 60, s. 47.

Matters in dispute not over \$800 may be referred to arbitration.

**74.** The Stipendiary Magistrate holding any Division Court as aforesaid, may, in any case, with the consent in writing of both parties to the suit, order the same, with or without other matters in dispute between the parties and within the jurisdiction of the Court as to subject matter but irrespective of amount if not exceeding eight hundred dollars, to be referred to arbitration to such persons, and in such manner and on such terms as he may think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Stipendiary Magistrate; and the award of the arbitrator or arbitrators or umpire, shall be entered in the cause as a judgment of the Court, and shall be as binding and effectual, to all intents and purposes, as if given by the Stipendiary Magistrate in a cause within his ordinary jurisdiction. 20 V. c. 60, s. 48.

Award to be entered as a judgment.

Award may be set aside.

**75.** The Stipendiary Magistrate may, on application to him within fourteen days after the entry of such award, set the same aside, or may, with the consent in writing of both parties revoke the said reference and order another reference to be made in the manner aforesaid; and when any reference has been made by any such order as aforesaid, either of the parties to the suit, may obtain from the Clerk of any Division Court, and cause to be duly served, a summons or subpoena requiring the attendance before the said arbitrators, of any witness resident within any such Temporary Judicial District, in like manner as before the Stipendiary Magistrate at the sittings of the said Division Courts. 20 V. c. 60, s. 48.

Subpoenas to witness before arbitrators.

Parties may agree that the Magistrate shall try any matter not over \$800.

**76.** If the parties between whom differences have arisen agree by a memorandum signed by them to refer their causes of action, claims and demands to the Stipendiary Magistrate of a temporary Judicial District, and agree that such Stipendiary Magistrate may try and determine the same, the said Stipendiary Magistrate shall have power and jurisdiction so to do, provided

provided the subject matter of difference is upon a cause or causes of action not exceeding eight hundred dollars in amount, and not within the subjects excepted from the jurisdiction of the said Division Courts, and so stated in the memorandum. 20 V. c. 60, s. 49.

**77.** Every such memorandum shall be executed in duplicate, one of which shall be filed with the said Stipendiary Magistrate and the other with the Clerk of some one of the said Division Courts, and shall thereupon confer on such Court jurisdiction and authority to hear and determine the matters so referred. 20 V. c. 60, s. 49.

Submission to be made in duplicate.

**78.** Upon such memorandum being filed the plaintiff may enter his claim for suit in such Division Court, and sue out a summons thereupon as in ordinary cases, and the proceedings in the said suit may be conducted to judgment and execution (irrespective of the amount recovered, so that it do not exceed eight hundred dollars) in the same manner as in other suits in the said Court, and the judgment in any such suit shall have the same effect as any other judgment of the Court. 20 V. c. 60, s. 49.

May be filed and proceedings thereon had to judgment in one of the Division Courts.

**79.** If any person wilfully insults the Stipendiary Magistrate or any officer of any Division Court during his sitting or attendance in Court, or wilfully interrupts the proceedings of such Court, any Bailiff or Officer of the Court, with or without the assistance of any other person, may, by order of the Stipendiary Magistrate, take such offender into custody, and the Stipendiary Magistrate may impose upon him a fine not exceeding the sum of twenty dollars, and in default of immediate payment thereof, may, by warrant under his hand and seal in the form in the Schedule marked D., cause such fine to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, or such magistrate may commit the offender to the Gaol of the Temporary Judicial District for any period not exceeding one month. 20 V. c. 60, s. 50.

Punishment of persons insulting the Magistrate or any officer, &c.

**80.** If any Officer or Bailiff of any Court holden under this Act, is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made, of any goods or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the Stipendiary Magistrate; and the Bailiff of the Court, or any Peace Officer in any such case, may take the offender into custody, (with or without warrant,) and bring him before such Stipendiary Magistrate accordingly. 20 V. c. 60, s. 51.

Punishment for assaulting any officer, resisting process, &c.

**81.** In case the Bailiff of a Division Court holden under this Act, employed to levy any execution against goods and chattels,

Punishment of Bailiff for ne-

glect, connivance, &c.

chattels, shall, by neglect, connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, and upon the facts alleged being proved to the satisfaction of the Court, on the oath of a credible witness, the Stipendiary Magistrate may order such Bailiff to pay such damages as the plaintiff appears to have sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to pay the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing judgments recovered in the said Court. 20 V. c. 60, s. 52.

Punishment of Bailiff or officer guilty of extortion.

**82.** If any Bailiff or Officer of any Division Court, acting under color or pretence of the process of such Court, is guilty of extortion or misconduct, or does not duly pay or account for any money levied or received by him under the authority of this Act, the Stipendiary Magistrate, at any sitting of the Court, if the party aggrieved thinks fit to complain to him, may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of any such damages and costs to the parties aggrieved, as the said Stipendiary Magistrate thinks just; and in default of payment of any money so ordered to be paid by such bailiff or officer within the time specified for the payment thereof in such order, the Stipendiary Magistrate, may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress may commit the offender to the Common Gaol of the temporary Judicial District for any period not exceeding three months. 20 V. c. 60, s. 53.

Punishment of Bailiff neglecting to return Writ or making false return.

**83.** If a Bailiff neglects to return any writ of execution within three days after the return day thereof, or makes a false return thereto, the party who sued out such writ may maintain an action on the covenant against such Bailiff and his sureties in any Court having competent jurisdiction in Upper Canada, and shall recover therein the amount for which the execution issued with interest from the date of the Judgment upon which such execution was issued, or such less sum as in the discretion of the Judge or Jury the plaintiff under the circumstances may be justly entitled to recover, and if a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon. 20 V. c. 60, s. 54.

**84.** The forms contained in the Schedule to this Act annexed marked D, are given as examples of the forms for proceedings in the said Division Courts, and may be used with such modifications as may be necessary in all actions and proceedings in the said Division Courts, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms so long as the substance is expressed; and with reference to forms not contained in the said Schedule, the forms contained in the said Schedule shall be used as guides in framing the same. 20 V. c. 60, s. 55.

Forms in the Schedule or to like effect to be valid.

**85.** No order, verdict or judgment, or other proceeding made concerning any of the matters aforesaid, shall be quashed or vacated for any matter of form. 20 V. c. 60, s. 57.

Want of form not to vacate..

**86.** When any levy or distress is made for any sum of money levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto; nor shall the party distraining, be deemed a trespasser from the beginning on account of any irregularity afterwards committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage. 20 V. c. 60, s. 56.

Provision for protection of persons levying by distress.

**87.** All actions and prosecutions commenced against any person for any thing done in pursuance of this Act, shall—  
1. Be commenced within six months after the act committed, and not afterwards or otherwise; and 2. Notice in writing of such action and of the cause thereof shall be given to the defendant, one month at least before the commencement of the action; and 3. No plaintiff shall recover in any such action, if tender of sufficient amends be made before such action brought, or if after action brought, a sufficient sum of money be paid into Court with costs by or on behalf of the defendant; and 4. In any such action the defendant may plead the general issue, and give any special matter arising under this Act in evidence under such plea; and 5. If any person brings any suit in any of Her Majesty's Courts of Record in respect of any grievance committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action do not find greater damages for the plaintiff than the sum of forty dollars, no costs shall be awarded to the Plaintiff in such action. 20 V. c. 60, s. 58.

Provision for protection of persons acting in pursuance of this Act.

**88.** The Queen's Writs shall run from all the Courts of Law and Equity in Upper Canada into the said unorganized Country, and have the same force and effect upon persons and property as similar Writs have in the organized parts of Upper Canada, and may be directed to the Sheriff of the County next adjacent thereto. 20 V. c. 60, s. 62.

Writs from Courts of Law and Equity to run into the unorganized tracts: to whom to be directed.

Registrar of Deeds may be appointed for certain tracts.

**89.** The Governor in Council may appoint a Registrar of Deeds in and for the unorganized tracts of Country bordering on and adjacent to Lakes Superior and Huron, who shall register all deeds and other conveyances and agreements relating to lands situate in any part of the said unorganized tracts and laid out and surveyed by the Crown. 20 V. c. 60, s. 63.

Where Registrar shall hold his office: his duties, fees, &c.

**90.** The said Registrar shall keep his office in a place to be named for that purpose in his Commission, or at such other place as may be appointed for that purpose from time to time by the Governor in Council, and his duties shall be the same as the duties of other Registrars under the Register Laws of Upper Canada; his fees shall be the same as those appointed by the Consolidated Statute for Upper Canada respecting the Registration of Deeds, Wills, Judgments, Decrees in Chancery and other Instruments, or the Governor in Council may order an annual Salary, not exceeding eight hundred dollars, to be paid to the said Registrar out of the Consolidated Revenue Fund of this Province, in lieu of such fees, which fees shall in such case be paid into such Revenue. 20 V. c. 60, s. 64.

Or he may be paid an annual salary.

Act not to apply to provisional districts.

**91.** So soon as Provisional Judicial Districts are formed as hereinafter provided, including any temporary Judicial District formed under this Act, the provisions hereinbefore contained shall cease to have any force therein except so far as may be necessary for supporting any process and proceedings issued, had or taken before or at the time when such Provisional Districts are formed. 20 V. c. 60, s. 61.

#### PROVISIONAL JUDICIAL DISTRICTS.

Governor may form provisional judicial districts out of unorganized tracts.

**92.** The Governor may, from time to time, by Proclamation under the Great Seal, declare that from and after a certain day to be therein named, a certain part or certain parts or the whole of the unorganized tracts of country in this Province bordering upon and adjacent to Lakes Superior and Huron, including the Islands in those Lakes which belong to this Province, and also all other parts of Upper Canada which are not now included within the limits of any County or Township, shall form a Provisional Judicial District or Provisional Judicial Districts, and define the limits of such Provisional Judicial District or Districts; and such Provisional District or Districts shall thereupon be formed accordingly. 16 V. c. 176, s. 1.

Governor may authorize the holding of certain Courts in such provisional districts.

**93.** The Governor may during the continuance of any such Provisional Judicial District formed as aforesaid, issue the necessary commissions authorizing the holding therein of Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery. 16 V. c. 176, s. 2.

Governor may appoint Judges for such provisional districts,

**94.** The Governor may appoint in each such Provisional Judicial District a fit and proper person, being a Barrister of not less than five years' standing at the Bar of Upper Canada,

to be Judge thereof, and such Judge shall have the same powers, duties and emoluments, and be paid in the same manner as a County Judge in Upper Canada, but his salary shall not exceed two thousand dollars per annum, and he shall hold his office during pleasure, and shall reside within the limits of his Provisional Judicial District, and shall not directly or indirectly practise or carry on or conduct any business in the profession or practice of the Law while holding his office of Judge, on pain of forfeiting the same, and of a penalty of four hundred dollars. 16 V. c. 176, s. 3.

their powers,  
salary, &c.

**95.** The Governor may pay to the Sheriffs and other officers of every Provisional Judicial District, by way of Salary or otherwise, out of any unappropriated moneys belonging to the Consolidated Revenue Fund of this Province, such several sums of money as he may think reasonable for the services performed by such Officers respectively. 16 V. c. 176, s. 4.

Governor may  
pay Sheriff,  
&c., of such  
districts.

**96.** The Laws now in force, with respect to the holding of Courts of Quarter Sessions of the Peace, County Courts and Division Courts, in the several Counties in Upper Canada, and to the composition, power and jurisdiction of such Courts respectively, and to the appointment, powers, duties and emoluments of Sheriffs, Coroners, Clerks, Constables and all other Officers attached to such Courts or employed in the administration of justice in connection therewith, shall extend and apply to such Provisional Judicial Districts, and such Districts shall be deemed and held to be Counties for all and every the purposes of such Laws. 16 V. c. 176, s. 5.

Certain laws to  
apply to provision-  
al districts,  
which shall be  
considered as  
Counties with  
regard to them.

**97.** Such Courts shall be held at the place in each such Provisional Judicial District which the Governor in Council by Proclamation from time to time appoints, and the word "District" shall be substituted for the word "County" in the titles of such Courts and Officers, as well as in the interpretation of such Laws, in their application to such Provisional Judicial Districts. 16 V. c. 176, s. 5.

Where Courts  
to be held,  
Districts to be  
substituted for  
Counties.

**98.** The Justices of the Peace appointed for any such Provisional Judicial District, or for any part or parts of this Province included therein, or wherein the same may be included, shall have, use, exercise and enjoy within such Provisional Judicial District, all the jurisdiction, powers and authorities, and discharge and perform all the duties which the Justices of the Peace in Upper Canada by law had and were entitled and required to use, exercise and enjoy, discharge and perform immediately previous to and upon the twenty-seventh day of August, one thousand eight hundred and forty-one; and also all such other powers and jurisdiction as may have been since conferred upon Justices of the Peace in general, in Upper Canada; But it shall not be necessary for any such Justice of the Peace to possess the property qualification required

Justices of the  
Peace to have  
the powers  
which Justice  
of the Peace  
had in the dis-  
tricts in Upper  
Canada.

required by the "Act for the qualification of Justices of the Peace;" And all such Justices of the Peace and other officers, shall be entitled to the benefit of all provisions of law in force in Upper Canada for the protection of Justices of the Peace and such other Officers as aforesaid. 16 V. c. 176, s. 6.

Any territory not included in any township may be included in a provisional district.

**99.** The Governor, may by Proclamation as aforesaid, include within the limits of any such Provisional Judicial District, any portion of any County in Upper Canada not included in any Township; and thereupon such portion shall for all purposes connected with the administration of Justice cease to belong to such County; but whenever such portion, or any part thereof, is formed or erected into a Township, the same shall thereupon cease to belong to or form part of the Provisional District and shall belong to the County from which it has been detached; and whenever any portion of any such Provisional Judicial District which at the time of the formation thereof was not included in any Township or County, is formed or erected into a Township or Townships, and attached to any County in Upper Canada, the same shall in like manner thereupon immediately cease to belong to or form part of such Provisional Judicial District. 16 V. c. 176, s. 7.

When it shall be again separated.

When crimes and offences in unorganized tracts may be charged to have been committed and be tried.

**100.** All crimes and offences committed in any of the said unorganized tracts of Country in Upper Canada, including Lakes, Rivers and other waters therein, not embraced within the limits of any organized County, or within any Provisional Judicial District, may be laid and charged to have been committed and may be enquired of, tried and punished within any County, and such crime or offence shall be within the jurisdiction of any Court having jurisdiction over crimes or offences of the like nature committed within the limits of the County before which Court such crime or offence may be prosecuted, and such Court shall proceed thereon to trial, judgment, and execution, or other punishment for such crime or offence, in the same manner as if such crime or offence had been committed within the County where such trial is had. 2 W. 4, c. 2, s. 2,---16 V. c. 176, s. 8---20 V. c. 60,---59 G. 3, c. 10, s. 1.

Where to be tried when judicial districts or new counties are formed.

**101.** When any Provisional Judicial District, or new County is formed and established in any of the unorganized tracts of County aforesaid and is so declared by law, or by the Governor by Proclamation under the Great Seal, all crimes and offences committed within the limits of such Provisional Judicial District or new County, shall be enquired of, tried and punished within the same, in like manner as such crimes or offences would have been enquired of, tried and punished if the last preceding Section had not been made or passed. 2 W. 4, c. 2, s. 2,---16 V. c. 176,---20 V. c. 60---59 G. 3, c. 10, s. 2.

Certain buildings to be

**102.** All buildings and erections provided by the Commissioners of Public works by direction of the Governor in Council for



for the holding of Courts and for the safe custody of Prisoners in such Provisional Judicial Districts as aforesaid, shall for the time being be deemed the Court Houses and Gaols of each of such Provisional Districts respectively. 16 V. c. 176, s. 10.

deemed Gaols of such provisional districts.

**103.** Any Sheriff or other Officer whose duty it is or who may be legally required to summon and return Jurors or persons to serve as Jurors, within any of the said Provisional Districts, shall and may select, choose and return for such Jurors any of the inhabitants of such Provisional Districts respectively, without reference to the mode prescribed for selecting, balloting or returning Jurors by the Upper Canada Jurors' Act, and Juries *de medietate linguæ*, and Juries of a like nature, may be ordered by the Court before which any cause or prosecution in any of the said Provisional Districts may be pending. 16 V. c. 176, s. 11.

Any persons may be returned as Jurors in the said provisional districts.

#### INCITING INDIANS.

**104.** Any person inciting any Indians or half-breeds frequenting or residing in any of the unorganized tracts of country aforesaid, to the disturbance of the public peace or to the commission of any other indictable offence, shall be guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment for not more than five years nor less than two years in the Provincial Penitentiary. 16 V. c. 176, s. 9.

Persons inciting Indians, &c., to the commission of certain offences how punishable.

**105.** Any person accused of inciting Indians or half-breeds as aforesaid, or accused or convicted of any other crime or offence in any such Provisional District as aforesaid, may be committed to any Common Gaol in Upper Canada; and the Constable or other officer having charge of such person and entrusted with his conveyance to any such Common Gaol, may pass through any County or Counties in Upper Canada with such person in his custody, and the keeper of the Common Gaol of any County in Upper Canada in which it may be found necessary to lodge for safe keeping any such person as aforesaid so being conveyed through such County in custody as aforesaid, shall receive such person and him safely keep and detain in such Common Gaol for such period as may be reasonable or necessary, and the Keeper of any Common Gaol in Upper Canada, to which any such person may be committed as aforesaid, shall receive such person and him safely keep and detain in such Common Gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken. 16 V. c. 176, s. 9.

Persons accused or convicted of crimes in any such provisional districts may be committed to any Gaol in Upper Canada.

**106.** This Act shall be known and cited as "The Act Title. respecting the administration of justice in unorganized tracts."

SCHEDULE A.—*Vide* s. 19.

## COVENANT BY THE CLERK OR BAILIFF.

Know all men by these presents that we, J. B., Clerk, (or Bailiff, *as the case may be*), of the Division Court number \_\_\_\_\_ in the Temporary Judicial District of \_\_\_\_\_, S. S., of \_\_\_\_\_, in the \_\_\_\_\_, and P. M., of \_\_\_\_\_, in the \_\_\_\_\_ do hereby jointly and severally for ourselves and for each of our heirs, executors and administrators covenant and promise that J. B., Clerk (or Bailiff) of the said Division Court (*as the case may be*) shall duly pay over to such person or persons as may be entitled to the same, all such moneys as he shall receive by virtue of the said Office of Clerk (or Bailiff, *as the case may be*), and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk, (or Bailiff) by Law, and shall not misconduct himself in his said Office to the damage of any person being a party in any legal proceeding; nevertheless it is hereby declared that no greater sum shall be recovered under this covenant against the several parties thereunto than as follows, that is to say :

Against the said J. B. in the whole,

Against the said J. S.           “

Against the said P. M.       “

In witness whereof, we have to these presents set our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord, one thousand eight hundred and \_\_\_\_\_

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

L. S.

L. S.

L. S.

SCHEDULE B.—*Vide s. 34.*TARIFF OF FEES AND ALLOWANCES TO BE RECEIVED BY CLERKS  
AND BAILIFFS.

CLERKS' FEES.	Not exceeding \$20.		Exceeding \$20 and not \$60		Exceeding \$60 and not \$80.		Exceeding \$80.	
	\$	cts.	\$	cts.	\$	cts.	\$	cts.
Entering every Account and issuing Summons.....	00	20	00	30	00	40	00	50
Copy of Summons, Particulars of Demand or Set Off, each.....	00	10	00	15	00	20	00	25
Every Summons to Witnesses with any number of names.....	00	10	00	10	00	10	00	10
Entering Bailiff's returns to Summons to Defendant.....	00	05	00	05	00	05	00	05
Every copy of Subpœna when made by the Clerk.....	00	05	00	05	00	05	00	05
Entering Set Off or other Defence requiring notice to Plaintiff.....	00	15	00	20	00	20	00	25
Adjournment of any cause.....	00	20	00	20	00	20	00	20
Entering every Judgment or order made at hearing.....	00	15	00	20	00	25	00	30
Taking confession of Judgment.....	00	15	00	15	00	15	00	15
Every Warrant, Attachment or Execution.....	00	25	00	30	00	40	00	50
Drawing every bond including Affidavit of Justification.....	00	75	00	75	00	75	00	75
For every Affidavit taken, and drawing the same, if not over 3 folios, if over that number, 3 cents per folio.	00	20	00	20	00	20	00	20
Every search on behalf of a person not a party to a Suit, to be paid by the Applicant.....	00	10	00	10	00	10	00	10
Every search for a party to a Suit when the proceedings are over a year old.....	00	10	00	10	00	10	00	10
<b>BAILIFFS' FEES.</b>								
Service of Summons or other Process, except Subpœna, on each person..	00	10	00	15	00	20	00	25
Service of each Subpœna.....	00	07	00	07	00	07	00	07
Taking confession of Judgment.....	00	15	00	15	00	15	00	15
Enforcing every Warrant, Execution or Attachment against the body or the goods.....	00	30	00	40	00	60	00	80
Drawing every bond authorized to be taken by him.....	00	50	00	50	00	50	00	50
Every Schedule of property seized....	00	25	00	25	00	25	00	25
For necessary notices of sale under execution..... 20 cents each								

For necessary travel to serve Summons and other process, or to execute Warrant or Attachment, a sum in the discretion of the Stipendiary Magistrate, not exceeding 13 cents per mile travel from Clerk's office.

Upon the sale of any property under any Execution, the sum of two and a half per cent on the amount realized, and not to apply to any overplus on the Execution.

SCHEDULE C.—*Vide s. 38.*

## ALLOWANCE TO WITNESSES.

Attendance per day in Court.....\$00 75  
 Travelling expenses, a reasonable sum in the discretion of the Stipendiary Magistrate, not exceeding 20 cents per mile, one way.

And where a witness attends in two or more causes, his expenses may be apportioned between or amongst such causes if the Stipendiary Magistrate shall think fit.—*Vide s. 84.*

SCHEDULE D.—*Vide s. 30.*

## PROCEDURE BOOK.

Division Court, for the  
 Ensuing Sittings, 26th February, 18

No. 1 A. D. 18

JOHN DOE vs. THOMAS ROE.  
 of | of

1851.

1st Jan.	Received particulars of plaintiff's demand (on contract) for \$ and plaintiff paid towards costs.
11th "	Issued summons to Bailiff, costs and mileage.
24th "	Summons returned served the day of
28th "	Defendant paid \$ demand and costs.
10th Feb.	Paid plaintiff \$ demand and costs, deposited.

No. 2. A. D. 18

JOHN DEN vs. THOMAS FEN.  
 of | of

10th Jan.	Received particulars of plaintiff's demand (for Tort) for \$20 plaintiff paid on account of costs and directed two subpoenas, and gave notice to try by Jury.
12th "	Issued summons to Bailiff, costs and mileage.
20th "	Summons returned served the day of
8th Feb.	Issued Jury summonses and subpoenas to Bailiff.
13th "	Jury summonses returned served, 10 miles travel, subpoenas served also.
20th "	Both parties appeared, cause tried, judgment for plaintiff on verdict for dollars cents damages, and dollars cents costs, to be paid in days.
20th March.	Defendant paid dollars in full of judgment and costs.

No. 3. A. D. 18

JAMES JONES vs. THOMAS THOMPSON.  
 of | of

11th Jan.	Received particulars of plaintiff's demand (on contract) for \$ and on account of costs.
12th "	Issued summons to G. G. Bailiff; costs and mileage.
1st Feb.	Summons returned, served the day of 9 miles travel.
3rd "	Defendant executed Cognovit for.
20th "	Judgment for plaintiff—debt, and dollars costs, to be paid in days.
10th March.	Defendant paid \$ debt and costs.

N. B.—*The proceedings in a suit may be continued from page to page, giving a reference from one to another; and the sums of money may be in currency. See 16 V. c. 158 & 20 V. c. 18.*

CASH

CASH BOOK.

CASH BOOK—RECEIPTS.		CASH BOOK—PAYMENTS.						
Account of Suitors' money paid into the the commencing the 1st of January, 1851.		Account of Suitors' money paid out of the the commencing the 1st of January, 1851.						
No.	Style of Cause.	When Received.	From whom Received.	No.	Style of Cause.	When Paid.	To whom Paid.	Amount.
36	Doe vs. Roe	24th Jan., 1851.	Defendant	100	Den vs. Fen <i>et al.</i>	1st Feb., 1851.	Plaintiff	\$ cents. 22 00
100	Den vs. Fen <i>et al.</i>	27th " "	Bailiff	153	Thomas vs. Roe, <i>et al.</i>	29th April, "	Plaintiff	82 33
250	James <i>ats.</i> Jones	28th Feb., "	Plaintiff	250	James <i>ats.</i> Jones.	29th " "	Defendant	3 67
153	Thomas vs. Roe <i>et al.</i>	10th April, "	Wm. Roe					
	Receipts up to 30th April.....							108 00
	Paid to Suitors as per payment account.....							
	Balance in Court, 30th April, carried to next Quarter...							
To Cash Balance remaining in Court 30th April.....\$								
357	Johnston <i>ats.</i> Wilson, &c.	3rd Sept., 1851. &c.	From Plaintiff, &c.	357	Johnston <i>ats.</i> Wilson, &c.	20th Sept., 1851. &c.	Defendant, &c.	9 50

\* N. B.—Or the amount may be in currency, Sec 20 V. c. 18.

PARTICULARS IN CASES OF CONTRACT.—*Vide s. 36.*

A. B., of \_\_\_\_\_, claims of C. D., of \_\_\_\_\_, the sum of \_\_\_\_\_ [the amount of the following account or the amount of the note (a copy of which is under written) together with interest thereon:] or for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed:—or, for that the said C. D. by deed under his seal dated \_\_\_\_\_, covenanted to, &c., and that the said C. D. hath broken said covenant,—whereby the said A. B. hath sustained damages to the amount aforesaid.

A. B.

PARTICULARS IN CASES OF TORT.—*Vide s. 36.*

A. B., of \_\_\_\_\_, states, that C. D., of \_\_\_\_\_, did, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, at the \_\_\_\_\_, unlawfully [take and convert one cow and one calf, the property of the said A. B.: or break and injure a wagon of the said A. B.: or keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., or kill or injure two sheep, the property of the said A. B.: or assault and beat the said A. B., (*or as the case may be, stating the Tort sued for in concise language*);] The said A. B., hath sustained thereby damages to the amount of \_\_\_\_\_, and claims the same of the said C. D.

A. B.

## PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF, AND HIS SURETIES.

A. B., of \_\_\_\_\_ claims of C. D., Clerk (*or Bailiff*) of the \_\_\_\_\_ Division Court for the \_\_\_\_\_, and E. F., of \_\_\_\_\_, and G. H., of \_\_\_\_\_, (sureties for and parties with the said C. D. to a covenant for the due performance of the duties of his said office the sum of \_\_\_\_\_ for moneys had and received by the said C. D. as such Clerk (*or Bailiff*) as aforesaid, in a certain cause in the said Division Court, wherein the said A. B. was plaintiff, and one H. H. was defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also (*stating in like manner any other similar claim*)—[or, the sum of \_\_\_\_\_ for damages sustained by the said A. B., through the misconduct (*or neglect*) of the said C. D. in the performance of the duties of his said office: For that on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned*).]

A. B.

SUMMONS

SUMMONS TO APPEAR.—Vide ss. 30, 37.

In the Division Court for the Temporary Judicial District of No. A. D., 18 .

Between A. B., plaintiff; and C. D., defendant.

To C. D., the above named defendant.

You are hereby [as before (or as often before) you were] summoned to be and appear, at the sittings of this Court to be holden at , in , in the said Temporary Judicial District of , on the day of , A. D. 18 , at the hour of in the forenoon, to answer the above named plaintiff, for the causes set forth in the plaintiff's statement of claim hereunto annexed; and, in the event of your not so appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated the day of , A. D. 18 .

By the Court. , Clerk.

Claim, Costs, exclusive of mileage

NOTICE.

Take notice, that if the defendant desires to set-off any demand against the plaintiff, (if the action be for Tort omit the words in Italics) at the trial or hearing of this cause, (or) to take the benefit of any Statute of Limitations, or other Statute, notice thereof in writing, and if a set-off containing the particulars of such set-off (omit the words last in Italics, if the action be for Tort,) must be given to the plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, if the plaintiff reside without the Division, at least six days before the said trial or hearing.

AFFIDAVIT OF SERVICE OF SUMMONS.

In the Division Court for the Temporary Judicial District of .

Between A. B., plaintiff; and C. D., defendant.

E. F., Bailiff of the Division Court of the said (or of the said Court) maketh Oath and saith, that he did on the day

MMM<sup>2</sup>

day of \_\_\_\_\_, 18\_\_\_\_, duly serve the said C. D., with a true copy of the annexed summons and statement of claim, by delivering the same personally to the said C. D., (or if the service were not personal, state how and on whom served) and that he necessarily travelled \_\_\_\_\_ miles to make such service.

Sworn before me, at \_\_\_\_\_, }  
 this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ }  
 Clerk \_\_\_\_\_ Division Court. }

E. F.

Or,

*This Form may be used, when the affidavit is endorsed on the summons :*

I swear, that this summons and claim annexed thereto were served by me on the \_\_\_\_\_ day of \_\_\_\_\_, by delivering a true copy of both, personally, to the defendant, (or to the wife or servant of the defendant, or to a grown up person being an inmate of, and at the defendant's dwelling) and that I necessarily travelled \_\_\_\_\_ miles to do so.

E. F., Bailiff.

Sworn, &amp;c.

NOTICE OF SET-OFF.—*Vide* ss. 42, 43.

In the \_\_\_\_\_ Division Court for the Temporary Judicial  
 District of \_\_\_\_\_

Between A. B., plaintiff ;  
 and  
 C. D., defendant.

Take notice, that the defendant will set-off the following claim on the trial, viz :

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

To A. B., the plaintiff.

C. D.

NOTICE OF DEFENCE UNDER STATUTE.—*Vide* s. 43.

In the \_\_\_\_\_ Division Court for the Temporary Judicial  
 District of \_\_\_\_\_

Between A. B., plaintiff ;  
 and  
 C. D., Defendant.

The plaintiff is required to take notice, that upon the hearing of this cause, the defendant intends to give in evidence, and insist



insist upon the following ground of defence, namely, that the claim, for which he the defendant has been summoned, has been barred by the Statute of Limitations (*or, as the case may be.*)

Dated this            day of            , 18            .  
C. D.

To A. B., the plaintiff.

N. B.—*This notice may be embodied with notice of set-off.*

CONFESSION OF DEBT AFTER SUIT COMMENCED.—*Vide s. 40.*

In the            Division Court for the Temporary Judicial  
 District of            .

Between A. B., plaintiff ;  
 and  
 C. D., defendant.

I acknowledged that I am indebted to the plaintiff in the sum of            , and consent that judgment for that amount and costs may be entered against me in this cause.

C. D.

Dated the            day of            , 18            .

Witness            , Clerk (*or Bailiff.*)

AFFIDAVIT OF EXECUTION OF CONFESSION.—*Vide s. 41.*

In the            Division Court for the Temporary Judicial  
 District of            .

Between A. B., plaintiff ;  
 and  
 C. D., defendant.

E. F., Clerk (*or Bailiff*) of the said Division Court, maketh oath and saith, that he did see the above (*or annexed*) confession duly executed by the said defendant, and that he is a subscribing witness thereto, and that he, deponent, has not received, and is not to receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession, and that he has no interest in the demand sought to be recovered in this action.

E. F.

Sworn before me, at            , on }  
 the            day of            , 18            . }  
 Clerk, &c.            }

SUMMONS TO WITNESS.—*Vide s. 37.*

In the  
District of

Division Court for the Temporary Judicial

Between A. B., plaintiff;  
and  
C. D., defendant.

You are hereby required to attend at the sittings of the said Court, to be holden at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the hour of \_\_\_\_\_ in the forenoon, to give evidence in the above cause, on behalf of the above-named \_\_\_\_\_ [and then and there to have and produce (*state particular documents required*) and all other papers relating to the said action, in your custody, possession, or power.]

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

To

Clerk.

MINUTE IN PROCEDURE BOOK OF JUDGMENT OF NONSUIT, OR  
DISMISSAL FOR WANT OF PROSECUTION.

Judgment of Nonsuit (*or that the cause be dismissed*) *or* “and that plaintiff pay \_\_\_\_\_ for defendant’s costs,” *or* \_\_\_\_\_ for defendant’s trouble, and \_\_\_\_\_ for his costs; to be paid in \_\_\_\_\_ days.”

MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST DEFENDANT  
FOR DEBT OR DAMAGE.

Judgment for the plaintiff for \_\_\_\_\_ debt (*or damages*) and \_\_\_\_\_ costs; to be paid in \_\_\_\_\_ days (*when an excess has been abandoned, add the words* “being in full discharge of his cause of action.”)

MINUTE IN PROCEDURE BOOK OF JUDGMENT FOR DEFENDANT.

Judgment for the defendant for \_\_\_\_\_ costs; *or* for \_\_\_\_\_ on set-off, *or* for his trouble and loss of time, and also \_\_\_\_\_ for his costs; to be paid forthwith) (*where an excess in the set-off has been abandoned, add the words* “being in full discharge of his claim, including the excess abandoned.”)

ORDER FOR NEW TRIAL.

In the Division Court for the Temporary Judicial  
 District of .

Between A. B., plaintiff  
 and  
 C. D., defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings be set aside, and a new trial be had between the parties on (*set out the terms or conditions, if any, on which the order is made.*)

\_\_\_\_\_,  
 Stipendiary Magistrate, &c.

Dated , 18 .

EXECUTION AGAINST THE GOODS OF DEFENDANT.

In the Division Court for the Temporary Judicial  
 District of .

No. , A. D. 18 .

Between A. B., plaintiff;  
 and  
 C. D., defendant.

Whereas at the sittings of the said Court holden on at \_\_\_\_\_, by the judgment of the said Court, the said plaintiff recovered against the said defendant the sum of \_\_\_\_\_ for a certain debt (*or for certain damages*) with \_\_\_\_\_ for costs, which said debt (*or damages*), and costs were ordered to be paid by the said defendant, at a day now passed; and whereas the defendant has not made such payment; These are therefore [as before, (*or as often before*)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found within the said Temporary Judicial District of \_\_\_\_\_ (except the wearing apparel and bedding of the said defendant, or his family, and the tools or implements of his trade, if any, to the value of \$20) the said debt (*or damages*) and costs, amounting together to the sum of \_\_\_\_\_ and your lawful fees on the execution of this precept, so that you may have the said sum of \_\_\_\_\_, within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said plaintiff.

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

\_\_\_\_\_,  
 Clerk. To

To

Bailiff of the said Court.

Judgment,  
Execution,  
Paid,  
Levy,

## EXECUTION AGAINST GOODS OF PLAINTIFF.

In the Division Court for the Temporary Judicial  
District of

No. , A. D. 18 .

Between A. B., plaintiff ;  
and  
C. D., defendant.

Whereas at the sittings of this Court, holden on  
at , judgment was given for the defendant, and  
for the sum of costs (or for the sum of on  
set-off and for costs ; or judgment of dismissal was given  
and for the sum of for defendant's trouble, and  
for costs) to be paid at a day now past ; and whereas  
the plaintiff has not paid the same : These are therefore to com-  
mand you forthwith to make and levy by distress and sale of  
the goods and chattels of the plaintiff, wheresoever the same  
may be found within the said Temporary Judicial District of  
(except the wearing apparel and bedding of the said  
plaintiff or his family, and the tools and implements of his trade,  
if any, to the value of \$20) the said sum of , or the said  
sum of and amounting together to the  
sum of and your lawful fees on the execution of this  
precept, so that you may have the said sum of within  
thirty days after the date hereof, and pay the same over to  
the Clerk of the Court for the said defendant.

Given under the seal of the Court, this day of  
18 .

\_\_\_\_\_,  
Clerk.

To

Bailiff of the said Court.

Judgment,  
Execution,  
Paid,  
Levy,

AFFIDAVIT FOR ATTACHMENT.—*Vide s. 59.*

*If made after suit commenced, insert style of Court and Cause.*

I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_,  
 (or E. F., of &c., agent for A. B., of &c., do make oath (or  
 being one of the people called Quakers, affirm) and say, that  
 C. D., of (or late of) \_\_\_\_\_ in the County of \_\_\_\_\_,  
 is justly and truly indebted to me deponent (or to the  
 said A. B.) in the sum of \_\_\_\_\_ [for goods sold and  
 delivered by this deponent (or by the said A. B.) to the said C.  
 D., at his request (or other cause of action, stating the same in  
 ordinary and concise language)] and I, deponent, further say,  
 that I have good reason to believe, and do verily believe, that  
 the said C. D. hath absconded from this Province, leaving per-  
 sonal property liable to seizure under execution for debt in the  
 temporary Judicial District of (or hath attempted to remove his  
 personal property out of the temporary Judicial District of \_\_\_\_\_  
 or keep himself, or property, concealed within the tempo-  
 rary Judicial District of \_\_\_\_\_, to avoid the service of pro-  
 cess (as the case may be,) with intent and design to defraud me  
 deponent (or the said A. B.) of the said debt; and I deponent  
 further say, that this affidavit is not made, nor the process thereon  
 to be issued, from any vexatious or malicious motive what-  
 ever.

Sworn before me, at \_\_\_\_\_, in the \_\_\_\_\_,  
 this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, }  
 Clerk, &c. } A. B. (or E. F.)

N. B.—*If the party sue in a special character, as executor or  
 the like, it should be stated in the Affidavit, in what character he  
 claims the debt.*

## BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the \_\_\_\_\_ Division Court for the Temporary Judicial  
 District of \_\_\_\_\_

Between A. B., plaintiff;  
 and  
 C. D., defendant.

Know all men by these presents, that we A. B. of \_\_\_\_\_,  
 (insert place of residence and addition) the above-named plain-  
 tiff, E. F., of &c., and G. G. of &c., are, and each of us is,  
 jointly and severally held and firmly bound to \_\_\_\_\_, of &c.,  
 the above-named defendant, in the sum of \_\_\_\_\_ of lawful  
 money of Canada, to be paid to the said defendant, his certain  
 attorney, executors, administrators and assigns, for which pay-  
 ment, well and truly to be made, we bind ourselves, our heirs,  
 executors

executors and administrators, and each, and every of us, binds himself, his heirs, executors, and administrators firmly by these presents.

Sealed with our respective seals.

Dated this                      day of                      , A. D., 18   .

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, and hath requested that certain perishable property, to wit (*specify property*) belonging to the above-named defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said Warrant of Attachment, [*or Whereas certain perishable property, to wit                      , belonging to the above-named defendant, hath been seized under and by virtue of a Warrant of Attachment, issued out of the above-named Court in the above-named cause, and hath been duly appraised and valued at the sum of                      and is now in the hands of the Clerk of the said Court ;* And whereas the said above-named plaintiff hath requested the said Clerk to expose and sell the said goods and chattels as perishable property] according to the form of the Statute in that behalf.

Now the condition of this obligation is such, that if the said above-named plaintiff, his heirs, executors or administrators, do repay to the said above-named defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff according to the true intent of the sixty-ninth, seventieth, seventy-first and seventy-second sections of "The Act respecting the administration of Justice in unorganized tracts ;" Then this obligation to be void—else to remain in full force and virtue.

Signed, Sealed and delivered	}	A. B. [L. S.]
in presence of		E. F. [L. S.]
		G. G. [L. S.]

BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.—*Vide* s.64.

In the                      Division Court for the Temporary Judicial  
District of

Between A. B., plaintiff,  
and  
C. D., defendant.

Know all men by these presents, that we, C. D., of (*insert place of residence and addition*) the above-named defendant, E. F., of &c., and G. G., of &c., are, and each of us is, jointly and severally

severally held and firmly bound to A. B., of &c., the above-named plaintiff, in the sum of \_\_\_\_\_ of lawful money of Canada, to be paid to the said plaintiff, his certain attorney, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators, firmly by these presents.

Sealed with our respective seals.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, for the sum of \_\_\_\_\_ and under and by virtue of the said Warrant of Attachment, certain goods and chattels of the said defendant, to wit : (*specify the property seized*) have been seized and attached ; and the said defendant desires that the said warrant be superseded, and the said property so attached restored to him under the provisions of the sixty-fourth (or sixty-fifth as the case may be) sections of "The Act respecting the administration of Justice in unorganized tracts."

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment. Then this obligation to be void—else to remain in full force and virtue.

Signed, Sealed and delivered in presence of	}	C. D., [L. S.]
		E. F., [L. S.]
		G. G., [L. S.]

#### ORDER OF REFERENCE.

In the \_\_\_\_\_ Division Court for the Temporary Judicial  
District of \_\_\_\_\_

Between A. B., plaintiff;  
and  
C. D., defendant.

By consent of the above-named plaintiff and defendant given in open Court, it is ordered, that all matters in difference in this cause (*and if consented to, add* "and all other matters within the jurisdiction of this Court as to subject matter, but not exceeding in amount \$800 in difference between the said parties") be referred to the award of \_\_\_\_\_, so as said award be

be made in writing, ready to be delivered to the parties entitled to the same, on or before the \_\_\_\_\_ day of \_\_\_\_\_; and that the said award may be entered as the judgment in this cause (*add any special terms as*) "the costs of reference to be in the discretion of the arbitrator" or "the costs of the action to abide the event of the suit."

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

\_\_\_\_\_,  
Clerk.

AWARD.

*The Award may, if endorsed on the order, be in the following Form :*

After hearing and considering the proofs laid before me (*or us*) in the matters of the within reference, and in full determination of the matters to me (*or us*) referred, I (*or we*) do award, that the within-named A. B. is entitled to recover from the within-named C. D. the sum of \_\_\_\_\_ together with the costs of this suit, and also \_\_\_\_\_ the costs of this reference, (*or, as the case may be,*) and that the same shall be paid by the said C. D. within \_\_\_\_\_ days, and that judgment be entered in the within mentioned case accordingly.

\_\_\_\_\_,  
Arbitrator.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

MINUTE IN PROCEDURE BOOK OF JUDGMENT ON AWARD.

Judgment for the plaintiff, (*or defendant*) for \_\_\_\_\_ costs (*or for the sum of \_\_\_\_\_ and \_\_\_\_\_ costs*) pursuant to award; to be paid in \_\_\_\_\_ days.

MINUTE IN PROCEDURE BOOK OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Judgment for the plaintiff for \_\_\_\_\_ and \_\_\_\_\_ costs, to be paid in \_\_\_\_\_ days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels.

EXECUTION AGAINST GOODS OF TESTATOR.

In the \_\_\_\_\_ Division Court for the Temporary Judicial District of \_\_\_\_\_.

Between A. B., plaintiff;  
and

C. D., Executor (*or administrator of F., deceased*), defendant.

Whereas



Whereas at a sitting of the said Court, holden on \_\_\_\_\_, at \_\_\_\_\_, by the judgment of the said Court, the said plaintiff recovered against the said defendant as executor (or administrator of E. F. deceased,) the sum of \_\_\_\_\_, for a certain debt, with \_\_\_\_\_, for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and the defendant has not paid the same: These are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the defendant to be administered, where-soever the same may be found within the said Temporary Judicial District of \_\_\_\_\_, the said debt and costs, amounting together to the sum of \_\_\_\_\_, together with the costs of this execution, or such part thereof for the satisfying of this execution, and the costs of making and executing the same, if the defendant hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods, and chattels, money, of the defendant, the sum of \_\_\_\_\_, for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the Clerk of the Court, for the said plaintiff.

Given under the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ . 18 .  
\_\_\_\_\_  
Clerk.

To \_\_\_\_\_,  
 Bailiff of the said Court.

Debt,  
 Costs,  
 Execution,  
 Paid,  
 Levy,

*N. B.—Warrants of execution upon a judgment given in other cases against executors may be drawn from this Form, with the requisite alterations.*

MINUTE IN PROCEDURE BOOK OF IMPOSITION OF FINE ON  
 WITNESS.

Adjudged that H. H. was duly summoned to appear as a witness, in this action, at the sittings of this Court here this day, [and also to produce (*as the case may be*)] that payment (or a tender of payment) of his reasonable expenses was made to him,—and that he did not appear [*or having appeared, did wilfully refuse to be sworn, and give evidence in this action*]  
(or

(or to produce such &c.)] (Or Adjudged, that H. H. being before this Court, now holden and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.) And further adjudged that the said H. H. pay a fine of \_\_\_\_\_, for such neglect, (or refusal) in \_\_\_\_\_ days, (or forthwith;) And that the sum of \_\_\_\_\_, part of the said fine, be paid by the Clerk to the plaintiff (or defendant) being the party injured by such neglect or refusal.

MINUTE IN PROCEDURE BOOK OF ORDER FOR IMPOSITION OF FINE  
FOR CONTEMPT.

It is adjudged that E. F., at the sittings of this Court now holden in open Court, is guilty of a contempt of the said Court, by wilfully insulting \_\_\_\_\_ Stipendiary Magistrate of the said Court [or "in view of the Court, by wilfully insulting \_\_\_\_\_, Clerk (or Bailiff) of the said Court, during his attendance at such Court" (or by wilfully interrupting the proceedings of the said Court:")] And it is ordered, that the said E. F. forthwith pay a fine of \_\_\_\_\_, for such offence, and, in default of payment, be committed to \_\_\_\_\_, for \_\_\_\_\_ days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

WARRANT OF COMMITMENT FOR CONTEMPT.—*Vide s. 79.*

In the \_\_\_\_\_ Division Court for the Temporary Judicial District of \_\_\_\_\_

To \_\_\_\_\_, Bailiff of the said Court, and to all Constables and Peace Officers of the said Temporary Judicial District of \_\_\_\_\_ and to the Jailer of \_\_\_\_\_:

Whereas at the sittings of this Court, holden on \_\_\_\_\_, at \_\_\_\_\_, it was adjudged, that E. F. did, then and there in open Court, wilfully insult me \_\_\_\_\_, Stipendiary Magistrate, of the said Court [or did, in view of the Court, wilfully insult \_\_\_\_\_, Clerk (or Bailiff) of the said Court, during his attendance at such Court (or did unlawfully interrupt the proceedings of the said Court)]; And it was ordered, that the said E. F. should forthwith pay a fine of \_\_\_\_\_, for such offence, and in default of payment, be committed to the \_\_\_\_\_ for \_\_\_\_\_ days;

And whereas the said E. F., did not pay the said fine, in obedience to the said order: These are therefore to require you, the said Bailiff and others, to take the said E. F., if he shall be found within the \_\_\_\_\_, and deliver him to the said jailer of \_\_\_\_\_; And you the said jailer are hereby required to receive the said E. F., and him safely keep in the Gaol aforesaid, for the term of \_\_\_\_\_ days from the arrest under this warrant, unless the said fine and

and costs, the costs amounting to \_\_\_\_\_, and also the expenses attending the commitment, amounting together to the sum of \_\_\_\_\_, be sooner paid.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

\_\_\_\_\_, [L. S.]  
Judge.

Sealed with the seal of  
the Court, [L. S.]  
Clerk. }

Fine \$  
Costs \$  
Execution \$

WARRANT TO LEVY FINE UPON WITNESS.

In the \_\_\_\_\_ Division Court for the Temporary Judicial District of \_\_\_\_\_

Between A. B., plaintiff;  
and  
C. D., defendant.

Whereas at the sittings of this Court, holden on \_\_\_\_\_, at \_\_\_\_\_, it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this Court [and also to produce (*as the case may be*)]; that payment (*or a tender of payment*) of his reasonable expenses was made to him, and that he did not appear [*or having appeared did wilfully refuse to be sworn and give evidence in this action (or to produce such &c.,)*]: (*where a witness in Court refuses to give evidence, instead of the foregoing, commence* "Whereas \_\_\_\_\_, being before the Court at a sittings thereof, and called upon to give evidence, in the above cause, did wilfully refuse to be sworn and give evidence"); And thereupon it was adjudged, that the said \_\_\_\_\_ should pay a fine of \_\_\_\_\_, for such neglect, (*or refusal*) in \_\_\_\_\_ days: (*or forthwith*): And whereas the said \_\_\_\_\_ hath not made such payment: These are therefore (*as before or as often before*) to command you forthwith to make and levy by distress and sale of the goods and chattels of the said wheresoever the same may be found, within the said Temporary Judicial District of \_\_\_\_\_ (except the wearing apparel and bedding of the said \_\_\_\_\_ or his family, and the tools and implements of his trade, if any, to the value of \$20) the said fine and costs amounting together to the sum of \_\_\_\_\_, and your lawful fees on the execution of this precept; so that you may \_\_\_\_\_

may have the said sum of \_\_\_\_\_ within thirty days after  
the date hereof, and pay the same over to the Clerk of the  
Court.

Given under the seal of the Court, this \_\_\_\_\_ day of  
18 \_\_\_\_\_ .

By order of the Court.

\_\_\_\_\_  
Stipendiary Magistrate.  
\_\_\_\_\_  
Clerk.

To \_\_\_\_\_ Bailiff of the said Court.

Fine,  
Costs,  
Execution.

---

TORONTO:—Printed by S. DERBISHIRE & G. DESBARATS,  
Law Printer to the Queen's Most Excellent Majesty.

# A

## SCHEDULE OF ACTS

AND PARTS OF ACTS WHICH RELATE TO

# UPPER CANADA ONLY

REFERRED TO IN THE ACT RESPECTING THE CONSOLIDATED STATUTES

FOR

## UPPER CANADA, CHAPTER 1,

WITH DATES OF PASSING AND TAKING EFFECT.

---

### 32 GEORGE III.

Caps.

- |   |                              |
|---|------------------------------|
| 1. LAW OF ENGLAND introduced as to<br>civil rights, except ss. 1. 2.    | } Passed 15th October, 1792. |
| 5. ACCIDENTS BY FIRE.   |                              |
| 7. MILLS, tolls regulated.  |                              |
| 8. GAOLS AND COURT HOUSES, so<br>much as has not been already repealed. |                              |
- 

### 33 GEORGE III.

Caps.

- |   |                          |
|---|--------------------------|
| 2. TOWNSHIP OFFICERS, s. 10.                  | } Passed 9th July, 1793. |
| 5. MARRIAGES, ss. 5, 6.                       |                          |
| 7. SLAVES, introduction of, prohibited, s. 1. |                          |
- 

### 34 GEORGE III.

Caps.

- |   |                          |
|---|--------------------------|
| 2. COURTS of King's Bench and Appeal, s. 1. | } Passed 9th July, 1794. |
| 5. FINES AND FORFEITURES.                   |                          |
- 

### 35 GEORGE III.

Cap.

- |                        |                           |
|------------------------|---------------------------|
| 4. KING'S BENCH, s. 1. | Passed 10th August, 1795. |
|------------------------|---------------------------|
- 

### 36 GEORGE III.

Cap.

- |                                    |                        |
|------------------------------------|------------------------|
| 3. LICENSES to sell spirits, s. 1. | Passed 3rd June, 1796. |
|------------------------------------|------------------------|

## 37 GEORGE III.

Caps.

- |   |                          |
|---|--------------------------|
| 7. DOWER, more easy mode of barring, ss. 1, 2.                            | } Passed 3rd July, 1797. |
| 11. SHOP LICENSES.  |                          |
| 13. LAW, practice of, Law Society, all not previously repealed or effete. |                          |
| 15. FUGITIVE FELONS, &c.  |                          |
- 

## 38 GEORGE III.

Caps.

- |  |   |
|--|---|
| 4. MARRIAGES.  | } 29th December, 1798, by Proclamation. |
| 5. DIVISION of the Province, all not already repealed or effete, except ss. 11, 12, 13, 26 and 34. |   |
- 

## 39 GEORGE III.

Cap.

- |                     |                           |
|---------------------|---------------------------|
| 3. ORPHAN CHILDREN. | } Passed 29th June, 1799. |
|---------------------|---------------------------|
- 

## 40 GEORGE III.

Caps.

- |   |                          |
|---|--------------------------|
| 1. CRIMINAL LAW of England, further introduced. | } Passed 4th July, 1800. |
| 4. LIQUORS, Licenses to sell.                   |                          |
- 

## 41 GEORGE III.

Cap.

- |   |                          |
|---|--------------------------|
| 6. QUARTER SESSIONS, general and other Courts, &c., s. 1. | } Passed 9th July, 1801. |
|---|--------------------------|
- 

## 43 GEORGE III.

Cap.

- |                                   |                                       |
|-----------------------------------|---------------------------------------|
| 1. SALE of Lands under execution. | } 4th January, 1803, by Proclamation. |
|-----------------------------------|---------------------------------------|
- 

## 45 GEORGE III.

Cap.

- |                            |                           |
|----------------------------|---------------------------|
| 1. LIQUOR, Licenses, s. 1. | } Passed 2nd March, 1805. |
|----------------------------|---------------------------|
- 

## 47 GEORGE III.

Cap.

- |                                |                            |
|--------------------------------|----------------------------|
| 11. FEES, Clerks of the Peace. | } Passed 10th March, 1807. |
|--------------------------------|----------------------------|
- 

## 48 GEORGE III.

Caps.

- |                                     |                            |
|-------------------------------------|----------------------------|
| 7. DOWER, mode of barring.          | } Passed 16th March, 1808. |
| 12. STATUTE LABOUR, ESSEX and KENT. |                            |

## 49 GEORGE III.

Caps.

- |  |   |                         |
|--|---|-------------------------|
| 4. SHERIFF'S Sales and Costs in certain cases, ss. 1, 2 and 5. | } | Passed 9th March, 1809. |
| 6. MENONISTS AND TUNKERS.                                      |   |                         |

## 50 GEORGE III.

Caps.

- |  |   |                          |
|--|---|--------------------------|
| 5. COMMON JAILS declared to be Houses of Correction. | } | Passed 12th March, 1810. |
| 10. MODE of barring Dower.                           |   |                          |

## 51 GEORGE III.

Caps.

- |  |   |                          |
|--|---|--------------------------|
| 6. DISTRICT COURTS and Sheriffs, ss. 2, 3. | } | Passed 13th March, 1811. |
| 9. USURY, s. 6.                            |   |                          |

## 53 GEORGE III.

Cap.

- |                                   |                          |
|-----------------------------------|--------------------------|
| 4. MILITIA PENSIONS, ss. 1, 4, 5. | Passed 13th March, 1813. |
|-----------------------------------|--------------------------|

## 55 GEORGE III.

Cap.

- |   |   |                          |
|---|---|--------------------------|
| 2. PROCEEDINGS in Outlawry. Except s. 10. | } | Passed 14th March, 1815. |
|   |   |                          |

## 56 GEORGE III.

Cap.

- |                        |                          |
|------------------------|--------------------------|
| 3. SPIRITUOUS LIQUORS. | Passed 22nd March, 1816. |
|------------------------|--------------------------|

## 57 GEORGE III.

Cap.

- |                                  |                         |
|----------------------------------|-------------------------|
| 9. OYER AND TERMINER, Courts of. | Passed 7th April, 1817. |
|----------------------------------|-------------------------|

## 58 GEORGE III.

Cap.

- |                 |                         |
|-----------------|-------------------------|
| 6. AUCTIONEERS. | Passed 1st April, 1818. |
|-----------------|-------------------------|

## 59 GEORGE III.—1st Session.

Caps.

- |   |   |                             |
|---|---|-----------------------------|
| 2. LICENSES to Inn Keepers.                   | } | Passed 27th November, 1818. |
| 10. CRIMINAL LAW.                             |   |                             |
| 13. PRACTICE of Physic and Surgery, ss. 2, 4. |   |                             |
| 16. LIGHT HOUSES.                             |   |                             |

## 59 GEORGE III.—2nd Session.

Caps.

- |                                  |   |                         |
|----------------------------------|---|-------------------------|
| 2. PHYSIC AND SURGERY.           | } | Passed 12th July, 1819. |
| 3. CONVEYANCES by married women. |   |                         |

## 1 GEORGE IV.

- Cap.  
2. PARLIAMENTARY REPRESENTATION. } Passed 7th March, 1820.

## 2 GEORGE IV.—1st Session.

- Caps.  
3. DIVISION of the Province, Counties, &c. }  
All not already repealed or expired }  
except, ss. 2, 4, 5, 6, 10 and 11. }  
4. MILITIA PENSIONS. }  
11. ILLEGAL Solemnization of Marriages. }  
12. PROMISSORY NOTES and Bills for } Passed 14th April, 1821.  
small sums. }  
13. CURRENCY, } Took effect 1st July, 1822.  
New York. }  
14. CONVEYANCES by Married Women. }  
32. TYTHES. } 20th February, 1823, by Proclamation.

## 2 GEORGE IV.—2nd Session.

- Caps.  
1. COMMON LAW COURTS, K. B. All }  
not heretofore repealed. } Passed 17th January, 1822.  
5. PRACTICE OF LAW, Law Society. }

## 4 GEORGE IV.—1st Session.

- Cap.  
16. WEIGHTS AND MEASURES. All not }  
heretofore repealed. } Passed 19th March, 1823.

## 4 GEORGE IV.—2nd Session.

- Cap.  
18. LIQUORS, Licenses to sell. } Passed 19th January, 1824.

## 7 GEORGE IV.

- Cap.  
6. MILITIA PENSIONS. } Passed 30th January, 1826.

## 8 GEORGE IV.

- Caps.  
3. PHYSIC AND SURGERY. }  
6. GUARDIANS. } Passed 17th February, 1827.  
11. ALE HOUSES. }

## 9 GEORGE IV.

- Caps.  
2. RELIGIOUS SOCIETIES, lands for sites }  
of Churches, ss. 1, 3. }  
4. APRONS to } Took effect 1st May, 1829. } Passed 25th March, 1828.  
Mill Dams. }



10 GEORGE IV.

- Cap.  
1. QUAKERS, Menonists and Tunkers, ss. } Passed 20th March, 1829.  
1, 2.

11 GEORGE IV.

- Caps.  
1. APPROPRIATION of Fines. } Passed 30th January, 1830.  
4. INDIGENT DEBTORS. }  
5. LAW of Set off extended. } Passed 6th March, 1830.  
9. LICENSES. }  
20. INSANE DESTITUTES. }  
36. MARRIAGES, ss. 3, 5, 6. } 2nd March, 1831, by Proclamation.

1 WILLIAM IV.

- Caps.  
1. VARIANCES. }  
2. CONVEYANCES by } Took effect 1st } Passed 16th March, 1831.  
Married Women. } August, 1831. }  
Except s. 3.

2 WILLIAM IV.

- Caps.  
1. BASTARDS. } Passed 23rd December, 1831.  
2. LAKES and Rivers. } " " "  
4. JUSTICES of the Peace. } Passed 28th January, 1832.  
6. STOCK in Companies. } " " "  
35. PARTITION of Real Estate. } Proclaimed.

3 WILLIAM IV.

- Caps.  
2. PRISONERS.—Witnesses, all not heretofore repealed. }  
3. CAPITAL OFFENCES. }  
4. CORRUPTION of Blood. }  
6. FUGITIVE OFFENDERS. }  
7. CORPORATIONS, ss. 1, 2. } Passed 13th February, 1833.  
8. SHERIFFS. }  
9. DOWER. }  
28. THAMES RIVER. }  
29. WHITE FISH, Fisheries. }  
34. LIGHTHOUSES. }  
43. PROVINCIAL PENITENTIARY. }  
45. DESTITUTE INSANE. }

4 WILLIAM IV.

- Caps.  
1. REAL PRO- } Took effect 1st July, 1834. }  
PERTY. }  
2. JUDGES, K. B. }  
4. PETTY TRESPASS. } Passed 6th March, 1834.  
5. BAIL. }  
7. REPLEVIN. }  
50. SPIRITUOUS LIQUORS. }

## 5 WILLIAM IV.

Caps.

- |  |                               |                               |
|--|-------------------------------|-------------------------------|
| 1. <b>BILLS of Exchange and Promissory Notes.</b>      | } Took effect 1st July, 1835. | } Passed 16th April, 1835.    |
| 2. <b>ERROR.</b>                                       |                               |                               |
| 10. <b>PUBLIC HEALTH.</b>                              |                               | } Passed 24th February, 1835. |
| 36. <b>MILITIA PENSIONS, s. 1, except the Recital.</b> | }                             | } Passed 16th April, 1835.    |
|  |                               |                               |

## 6 WILLIAM IV.

Caps.

- |  |  |                            |
|--|--|----------------------------|
| 3. <b>PUBLIC LANDS.</b>  | }  | } Passed 20th April, 1836. |
| 4. <b>LIQUORS, Licenses to sell, ss. 7, 8 and all not heretofore repealed.</b> |  |                            |
| 15. <b>FISHERY in Burlington Bay.</b>  |  |                            |
| 18. <b>MUTUAL Insurance Companies.</b>   |  |                            |
| 29. <b>DESTRUCTION of Wolves.</b>  |  |                            |
| 44. <b>FELONY, full defence by Counsel.</b>                                    | } 29th September, 1836, by Proclamation. |                            |

## 7 WILLIAM IV.

Caps.

- |   |   |                           |                               |
|---|---|---------------------------|-------------------------------|
| 1. <b>KING'S BENCH. All not heretofore repealed.</b>  | } | } Passed 4th March, 1837. |                               |
| 2. <b>COURT of Chancery, except Sec. 12.</b>  |   |                           |                               |
| 3. <b>AMENDMENT of Law. Except s. 1.</b>  |   |                           | } Took effect 1st June, 1837. |
| 4. <b>LARCENY.</b>  |   |                           |                               |
| 5. <b>BILLS of Sale, Exchange and Promissory Notes.</b>   |   |                           | } Took effect 1st June, 1837. |
| 6. <b>CRIMINAL OFFENCES.</b>  |   |                           |                               |
| 7. <b>TRANSPORTATION of Convicts.</b>   |   |                           |                               |
| 8. <b>SEDUCTION.</b>  |   |                           |                               |
| 9. <b>CORPORATIONS.</b>   |   |                           |                               |
| 10. <b>ESTREATS. Took effect 1st June, 1837.</b>  |   |                           |                               |
| 11. <b>GENERAL Quarter Sessions, ss. 2, 4.</b>  |   |                           |                               |
| 14. <b>STATUTES.—Form of enactments in, &amp;c. Except Sections numbered 14 to 20, so far as respects any Corporations to which those Sections apply.</b> |   |                           |                               |
| 15. <b>PRACTICE of Law. Except s. 2.</b>  |   |                           |                               |
| 18. <b>DISTRICT FUNDS.</b>  |   |                           |                               |
| 22. <b>NAVIGATION, all not heretofore repealed.</b>   |   |                           |                               |
| 96. <b>GRANT for salaries of Keepers of Light-houses.</b>   |   |                           |                               |
| 103. <b>MILITIA PENSIONS.</b>   |   |                           |                               |

## 1 VICTORIA.—2nd Session.

Caps.

- |                               |   |                              |
|-------------------------------|---|------------------------------|
| 5. <b>GAOLS. Except s. 6.</b> | } | } Passed 12th January, 1838. |
| 7. <b>JOINT CONTRACTORS.</b>  |   |                              |

## 1 VICTORIA.—2nd Session—Continued.

Caps.

- |  |   |                         |
|--|---|-------------------------|
| 9. OUTLAWRY.   | } | Passed 6th March, 1838. |
| 11. UNLAWFUL TRAINING.                                   |   |                         |
| 14. COURT of Chancery.                                   |   |                         |
| 16. DISTRESSES, levying, &c.                             |   |                         |
| 18. MACHINERY.   |   |                         |
| 21. TOWNSHIP OFFICERS. All not here-<br>tofore repealed. |   |                         |
| 44. MILITIA PENSIONS.                                    |   |                         |

## 2 VICTORIA.

Caps.

- |  |   |                        |
|--|---|------------------------|
| 1. KING'S BENCH.                                     | } | Passed 11th May, 1839. |
| 2. COMMISSIONERS.                                    |   |                        |
| 4. PETTY TRESPASSES.                                 |   |                        |
| 6. CONVEYANCES by Married Women.<br>Except ss. 1, 4. |   |                        |
| 7. OUTLAWRY.   |   |                        |
| 15. PROTECTION of Public Lands.                      |   |                        |
| 16. RIVERS and Creeks.                               |   |                        |

## 3 VICTORIA.

Caps.

- |                                 |   |   |
|---------------------------------|---|---|
| 3. DESERTERS.                   | } | Passed 10th February, 1840.               |
| 4. PROMISSORY NOTES.            |   |   |
| 8. BILLS of Exchange, ss. 2, 3. |   |   |
| 12. FOREIGNERS, Aggressions by. |   |   |
| 13. INDIANS.                    |   |   |
| 14. GAOLS.                      |   |   |
| 17. WEIGHTS and Measures, s. 3. |   |   |
| 20. SPIRITUOUS LIQUORS.         |   |   |
| 27. MILITIA PENSIONS.           |   |   |
| 28. MILITIA PENSIONS.           |   |   |
| 73. RELIGIOUS SOCIETIES.        |   | 3rd December, 1841, by Pro-<br>clamation. |

## 4, 5 VICTORIA.

Caps.

- |                                 |   |                              |
|---------------------------------|---|------------------------------|
| 12. JUSTICES of the Peace.      | } | Passed 27th August, 1841.    |
| 41. MEDICAL PRACTICE.           |   | Passed 18th September, 1841. |
| 64. MUTUAL INSURANCE COMPANIES. |   |                              |

## 7 VICTORIA.

Caps.

- |                                   |   |                            |
|-----------------------------------|---|----------------------------|
| 30. ADVERSE CLAIMS Interpleading. | } | Passed 9th December, 1843. |
| 33. SHERIFFS AND CORONERS.        |   |                            |
| 36. RIVERS AND RIVULETS.          |   |                            |

## 8 VICTORIA.

Caps.

- |   |   |                             |
|---|---|-----------------------------|
| 7. COUNTIES, Districts and Townships.<br>Except s. 1, and Schedule A. | } | Passed 10th February, 1845. |
| 8. HEIR AND DEVISEE CLAIMS.   |   |                             |

## 8 VICTORIA.—Continued.

Caps.

- |   |   |                          |
|---|---|--------------------------|
| 13. DISTRICT COURTS. All not heretofore repealed except, s. 76. | } | Passed 17th March, 1845. |
| 15. RELIGIOUS SOCIETIES may hold lands.                         |   |                          |
| 20. LINE FENCES and Water Courses.                              | } | Passed 29th March, 1845. |
| 38. FEES of District Officers.                                  |   |                          |
| 44. BRIDGES, fast driving on.                                   | } | Passed 29th March, 1845. |
| 45. SUNDAY, profanation of.                                     |   |                          |
| 48. INSOLVENT DEBTORS.  |   |                          |
| 50. FERRIES.  |   |                          |
| 66. HURON DISTRICT Mill Dams.                                   |   |                          |

## 9 VICTORIA.

Caps.

- |   |   |                        |
|---|---|------------------------|
| 6. CONVEYANCE of Real Property.                           | } | Passed 18th May, 1846. |
| 7. DISTRICT COURTS. } Took effect 1st June, 1846.         |   |                        |
| 9. FERRIES.   | } | Passed 18th May, 1846. |
| 10. CHANCERY.   |   |                        |
| 11. FINES AND RECOVERIES.                                 |   |                        |
| 17. SCHOOLS, sites for.                                   |   |                        |
| 33. SUPERIOR COURTS, Accommodation of, Fund for provided. | } | Passed 9th June, 1846. |
| 34. REGISTRY LAWS. Except s. 2.                           |   |                        |
| 56. SHERIFF'S POUNDAGE.                                   |   |                        |
| 58. ADMINISTRATION of Criminal Justice.                   |   |                        |
| 90. BUILDING SOCIETIES.                                   |   | Passed 18th May, 1846. |

## 10, 11 VICTORIA.

Caps.

- |                          |   |                         |
|--------------------------|---|-------------------------|
| 5. PRESCRIPTION.         | } | Passed 9th July, 1847.  |
| 16. REGISTRY LAW.        |   |                         |
| 18. MARRIAGES.           | } | Passed 23th July, 1847. |
| 20. RIVERS AND RIVULETS. |   |                         |
| 23. MASTER AND SERVANT.  |   |                         |
| 29. PRACTICE OF LAW.     |   |                         |

## 11 VICTORIA.

Cap.

- |                              |                          |
|------------------------------|--------------------------|
| 10. MILL DAM on Moira River. | Passed 23rd March, 1848. |
|------------------------------|--------------------------|

## 12 VICTORIA.

Caps.

- |   |   |                          |
|---|---|--------------------------|
| 9. PROTECTION of Public Lands.                                | } | Passed 25th April, 1849. |
| 35. SURVEYS from s. 26 to 50 both inclusive.                  |   |                          |
| 63. COMMON PLEAS AND APPEAL. } Took effect 1st January, 1850. | } | Passed 30th May, 1849.   |
| All not heretofore repealed.                                  |   |                          |

## 12 VICTORIA.—Continued.

Caps.

- |   |   |                        |                                  |
|---|---|------------------------|----------------------------------|
| 64. CHANCERY.   | } | }                      |                                  |
| 66. DISTRICT COURTS. All not heretofore repealed.   |   |                        |                                  |
| 71. TRANSFER of real property. All not heretofore repealed.   |   |                        | Took effect 31st December, 1849. |
| 72. INFANTS, Real Estate.   |   |                        |                                  |
| 73. MORTGAGORS, sale of the interest of in execution.   |   |                        |                                  |
| 76. BILLS OF EXCHANGE, damages on protest.  |   |                        |                                  |
| 77. COMMISSIONERS, appointment of, for taking affidavits.   |   |                        | Passed 30th May, 1849.           |
| 78. COUNTIES, names of, &c. All not heretofore repealed.  |   |                        |                                  |
| 79. COUNTIES, names of, s. 2 having been inadvertently repealed by 22 V. c. 99, is hereby revived, subject to the provisions of the 22 V. c. 115. |   |                        | Took effect 1st January, 1850.   |
| 85. WEIGHTS AND MEASURES.   |   |                        |                                  |
| 86. MUTUAL INSURANCE COMPANIES.   | } | Passed 30th May, 1849. |                                  |
| 87. MILL DAMS.  |   |                        |                                  |
| 91. RELIGIOUS SOCIETIES, s. 2.  |   |                        |                                  |

## 13 &amp; 14 VICTORIA.

Caps.

- |  |                                |                           |                                |                           |
|--|--------------------------------|---------------------------|--------------------------------|---------------------------|
| 48. COMMON SCHOOLS.  | }                              | }                         |                                |                           |
| 50. CHANCERY.  |                                |                           | Passed 24th July, 1850.        |                           |
| 51. COURTS of Common Law, and Error and Appeal. All not heretofore repealed except s. 1. |                                |                           |                                |                           |
| 52. COUNTY COURTS.   |                                |                           | Took effect 1st January, 1851. | Passed 10th August, 1850. |
| 53. DIVISION COURTS.   |                                |                           |                                |                           |
| 54. APPEALS—Summary Convictions.   |                                |                           |                                |                           |
| 55. JURORS.  |                                |                           |                                |                           |
| 56. CORONERS.  |                                |                           | Passed 24th July, 1850.        |                           |
| 58. DOWER.   |                                |                           | Passed 10th August, 1850.      |                           |
| 60. SLANDER AND LIBEL.   |                                |                           |                                |                           |
| 61. LIMITATIONS, written memoranda.  | Took effect 1st January, 1852. | Passed 24th July, 1850.   |                                |                           |
| 63. REGISTRY LAWS.   |                                |                           |                                |                           |
| 68. LUNATIC ASYLUM, Public Buildings.  | }                              | Passed 10th August, 1850. |                                |                           |
| 70. MARRIAGE LICENSE FUND.   |                                |                           |                                |                           |
| 71. CLAIMS BY GOVERNMENT.  |                                |                           |                                |                           |
| 74. PROTECTION OF INDIANS.   |                                |                           |                                |                           |
| 75. MILL OWNERS.   |                                |                           | Passed 24th July, 1850.        |                           |

13 & 14 VICTORIA.—Continued.

Caps.

- 76. CEMETERY COMPANIES.
  - 77. CEMETERIES.
  - 78. RELIGIOUS SOCIETIES.
  - 79. BUILDING SOCIETIES.
- } Passed 10th August, 1850.

14 & 15 VICTORIA.

Caps.

- 5. COUNTIES and Territorial Division, ss. 1, 2, 11, 17, and Schedules A. B. C. } Took effect 1st January, 1852.
- 6. PRIMOGENITURE. } Took effect 1st January, 1852.
- 7. TRANSFER of Real Property. } Passed 2nd August, 1851.
- 8. LEASING of Lands.
- 9. CROWN DEBTS to be registered.
- 11. APPRENTICES and Minors.
- 12. HEIR and Devisee, claims.
- 13. ADMINISTRATION of Criminal Law.
- 14. PAYMENT OF JURORS.
- 45. MORTGAGES.
- 54. PROTECTION OF MAGISTRATES.
- 56. FEES on Patents of Public Lands.
- 64. REPLEVIN.
- 65. JURORS.
- 94. BILLS and Notes.
- 111. COMMON SCHOOLS.
- 115. CONVEYANCE of real estate by married women, ss. 1, 2. } Passed 30th August, 1851.
- 116. INSOLVENT DEBTORS.
- 118. DEPUTY CLERKS of Crown to be Clerks of Assize. } Took effect 1st January, 1852.
- 119. FEES of Justices of the Peace. } Took effect 1st November, 1851.
- 123. OBSTRUCTIONS in Rivers.

16 VICTORIA.

Caps.

- 19. EVIDENCE.
- 20. COUNTY COURTS. } Passed 10th November, 1852.
- 89. UNIVERSITY OF TORONTO. Except s. 46. } Passed 22nd April, 1853.
- 119. COUNTY COURTS. } Took effect 31st December, 1853.
- 120. JURORS. Took effect 1st July, 1853.
- 121. MORTGAGEES, entry by. } Passed 23rd May, 1853.
- 124. HARBOURS, Docks, Piers, Joint Stock Companies.

## 16 VICTORIA.—Continued.

Caps.			
175.	COURTS OF COMMON LAW, Practice. All not heretofore repealed.	} Took effect 1st July, 1853.	} Passed 14th June, 1853.
176.	UNORGANIZED TRACTS.		
177.	DIVISION COURTS.	} Took effect 1st July, 1853.	
178.	APPEALS respecting by-laws, s. 26.	} Took effect 1st July, 1853.	
180.	PROTECTION of Justices of the Peace.		
182.	ASSESSMENT LAWS.	} Took effect 1st January, 1854.	
185.	COMMON SCHOOLS.		
186.	GRAMMAR SCHOOLS.	} Took effect 1st January, 1854.	
187.	REGISTRY LAWS.		
188.	LUNATIC ASYLUM.	} Took effect 20th June, 1853.	
190.	JOINT STOCK COMPANIES for making roads, bridges, wharves, &c.		
192.	MUTUAL Insurance Companies.		
193.	STANDARD WEIGHTS.		

## 18 VICTORIA.

Caps.			
21.	ASSESSMENTS. Except s. 1.	} Passed 18th December, 1854.	
22.	HARBOUR and Dock Companies.		
69.	HALTON and Wentworth, s. 5.		
83.	BOUNDARY LINES, ss. 8, 9.		
92.	CRIMINAL LAW and Procedure, s. 39.		
118.	REPLEVIN.	} Passed 19th May, 1855.	
119.	SALE of lands by Religious Societies. Except s. 2.		
120.	MUTUAL Insurance Companies.		
121.	EDUCATIONAL INSTITUTIONS.		
122.	ACCOMMODATION of Courts of Superior Jurisdiction.		
123.	COURT of Error and Appeal.	} Passed 30th May, 1855.	
124.	DORMANT EQUITIES.		
125.	DIVISION COURTS.	} Took effect 1st July, 1855.	
126.	CUSTODY of Infants.		
127.	REGISTRY LAWS.	} Took effect 1st July, 1855.	
128.	REPORTERS Courts of Law and Equity.		
130.	PAYMENT of Jurors.		
131.	SEPARATE SCHOOLS.		
132.	GRAMMAR and Common Schools.		
135.	WEIGHTS and Measures.		
136.	MASTERS and Servants.		
137.	LINE FENCES and Water courses.		
138.	HIGHWAYS. "Law of the Road."		
139.	ROADS, Bridges, &c., s. 1.		

## 19 VICTORIA.

- Caps.
- |  |                                     |                           |
|--|-------------------------------------|---------------------------|
| 43. COMMON LAW<br>PROCEDURE.<br>Except s. 29.          | } Took effect 21st August,<br>1856. | } Passed 19th June, 1856. |
| 54. SCHOOL GRANT, s. 18.                               |                                     |                           |
| 90. COUNTY<br>COURTS. } Took effect 21st August, 1856. | } Passed 1st July, 1856.            |                           |
| 91. COUNTY COURTS, in York and Peel.                   |                                     |                           |
| 92. JURORS ACT, amended.                               |                                     |                           |
| 94. GAME LAWS.   |                                     |                           |

## 20 VICTORIA.

- Caps.
- |   |                                    |                           |
|---|------------------------------------|---------------------------|
| 2. EXCHEQUER, practice in suits on behalf<br>of Crown.                                    | } Took effect 1st August,<br>1857. | } Passed 27th May, 1857.  |
| 3. MORTGAGES } of chattels.   |                                    |                           |
| 4. DESPATCH of Business by Grand Juries.  |                                    |                           |
| 5. COURTS of Error and Appeal. Except<br>s. 5.  |                                    |                           |
| 7. FERRIES.   |                                    |                           |
| 8. DISCONTINUANCE of the Lunatic<br>Asylum Tax.   |                                    |                           |
| 31. POUNDS, ss. 2, 3.   | }                                  | } Passed 10th June, 1857. |
| 56. CHANCERY.   |                                    |                           |
| 57. TO AMEND Common Law Procedure<br>Act. All not heretofore repealed. Ex-<br>cept s. 18. |                                    |                           |
| 58. COUNTY } Took effect 1st July, 1857.  |                                    |                           |
| 59. COUNTY } Took effect 1st January,<br>ATTORNEYS. } 1858.                               |                                    |                           |
| 60. ADMINISTRATION of Justice in un-<br>organized tracts.                                 |                                    |                           |
| 61. APPEAL in Criminal Cases.   |                                    |                           |
| 62. TO PREVENT delay in Administration<br>of Justice.                                     |                                    |                           |
| 63. ADMISSION of Attorneys.   |                                    |                           |
| 64. ACCOMMODATION of Courts of Superior<br>Jurisdiction.                                  |                                    |                           |
| 65. PRIMOGENITURE, Act abolishing,<br>amended.  |                                    |                           |
| 66. LAWS of Marriage, amended.  |                                    |                           |
| 73. BOUNDARY LINES.   |                                    |                           |
| 74. MUTUAL Insurance Companies.   |                                    |                           |

## 22 VICTORIA.—1st Session, 1858.

- Caps.
- |                              |                           |
|------------------------------|---------------------------|
| 9. APPEAL in Criminal Cases. | } Passed 30th June, 1858. |
| 14. TERRITORIAL.             |                           |



22 VICTORIA.—1st Session, 1858.—Continued.

Caps.

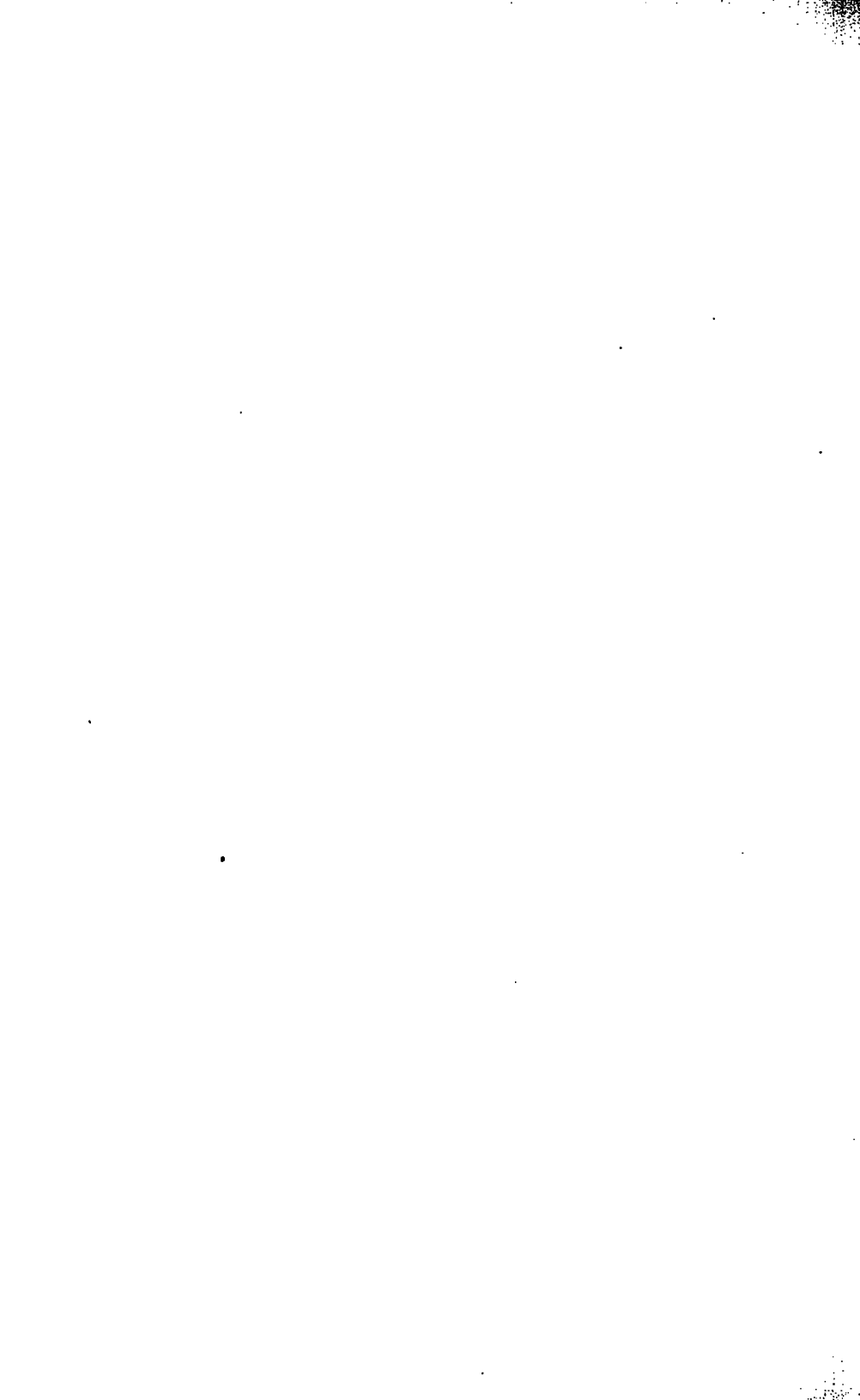
- |  |                                    |                             |
|--|------------------------------------|-----------------------------|
| 93. U. C. SUR-ROGATE COURTS.             | } Took effect 1st September, 1858. | } Passed 16th August, 1858. |
| 94. ADMISSION of Attorneys.              |                                    |                             |
| 95. SEPARATE Registry Offices in Cities. | } Took effect 1st September 1858.  |                             |
| 96. ABOLITION of arrest for debt.        |                                    |                             |
| 97. SCI. FA., to repeal Letters Patent.  | } Took effect 1st December, 1858.  |                             |
| 98. PENALTY for Petty Trespasses.        |                                    |                             |
| 99. MUNICI-PAL ACT.                      | } Took effect 1st December, 1858.  |                             |
| 100. JURY ACT.                           |                                    |                             |
| 110. PARK, University of Toronto.        |                                    |                             |

22 VICTORIA.—2nd Session, 1859.

Caps.

- |  |                            |
|--|----------------------------|
| 6. SALE OF LIQUORS Restrained.             | } Passed 26th March, 1859. |
| 31. COURTS of Superior Jurisdiction, U. C. |                            |
| 32. BILLS OF EXCHANGE, U. C., &c.          | } Passed 4th May, 1859.    |
| 33. ABOLITION of Imprisonment for Debt.    |                            |
| 34. MARRIED WOMEN, &c.                     |                            |
| 35. MARRIED WOMEN, Real Estate.            |                            |
| 36. RELIEF of Registrars.                  |                            |
| 37. MUNICIPAL INSTITUTIONS.                |                            |
| 38. MUNICIPAL INSTITUTIONS.                |                            |
| 39. MUNICIPAL CORPORATIONS.                |                            |
| 40. MUNICIPAL INSTITUTIONS.                |                            |
| 41. FERRIES.                               |                            |
| 42. 12 V. c. 35, Amendment.                |                            |
| 43. JOINT STOCK Roads Amendment.           |                            |
| 44. AGRICULTURE.                           |                            |
| 45. BUILDING SOCIETIES.                    |                            |
| 46. MUTUAL FIRE INSURANCE.                 |                            |
| 47. HOMCEOPATHY.                           |                            |





# B

## SCHEDULE OF STATUTES FOR UPPER CANADA

WHICH HAVE BEEN

## CONSOLIDATED AND REPEALED.

See SCHEDULE A.

STATUTES.	Page.	STATUTES.	Page.
32 Geo. 3 .....	1056	10 Geo. 4 .....	1061
33 " .....	"	11 " .....	"
34 " .....	"	1 Wm. 4 .....	"
35 " .....	"	2 " .....	"
37 " .....	"	3 " .....	1062
38 " .....	"	4 " .....	1063
39 " .....	1057	5 " .....	1064
40 " .....	"	6 " .....	1065
41 " .....	"	7 " .....	"
43 " .....	"	1 Vic. .....	1067
47 " .....	1058	2 " .....	1068
48 " .....	"	3 " .....	"
49 " .....	"	4 & 5 Vic. ....	1069
50 " .....	"	7 Vic. .....	"
51 " .....	"	8 " .....	"
53 " .....	"	9 " .....	1072
55 " .....	"	10 & 11 Vic. ....	1074
57 " .....	"	11 Vic. .....	1075
59 " 1st Session.....	"	12 " .....	"
59 " " .....	"	13 & 14 Vic. ....	1077
2 Geo. 4 1st Session.....	1059	14 & 15 " .....	1081
2 " 2nd " .....	"	16 Vic. .....	1083
4 " .....	1060	18 " .....	1089
6 " .....	"	19 or 19 & 20 Vic. ....	1091
7 " .....	"	20 Vic. .....	1095
8 " .....	"	22 " 1858.....	1099
9 " .....	1061	22 " 1859.....	1100

32 GEORGE 3.					35 GEORGE 3.						
Cap.	Sec.	CONSOLIDATED.				Cap.	Sec.	CONSOLIDATED.			
		Cap.	Sec.	Page.				Cap.	Sec.	Page.	
1	1				Rep. pt. of 14 G. 3, c. 83. Effete.	4	1	10	3	32	Rep. by 2 G. 4, c. 1, 2d Sess. Effete.
	2										
	3	9	1	31							
	4										
	5	9	1	31							
	6	9	1	31							
7	1	48	1	461	Effete.	7	1	84	5,6,10, 3-4	852-853	Rep. by 48, G. 3, c. 7.
	2	"	1	"							
	3	"	2	"							
8	1				Rep. by 22 V. c. 99.	13	1	33	1	406	Effete. Sup. See 47 G. 3, c. 5,— 20 V. c. 63.
	to 13										
	14										
	15	127	4	996							
16					Sup. by 1 V. c. 5, s. 6.	4					
	16										
	17	127	5	996							
33 GEORGE 3.					37 GEORGE 3.						
2	1				Rep. by 5 W. 4, c. 8.	7	3				Rep. by 2 G. 4, c. 5, 2d. Sess. Effete.
	to 9										
	10	17	10	117							
5	1				Stet.	15	1	95	1	929	Sup. See 20 V. c. 66. " "
	to 4										
	5										
	6	72	3	788							
7	7				Expired.	4	4	72	2	788	See 20 V. c. 66, s. 2. Effete.
	7										
7	1	75	1,2	798	Effete.	5	1	3	No. 1	8	Stet.
	2										
	to 5										
	6										
	7										
34 GEORGE 3.					38 GEORGE 3.						
2	1	10	1,3,5,31,32,		Rep. by 2 G. 4, c. 1, 2d Session.	4	1				Sup by 12 V. c. 78 & See 22 V. c. 99, s. 403.
	2										
	32										
	33										
	to 36										
	37										
	37										
	38										
2	1				Rep. by 12 V. c. 63, s. 37.	5	2	"	No. 2	9	Rep. by 2 G. 4, c. 1, 2d S. "
	2										
	3										
	4										
	5										

38 GEORGE 3.—Cont.

Cap.	Sec.	CONSOLIDATED.			
		Cap.	Sec.	Page.	
5	7	3	No. 9	9	Rep. by 4 G. 4, c. 5, 2nd session. Sup. by 12 V. c. 78. Stet. "
	8	"	No. 10	9	
	9				
	10				
	11				
	12				
	13				
	14	3	No. 11	10	
	15	"	No. 12, 13 & s. 2	10 & 18	
	16	"	No. 15	10	
	17	"	No. 14	10	
18				Sup. by 12 V. c. 78.	
19	"	No. 16	11	Rep. by 3 W. 4, c. 16. " 56 G. 3, c. 19, 3 W. 4, c. 16. Rep. 2 G. 4, c. 3. Sup. by 12 V. c. 78. "	
20	"	No. 17	"		
21					
22					
23					
24					
25					
26					
27	3	No. 41	17		
28	"	"	"		
29	"	"	"		
30	"	"	"		
31	"	No. 39	"		
32				Sup. by 12 V. c. 78.	
33	"	No. 37	16	Stet.	
34	"	No. 38	16		
35	"	No. 36	"	Sup. by 12 V. c. 78.	
36	"	No. 36	"		
37					
38	"	No. 33	15		
39	"	No. 34	"		
40				Sup. by 12 V. c. 78.	
41				Effete.	

39 GEORGE 3.

Cap.	Sec.	CONSOLIDATED.			
		Cap.	Sec.	Page.	
3	1	76	3	801	See 14, 15 V. c. 11, s. 2, Effete.
	2	"	3	"	
	3				
	4	76	3	801	
40 GEORGE 3.					
1	1	94	1	928	Effete. See 3 W. 4, c. 3, s. 25—4 & 5 V. c. 24, s. 25. Sup. do & ss. 31, 51. do do See 3 W 4, cc. 3, 25 and 7 W. 4, c. 4, s. 3. Effete 4, 5 V. c. 24, s. 25. Sup. by 3 W. 4, c. 3, s. 25—4, 5 V. c. 24, s. 25 —7 W. 4, c. 7, s. 2. Sup. See 4, 5 V. c. 26, ss. 35, 41—4, 5 V. c. 27, s. 39.
	2				
	3				
	4				
	5				
	6				
	7				
41 GEORGE 3.					
6	1	17	1	115	Rep. by 7 W. 4, c. 11. do do
	2				
	3				
43 GEORGE 3.					
1	1	22	252	239	
	2	"	"	"	

47 GEORGE 3.					53 GEORGE 3.					
CONSOLIDATED.					CONSOLIDATED.					
Cap.	Sec.	Cap.	Sec.	Page.	Cap.	Sec.	Cap.	Sec.	Page	
6	2	63	1	719	} But rep. by 16 V. c. 186, Sup. by 8 V. c. 38, to be rep. do s. 3. do	4	1	6	1	24
11	1	.....	.....	.....		2	.....	.....	.....	} Rep. by 55 G. 3, c. 6, 56 G. 3, c. 17. Rep. by 56 G. 3, c. 17, 55 G. 3, c. 6. Effete.
	2	.....	.....	.....		3	.....	.....	.....	
		.....	.....	.....		4	.....	.....	.....	
		.....	.....	.....	5	6	2	24		
48 GEORGE 3.					55 GEORGE 3.					
7	1	84	8	853	} Effete.	2	1	.....	.....	} Effete.
	2	"	9	"		1	17	2	116	
	3	"	9	"		2	107	1	951	
	4	.....	.....	.....		3	107	2-3	951-2	
		.....	.....	.....	4	"	4	952		
		.....	.....	.....	5	"	5	"		
		.....	.....	.....	6	"	6	"		
		.....	.....	.....	7	"	7	953-4		
		.....	.....	.....	8	"	8	954		
		.....	.....	.....	9	"	9	"		
		.....	.....	.....	10	.....	.....	.....	Stet.	
		.....	.....	.....	11	.....	.....	.....	Effete.	
49 GEORGE 3.					57 GEORGE 3.					
4	1	22	322	253	} Rep. by 2 G. 4, c. 1, 2d Ses. do do	9	.....	11	8	42
	2	"	323	254						
	3	.....	.....	.....						
	4	.....	.....	.....						
	5	22	253	239						
6	1	32	1, 2	401						
	2	"	"	"						
	3	"	"	"						
50 GEORGE 3.					59 GEORGE 3.—1st Session.					
5	1	127	11	997	} See 2 V. c. 6, s. 3.	10	1	128	100	1020
10	1	84	6	853		2	"	101	"	
	2	"	11	854		13	1	.....	.....	.....
		.....	.....	.....		2	40	1, 6, 7,	436--7	Effete.
		.....	.....	.....		3	.....	.....	.....	} Rep. by 8 G. 4, c. 3.
		.....	.....	.....		4	40	18	438	
		.....	.....	.....		5	.....	.....	.....	} Rep. by 59 G. 3, c. 2, 2nd Session.
		.....	.....	.....						
51 GEORGE 3.					59 GEORGE 3.—2nd Session.					
6	1	.....	.....	.....	} Rep. by 2 G. 4, c. 2, 2nd Session.	2	1	.....	.....	.....
	2	22	253	239						
	3	"	"	"						
		.....	11	.....						
		38	431	.....						
9	6	43	4	449						
Joint		58	9	684						

59 GEORGE 3.—2nd Session.—Cont.

Cap.	Sec.	CONSOLIDATED.			Page.	
		Cap.	Sec.	Page.		
2	2	40	2, 3	436		
	3	"	4	"		
	4	"	5	"		
3	1	85	1	854		
	2	"	2,3,4,9	"5, 6		
	3	"	2	854		
	4				Sup. by 1 W. 4, c. 2—2 V. c. 6—14, 15 V. c. 115.	
	5	85	3, 7	855		
4	2	63	5	720	Rep. by 16 V. c. 186, s. 17. do do	
	11	"	"	"		

2 GEORGE 4.—1st Session.

3	1				Effete. Stet. Rep. by 4 G. 4, c. 5, 2nd Session. Effete, Stet. do do Rep. by 3 W. 4, c. 16. Sup. by 7 W. 4, c. 32. Effete See 14, 15 V. c. 5. Stet. " Effete See 14, 15 V. c. 5.
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
4	1				Effete. Effete. Expired. do do do Sup. by 3 V. c. 27, s. 1, which substituted another Board for the Medical Board. Expired.
	2	6	2	24	
	3				
	4				
	5				
	6				
	7				
	8				
	9				

2 GEORGE 3.—1st Session.—Cont.

Cap.	Sec.	CONSOLIDATED.			Page.	
		Cap.	Sec.	Page.		
4	10				See 12 V. c. 10, s. 5, No. 13, which embraces it Rep. by 7 G. 4, c. 6.	
	11					
	12				See 7 G. 4, c. 6, ss. 4, 5, 6.	
	13				do	
	14				do	
	15	6	12, 13	26, 27		
	16				Expired.	
	17				Embraced by 12 V. c. 10, s. 5, No. 17.	
	18	6	12, 13	26, 27		
	19	"	1	24		
	20				Rep. by 7 G. 4, c. 6.	
	21	6	2	24	See 3 V. c. 27.	
	22	"	5	"		
	23				Effete.	
11	1	102	3, 4	939		
	2	"	4	"		
12	1	42	1	441		
14	1	85	1	854		
	2				Effete. See c. 85, s. 9, p. 856.	
32	1	66		774		

2 GEORGE 4th.—2nd Session.

1	1				Effete. Rep. by 2 G. 4, c. 1.
	2				
	3	10	19	36	Rep. by 19 V. c. 43, s. 318.
	4	}			
	to 9				
	10				Effete. See 8 V. c. 13, s. 14, & c. 48, s. 44, —19 V. c. 43, s. 23,—22 V. c. 96.
	11	22	35	192	
	12	"	37	"	
	13	"	36	"	
	14				Rep. by 19 V. c. 43, s. 318.

2 GEORGE 4.—2nd Session.—Cont.

4 GEORGE 4.—1st Session.

		CONSOLIDATED.			
Cap.	Sec.	Cap.	Sec.	Page.	
1	15				Rep. by 22 V. c. 96, s. 22. Effete.  Sup. by 19 V. c. 43.  Rep. by 7 W. 4, c. 1.  Sup. by 19 V. c. 43, ss. 4, 9, 318.  Sup. by 22 V. c. 96.  Rep. by 19 V. c. 43, s. 318.  Effete. Rep. 20 V. c. 63, schd.  Effete.  Rep. by 20 V. c. 63, s. 3.
	16				
	17	32	19	405	
	18	"	21	"	
	19	22	270	243	
	20	"	267	"	
	21	38	11	431	
	22	22	342	258	
	23				
	24	9	2	31	
	25	22	99	206	
	26	"	100	"	
	27				
	28	11	6	42	
	29	22	149	215	
	30	31	153	378	
	31	38	13	431	
	32				
	33				
	34	22	128	211	
	35				
36	22	{ 201 and 224 }	{ 228 and 233 }		
37	"	118	209		
38	"	313	252		
39	39	1	434		
40	"	2, 3, 4	435		
41	22	{ 36 and 333 }	{ 192 and 256 }		
42	39	5	435		
43					
44	35	22	418		
45	119	1	971		
46					
5	1	33	2	406	
	2	34 { 1 No. 3. 4 }		410	
	3				

		CONSOLIDATED.			
Cap.	Sec.	Cap.	Sec.	Page.	
16	1				Effete.  Repealed by 12 V. c. 85. " "  Repealed by 12 V. c. 85. Effete. Effete.
	2	58	1	695	
	3	"	2	"	
	4				
	5				
	6	58	16	697	
	7				
	8				
	9				
6 GEORGE 4.					
7	19	55	151	679	Rep. by 13, 14 V. c. 66, s. 1, but see 16 V. c. 182, s. 66.
	20	89	18-34 18	885, 8 885	
7 GEORGE 4.					
6	1				Effete. " Superseded by 3 V. c. 27. Effete. See 1 V. c. 44, s. 2.
	2				
	3				
	4				
	5	6	2	24	
	6	"	15	27	
	7	"	14	"	
8 GEORGE 4.					
3	1				Effete.  Effete.  Effete.
	2	40	8	437	
	3	"	9	"	
	4				
	5	40	11	437	
	6	"	12, 13	"	
	7	"	{ 14, 15- 16, 17 }	{ " 8	
	8	"	18	438	
6	1	74	3, 4	796	



**8 GEORGE 4.—Cont.**

Cap.	Sec.	CONSOLIDATED.						
		Cap.	Sec.	Page.				
6	2	74	5	797	See c. 76, s. 2, p. 801.			
	3	"	6	"				
	4	5	74	1	795	Rep. by 22 V. c. 93, s. 68.		
							6	"

**11 GEORGE 4.—Cont.**

Cap.	Sec.	CONSOLIDATED.			
		Cap.	Sec.	Page.	
36	4				Rep. by 10, 11 V. c. 18.
	5	72	2	788	
	6				

**9 GEORGE 4.**

2	1	69	1	780	Repealed by 3 V. c. 73.
	2				
	3	69	2	780	
	4				
4	1	48	3	462	
	2	"	3	"	

**1 WILLIAM 4.**

1	1	111		958	Sup. by 12 V. c. 10, s. 5, No. 27. See 7 V. c. 4.
	"	22	216	231	
2	2				Stat.
	1	85	2, 3, 4	854-5	
	2	"	8	855	
	3				
	4	85	9	856	
5				Effete.	

**10 GEORGE 4.**

1	1	32	1, 2	401	Sup. by 12 V. c. 10, s. 5, No. 13.
	2				
	3				

**2 WILLIAM 4.**

1	1				Rep. 21 James 1st sup. by 4, 5 V. c. 27, s. 14.	
	2					do do
2	1				Sup. by 14, 15 V. c. 5, s. 11. See 19 V. c. 43.	
	2	128	100-1	1020		do do See 7 V. c. 6.
4	1				Sup. by 16 V. c. 178.	
	2					do do
	3					do do
5	4				Sup. by 16 V. c. 180.	
	5					do do
6	1	22	255	240		
	2	"	"	256		
35	1	86	4, 5	858		
	2	"	6	"		
	3	"	15	860		
	4	"	18	861		

**11 GEORGE 4.**

1	1	118	1	971	Sup. by 19 V. c. 43, ss. 124, 133.
	2				
	3				
	4				
	5				
5	1				Sup. by 13, 14, V. c. 53.
	2				
	3				
	4				
	5				
20	1	122	1	982	Effete.
	2	"	1, 2	"	
	3	"	2	"	
	4	"	3	"	
	5				
36	1				Stat.
	2				
	3	72	1	787	

2 WILLIAM 4.—Cont.

3 WILLIAM 4.—Cont.

2 WILLIAM 4.—Cont.					3 WILLIAM 4.—Cont.						
Cap.	Sec.	CONSOLIDATED.			Page.	Cap.	Sec.	CONSOLIDATED.			Page.
		Cap.	Sec.	Page.				Cap.	Sec.	Page.	
35	5	86	17	860							
	6	"	25	863							
	7	"	22	862							
	8	"	22	"							
	9	"	9	859							
	10	"	14	860							
3 WILLIAM 4.											
2		See Joint 99	76	1024							
											Sup. by 4, 5 V. c. 24, ss. 1, 2, 3, 4, 11,—14, 15 V. c. 96,—16 V. c. 179, ss. 14, 15, 16.
3	1	97	1	930							
	2										Sup. by 4, 5 V. c. 27, ss. 2, 4.
	3										"
	4	97	4	931							
	5										Sup. by 4, 5 V. c. 27, s. 16.
	6										" s. 17.
	7										" s. 15.
	8										" c. 25, s. 6.
	9										" " s. 14.
	10										" " s. 18.
	11										Sup. by 4, 5 V. c. 26, s. 23.
	12										Sup. by 4, 5 V. c. 25, s. 53,—c. 26, ss. 5, 6, 7, and 4, 5 V. c. 27, ss. 3, 7, 8, 9, 10, 11, 12.
13	79	6 to 12		931 and 2-3							
14	"	2, 13		930-3							
15											Effete.
16	97	5		931							
17											Sup. by 4, 5 V. c. 24, ss. 14, 15.
18											" s. 16.
19	97	3		931							
20											Sup. by 4, 5 V. c. 27, s. 4.
3	21										Sup. by 4, 5 V. c. 27, s. 4.
	22										"
	23										" s. 5.
	24										" "
	25	97	5	931							
	26										Sup. See 4, 5 V. c. 24, s. 31,—10, 11 V. c. 4, s. 9, & c. 9, s. 22.
4		116	1, 2	966							
6	1	96	1	930							
	2	"	2	"							
	3	"	3	"							
7	1	22	17	188							
	2										Effete. See 19 V. c. 43, ss. 59, 60, 62.
	3										Rep. by 7 W. 4, c. 9.
8	1										Effete.
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	6										Rep. by 4, 5 V. c. 91, s. 12.
	7	38	{ 1No. 3-4	{ 428							
	8	"	{ 1No. 1-2-3	{ 428-9							
	9	"	6	430							
	10	"	7	"							
	11	"	8	"							
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	16	"	9	431							
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	19										Rep. by 4, 5 V. c. 91, s. 12.
20	28	3		429							
21	"	3		"							

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	2	"	11	854
28	1	47	1	459
	2	"	6	460
	3	"	8	"
29	4			} Repealed by 22 V. c. 86, s. 1. Residue C.
34	1	8	1	29
	2	"	1	"
	3	"	2	"
43	4			} Effete. See 12 V. c. 10, s. 5, No. 19. C. To be re- pealed. See "Penitentiary Act."
45	1			} Effete.
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45	"	19, 20	"	
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47	"	14	"	
48	82	10	830	
49	"	11	831	
50	"	12	"	
51	"	13	"	
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53	"	66-7-8	316	
54	"	69	317	
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56	"	63-4-5	316	
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59	82	14	832	
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1	1	82	4	829
	2	"	5	830
	3	"	6	"
	4	"	17	833
	5	"	18	"
	6	"	19	"
	7	"	20	"
	8	"	21	834
	9	"	7	830
	10	"	8	"
	11	"	2, 3	829
	12	"	9	830
	13	84	1	852
	14	"	1, 2	"
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	16	88	1	869

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Effete.

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9	"	14	328			

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	3	"	23	446	
	4	"	24	"	
	5	42	25	446	
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	8	42	26	446	
	9	"	27	"	
	10				
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2	1	113	16	963	

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	4	"	5	700		20	"	34	508		
	5					21	"	83	515		
	6	59	6	700		22	"	28	507		
						23	"	16-17	505		
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				Effete. See 2 V. c. 21,—22 V. c. 81.	25	"	52	511			
36						26	"	85	515		
										Rep. 49 G. 3, c. 3.	
6 WILLIAM 4.						29	1		700		
3		81	1	818		2	60	1	"		
15	1					3	"	2	"		
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	3					5	"	4	"		
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						7				Effete.	
						44	1			Sup. 4, 5 V. c. 24, ss. 9, 10.	
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	3	"	18-19	505			3			Superseded 9 V. c. 114.	
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	5									Rep. 12 V. c. 63, s. 10. See 13, 14 V. c. 51, s. 3.	
	6	52	25	506						Effete.	
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	9	"	45-46	" 10							
	10	"	{ 53 to 56 }	{ 511-12 }			6				
	11	"	{ 62 to 65 }	{ 513 }			7				
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	4	"	8, 9	807-8		5	1	42	5, 6
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	6					3	"	"	8
	7					6	1	115	1
	8	22	62	199		1			
	9	42	30	447		2			} Sup. 4, 5 V. c. 24, 25, 26, 27.
	10	22	90	204		3	"	2	
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	14	22	89	204		2	"	"	2
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	9	"	5	"		
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21	1				Repealed 12 V. c. 80.	
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	33					Repealed 22 V. c. 99.
	34					"
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	3	"	9	820	
	4	"	10	"	
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	10	"	17	"	
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3	1				Repeals 44 G. 3, c. 2.
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8	1				Rep. 5 W. 4, c. 1, ss. 4, 6, 7, 10, 14.
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	3	"	32	"	
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23	"	"	10	120				
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	6	"	37	"		54	"	"	"
	7	"	38	"					Effete.
	8	"	39	54	17	1	63	28	726
	9	"	40	"		2	"	29	"
	10	"	41	55	33	1			Effete.
	11	"	42	"		2			"
	12	"	43	"		3	101	5	938 } Sup. 22 V. c. 31.
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	14	"	76	62		5	10	29	38
11	1	83	1	840		6	33	8	409
	2	"	2-3	841		7	"	10	409
	3	"	4	"		8	"	11	410
	4	"	5	"		9	"	"	"
	5	"	6	"		10	"	"	"
	6	"	7	842					See 12 V. c. 10, s. 5.
	7	"	8	"					"
	8	"	9	"	34	1			Effete.
	9	"	10	"		2			Stet.
	10	"	11	843		3	89	{ 2, 5, 9, } 882	
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	13	"	14	"		5	"	15	884
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	15	"	16	844				{ 1, 3, 44 } 891	
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	17	"	18	"				{ 20, 22, } 885	
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	26	"	28	"		12	"	46	892
	27	"	29	848		13	"	{ 17, No. } 884	
	28	"	30	"				{ 4, 36, } 889	
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	12	"	4	"			
	13	"	5	"			
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	10	"	31	"	
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C

SCHEDULE OF THE STATUTES.

OF

UPPER CANADA,

BEFORE THE UNION.

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*In the following List of Statutes,*

|              |       |                         |
|--------------|-------|-------------------------|
| Consol. .... | means | Consolidated.           |
| P. ....      | "     | Private.                |
| L. ....      | "     | Local.                  |
| O. ....      | "     | Occasional.             |
| Effete. .... | "     | Exhausted               |
| Rep. ....    | "     | Repealed or superseded. |
| Exp. ....    | "     | Expired.                |

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Those Acts which are not marked as expired, repealed, effete, or consolidated, remain in force as being local or private, and not strictly Public General Statutes, and therefore not consolidated.

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5. Provincial Statutes.—Rep. 4 G. 4, c. 14, 2nd Sessn.—8 V. c. 68.—14, 15 V. c. 81.
6. Grant for Highways.—Rep. 46 G. 3, c. 4.
7. Collection of Excise Duties on Spirituous Liquors.—Rep. 9 V. c. 2.
8. Supplies.—Effete.
9. Grant for Public Buildings.—Rep. 52. G. 3, c. 4, 2nd Sessn.
10. Supplies. Effete.
11. To encourage cultivation of Hemp.—Rep. 53 G. 3, c. 7.

45 GEORGE III.

Caps.

1. Spirituous Liquors.—Rep. 56 G. 3, c. 3.—8 V. c. 4.—9 V. c. 2.—16 V. c. 184.  
To be expressly repealed.
2. Heir and Devisee, Claims.—Rep. 8 V. c. 8.
3. House of Assembly.—Controverted Elections, Rep. 4 G. 4, c. 4, 2nd Sessn.
4. Provisional Agreement between Upper and Lower Canada.—Exp.
5. Administration of Justice in Newcastle District.—Effete.
6. Appointment of Township Officers.—Rep. 5 W. 4, c. 8.
7. Relief of Insolvent Debtors.—Rep. 19 V. c. 43, s. 318.
8. Inspection of Beef and Pork.—Rep. 4, 5 V. c. 88.
9. Supplies.—Effete.
10. Hemp, to encourage cultivation of.—Rep. 53 G. 3, c. 7.

46 GEORGE III.

Caps.

1. Provision for certain Sheriffs.—Exp.
2. Physic and Surgery.—Effete.
3. Grant for Scientific Apparatus.—Effete.
4. Highways.—Exp.
5. Township Officers.—Rep. 48 G. 3, c. 14,—5 W. 4, c. 8.
6. Collection of Excise Duties on Spirituous Liquors.—Rep. 48 G. 3, c. 8. and Effete.
7. Supplies.—Effete.

47 GEORGE III.

Caps.

1. Practice of Law.—Effete.
2. Wolves.—Effete.
3. Payment of Debts, Eastern District.—Effete.
4. Ports of Entry.—Exp.
5. Practice of Law.—Rep. 20 V. c. 63.
6. District Schools.—Rep. 16 V. c. 186.
7. Rates and Assessments.—Rep. 51 G. 3, c. 8.
8. Supplies.—Effete.
9. Hawkers and Pedlars.—Rep. 51 G. 3, c. 2.
10. Import Duties from United States.—Exp.
11. FEES, Clerks of the Peace.—Consol.
12. Preservation of Salmon.—Rep. 2 G. 4, c. 10.

48 GEORGE III.

Caps.

1. Consolidated Militia Law.—Rep. 1 V. c. 8, 2 V. c. 9.
2. Grant for Highways.—Effete.
3. Annual grant for salary for Adjutant General.—Rep. 4 G. 4, c. 6.
4. Supplies.—Effete.
5. Returning Officers of Counties.—Exp.
6. Annual grants for Clerks of Legislative Council and Assembly.—Superseded, I. S. 3, 4 V. c. 35.
7. DOWER, mode of barring.—Consol.
8. Collection of duties on Spirituous Liquors.—Rep. 9. V. c. 2.
9. To encourage cultivation of Hemp.—Effete.

## 48 GEORGE III—Continued.

Caps.

10. Heir and Devisee claims.—Rep. 8 V. c. 8.
11. Amended Parliamentary representation.—Rep. 4 G. 4, c. 3, 2nd Sessn.
12. Statute labour in Essex and Kent.—L. Effete. To be expressly repealed.
13. Special Juries.—Rep. 13, 14 V. c. 55, Schd. C.
14. Township Officers.—Rep. 5 W. 4, c. 8.—1 V. c. 21.
15. Johnstown District, Court House and Jail.—Effete.
16. District Schools.—Rep. 16 V. c. 186.

## 49 GEORGE III.

Caps.

1. Upper and Lower Canada, provisional agreement between.—Exp.
2. Militia and billeting Troops.—Rep. 9 V. c. 28.
3. Destruction of Wolves.—Rep. 6 W. 4, c. 29.—11 G. 4, c. 17.
4. SHERIFF'S Sales and Costs in certain suits.—part Consol. Rep. 2 G. 4, c. 1, 2nd Sessn.
5. Supplies.—Effete.
6. MENONISTS and Tunkers.—Consol.
7. Grand River.—Effete.
8. Currency.—Rep. 4, 5 V. c. 93.
9. Grant for Highways.—Effete.

## 50 GEORGE III.

Caps.

1. Highways.—Rep. 4 G. 4, c. 10.—5 W. 4, c. 8.—1 V. c. 21.—12 V. c. 80.—22 V. c. 99. (1858.)
2. Grant for Highways.—Effete.
3. Preservation of salmon.—Rep. 2. G. 4, c. 10.
4. Forgery of Foreign Bills of Exchange.—Rep. 10, 11 V. c. 9.
5. COMMON JAILS declared to be Houses of Correction.—Consol.
6. Duty on Billiard Tables, &c.—Rep. 16 V. c. 184.
7. Supplies.—Effete.
8. To encourage cultivation of Hemp.—Effete.
9. Superior Court of Civil and Criminal Jurisdiction.—Effete.
10. MODE of barring Dower.—Consol.
11. Menonists and Tunkers.—Rep. 1 V. c. 8.—2 V. c. 9.
12. Township Officers, Haldimand County.—Rep. 12 V. c. 80.
13. Additional grant for Bridge, Grand River.—Effete.

## 51 GEORGE III.

Caps.

1. Grant for Highways.—Effete.
2. Hawkers and Pedlars.—Effete.
3. Imprisonment for debt.—Rep. 2 G. 4, c. 1, 2nd Sessn.
4. Supplies.—Effete.
5. Provisional Agreement between Upper and Lower Canada.—Exp.
6. DISTRICT COURTS and Sheriffs.—Consol. ss. 2, 3, Sec. 1, rep. 2 G. 4, c. 2, 2nd Sessn.
7. Militia.—Rep. 18 V. c. 77, s. 7.



51 GEORGE III.—Continued.

Caps.

8. Assessments and Rates.—Rep. 59 G. 3, c. 7.—5 W. 4, c. 8.—1 V. c. 21.—13, 14 V. c. 66.
9. DAMAGEN on protest of Bills of Exchange, interest.—Sec 1, Effete. Ss. 2, 3, 4, 5, 6, Rep.—12 V. c. 76, s. 6, s. 6. Consol. except as Rep.—16 V. c. 80.

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52 GEORGE III.—(1st Session.)

Caps.

1. Desertion of Soldiers.—Exp.
2. Grant for Highways.—Rep. 52 G. 3, c. 2, 2nd Sessn.
3. Militia.—Exp.
4. Travelling on Highways.—Rep. 16 V. c, 189.—18 V. c. 138.
5. Supplies.—Effete.
6. Grant for Militia.—Effete.
7. Supplies.—Effete.
8. Hemp, to encourage cultivation of.—Rep. 53 G. 3, c. 7.
9. Heir and Devisee claims. Rep. 8 V. c. 8.
10. Repairs of Highways.—Rep. 12 V. c. 80.
11. Returning Officers.—Effete.

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52 GEORGE III.—(2nd Session.)

Caps.

1. Militia.—Exp.
2. Highways. Effete.
3. Defence of the Province.—Exp.
4. Public Buildings.—Effete.
5. Supplies.—Effete.

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53 GEORGE III.

Caps.

1. Army Bills, Lower Canada.—Exp.
2. Militia and transport of Military Stores.—Exp.
3. To authorize prohibition of exportation of Grain.—Exp.
4. MILITIA PENSIONS.—Consol. Sec. 2 and 3, rep. 55 G. 3 c. 6.—56 G. 3, c. 17.
5. Sale of Spirituous Liquors to Indians.—Exp.
6. Defence of the Province.—Exp.
7. Hemp, Cultivation of—Effete.
8. Provisional Agreement between Upper and Lower Canada.—Exp.
9. Township Officers.—Rep. 5 W. 4, c. 8.—1 V. c. 21.
10. Billeting Military Troops.—Rep. 1 V. c. 8, s. 54.
11. Supplies.—Effete.

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54 GEORGE III.

Caps.

1. Militia.—Exp.
2. Issue and circulation of Government Bills.—Exp.
3. Grant for Highways.—Effete.
4. Eligibility of members of House of Assembly.—Rep. 58 G. 3, c. 9.—4 G. 4, c. 3, 2nd Sessn.
5. Hawkers and Pedlars.—Exp.

## 54 GEORGE III—Continued.

Caps.

6. Detention of parties suspected of treasonable practices.—Exp.
7. Additional excise duty on Distillers.—Exp.
8. Exportation of Grain.—Exp.
9. Aliens.—Effete.
10. Duty on Spirituous Liquors, Shop and Tavern Licenses.—Exp.
11. For more effectual trial of Treason.—Exp.
12. Supplies.—Effete.
13. Outlawry.—Rep. 55 G. 3, c. 2.
14. High Treason.—Effete.
15. Market established in Town of York.—Rep. 12 V. c. 80.
16. Bills of Lower Canada Army.—Exp.
17. Grant for defence of the Province.—Effete.
18. Provisional Agreement between Upper and Lower Canada.—Exp.
19. Sheriffs.—Exp.

## 55 GEORGE III.

Caps.

1. Grant for Highways.—Effete.
2. PROCEEDINGS in Outlawry.—Consol. except s. 10, Stet.
3. Practice of Law, relief of certain Barristers.—Rep. 20 V. c. 63.
4. Remuneration for services of Thomas Merritt as Sheriff.—Effete.
5. Assessment and Rates.—Rep. 59 G. 3, c. 7, 2nd Sessn.
6. Militia pensions.—Rep. 2 G. 4, c. 4, 2nd Sessn.
7. Swayze relief of Isaac.—Effete.
8. Gaols and Court Houses, grant for repairs of.—Effete.
9. Quarter Sessions.—Rep. 7 W. 4, c. 11.
10. Physic and Surgery.—Rep. 59 G. 3, c. 13.
11. Inspectors of Districts.—Effete.
12. Accommodation for Provincial Legislature.—Effete.
13. Grant for Militia.—Effete.
14. Supplies.—Effete.
15. Grant for monument for Sir Isaac Brock.—Effete.
16. Quarter Sessions.—Rep. 7 G. 4, c. 13.
17. Grant for purchase of Hemp.—Effete.
18. Incorporation of Midland District School Society.—L.

## 56 GEORGE III.

Caps.

1. Quarter Sessions in London and Johnstown Districts.—Rep. 7 W. 4, c. 11.
2. Ottawa District.—L.
3. Sale of Spirituous Liquors.—Rep. 16 V. c. 184. To be expressly repealed.
4. Returning Officers of Counties.—Exp.
5. Courts of Requests.—Rep. 3 W. 4, c. 1.
6. Provision for Provincial Aide de Camp.—Exp.
7. Provision for Adjutant General of Militia.—Exp.
8. Ports of Entry.—Exp.
9. Remuneration to Powell William Dummer.—Effete.
10. Sale of Spirituous Liquors.—Rep. 59 G. 3, c. 2, 1st Sessn.
11. Travelling on Highways.—Rep. 18 V. c. 138.—16 V. c. 189.
12. Militia Pension to Catherine McLeod.—Effete.
13. Pension for a certain period to Charlotte Overholt.—Effete.
14. Limits of Town of Niagara.—L. See 12 V. c. 81, Sch : B. No. 10.

56 GEORGE III—Continued.

Caps.

15. Supplies for expenses of the Legislature.—Effete.
16. Titles to land in Niagara District.—L.
17. Militia Pensions.—Rep. 2 G. 4, c. 4, 1st Sessn.
18. Building Gaol and Court House at the Town of York.—Effete.
19. Gore District.—L.
20. Certain relief to Excise Inspectors.—Effete.
21. Heir and Devisee claims.—Rep. 8 V. c. 8.
22. Salaries, Parliamentary Officers.—Exp.
23. Grant for Highways.—Effete.
24. Grant for Library Legislative Assembly.—Effete.
25. Army Bills of Lower Canada.—Exp.
26. Supplies, grant of a sum yearly.—Rep. 1 W. 4, c. 14.
27. Speaker's Salary (Assembly).—Rep. 2 G. 4, c. 27.
28. Trade regulation with United States.—Exp.
29. Provisional agreement between U. and L. Canada.—Rep. 58 G. 3, c. 13.
30. Remuneration to Elizabeth Wright.—Effete.
31. Militia.—Rep. 1 V. c. 8, s. 54.—2 V. c. 9.
32. Grant for encouraging the cultivation of Hemp.—Rep. 58 G. 3, c. 7.
33. Police Regulations, Kingston.—Rep. 4 G. 4, c. 30, 2nd Sessn.
34. Duty on Hawkers and Pedlars.—Rep. 16 V. c. 184.
35. Grant for Provincial Agent.—Rep. 2 G. 4, c. 10, 2nd Sessn.
36. Grant for Common Schools.—Rep. 4, 5 V. c. 18.
37. Grant for Highways.—Effete.
38. Grant for expenses of land titles Niagara District.—Effete.
39. Highways.—Rep. 59 G. 3, c. 8, 2nd Sessn.—5 W. 4, c. 8.

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57 GEORGE III.

Caps.

1. Wentworth and Halton, representation.—Rep. 60 G. 3, c. 2. or 1 G. 4, c. 2.
2. Police—York, Sandwich, Amherstburg.—Rep. 12 V. c. 80.
3. Supplies.—Effete.
4. Town of Niagara.—Rep. 12 V. c. 80.
5. Militia Pensions.—Rep. 2 G. 4, c. 4, 1st Sessn.
6. Supplies.—Effete.
7. Township Officers.—Rep. 5 W. 4, c. 8.
8. Sheriffs.—Exp.
9. OYER and Terminer.—Consol.

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58 GEORGE III.

Caps.

1. Excise duties on Spirituous Liquors.—Exp.
2. General Quarter Sessions, London and Johnstown Districts.—Rep. 7 W. 4, c. 11.
3. To enable Robt. Cartwright to surrender land to Crown.—P.
4. Costs in King's Bench, regulated.—Rep. 8 V. c. 13, s. 59.
5. Hawkers and Pedlars.—Rep. 16 V. c. 184.
6. Duty on Auctioneers and Auctions.—Rep. 16 V. c. 184. To be expressly repealed.
7. Grant to encourage cultivation of Hemp.—Effete.
8. Registry of Deeds executed abroad.—Rep. 9 V. c. 34.

## 58 GEORGE III.—Continued.

Caps.

9. Eligibility of Members, House of Assembly.—Rep. 4 G. 4, c. 3, 2nd Sessn.
10. Supplies.—Effete.
11. Outlawry.—Exp.
12. Grant for remuneration of certain Commissioners.—Effete.
13. Provisional Agreement between Upper and Lower Canada.—Exp.

## 59 GEORGE III.—(1st Session.)

Caps.

1. Trade regulations with United States.—Rep. 59 G. 3, c. 1, 2nd Sessn.
2. Licenses to Innkeepers, Spirituous Liquors.—Rep. 13, 14 V. c. 65. To be expressly repealed.
3. County of Glengarry, division into Townships.—L.
4. Market in Town of Cornwall established.—Rep. 4 W. 4, c. 25.
5. Grant for Roads, Johnstown and Newcastle Districts.—Effete.
6. Shop Licenses, Spirituous Liquors.—Exp.
7. Supplies.—Effete.
8. Township Officers.—Rep. 5 W. 4. c. 8.—1 V. c. 21.
9. Supplies.—Effete.
10. CRIMINAL LAW.—Consol.
11. Seditious Meetings.—Rep. 60 G. 3, or 1 G. 4. c. 4.
12. Forfeited Estates.—L.
13. PRACTICE of Physic and Surgery.—s. 2, 4, Consol.—ss. 3, 5 Rep. 8 G. 4. c. 3.—59 G. 3, c. 2.
14. Boundary Lines.—Rep. 12 V. c. 35, s. 1.
15. Marriages.—O.
16. Light Houses and Tonnage duties.—Rep. 14, 15 V. c. 52. To be expressly repealed.
17. Wholesale Licenses, Spirituous Liquors.—Exp.
18. Grant for survey of St. Lawrence River.—Rep. 2 G. 4, c. 2, 1st Sessn.
19. Grant for remuneration of certain persons.—Effete.

## 59 GEORGE III.—(2nd Session.)

Caps.

1. Import duties, United States.—Exp.
2. PHYSIC and Surgery.—Consol.
3. CONVEYANCES by married women.—Consol.
4. District Schools.—Rep. 16 V. c. 186.
5. Town of Niagara.—Rep. 12 V. c. 80.
6. Excise duty on Stills.—Exp.
7. Assessment and Rates.—Rep. 13, 14 V. c. 66.
8. Highways.—Rep. 13, 14 V. c. 66.
9. Court of Requests.—Rep. 2 G. 4, c. 2, 2nd Sessn.
10. Supplies.—Effete.
11. Niagara Market.—Rep. 12 V. c. 80.
12. Militia.—Rep. 1 V. c. 8.
13. Payment of Inspector General.—Effete.
14. Grant to provide accommodation for the Provincial Legislature.—Effete.
15. Incorporation of Bank of Kingston.—Effete.
16. Grant for obtaining plans of Public Buildings.—Effete.
17. Travelling on highways.—Rep. 16 V. c. 189.—18 V. c. 138.

59 GEORGE III.—(2nd Session)—Continued.

Caps.

18. Heir and Devisee claims.—Rep. 8 V. c. 8.
19. Supplies.—Effete.
20. Relief to Chapin Abner.—Effete.
21. Relief to John Wagstaff.—Effete.
22. Ports of Entry.—Exp.
23. Returning Officers of Counties.—Exp.
24. Bank of Upper Canada incorporated.—P.
25. Joint Contractors, Obligors, &c.—Rep. 19 V. c. 43, s. 318.

1 GEORGE IV.

Caps.

1. Trade regulation with United States.—Rep. 2 G. 4, c. 1, 1st Sessn.
2. PARLIAMENTARY Representation.—Consol. Joint.
3. Supplies.—Effete.
4. Seditious Meetings.—Effete.
5. Inspection of Flour and Ashes.—Rep. 4, 5 V. c. 89.
6. Remuneration to John Beikie.—Effete.
7. Common Schools.—Rep. 4, 5 V. c. 18.

2 GEORGE IV.—(1st Session.)

Caps.

1. Trade regulation with United States.—Exp.
2. Grant for improvement of Internal Navigation.—Effete.
3. DIVISION of the Province, Counties, &c.—Consol. except ss. 2, 4, 5, 6, 10, 11.
4. MILITIA PENSIONS.—Consol.
5. Militia Pensions, Loans for arrears.—Effete.
6. Forfeited Estates.—O.
7. Sheriff's Mileage.—Rep. 16 V. c. 175, s. 13.—20 V. c. 57, s. 28. See 19, 20 V. c. 43.
8. Spirituous Liquors.—Rep. 22 V. c. 99. (1858.)
9. Outlawry.—Exp.
10. Preservation of Salmon.—Rep. 8 V. c. 47.
11. ILLEGAL Solemnization of Marriages.—Consol.
12. PROMISSORY NOTES and Bills for small sums.—Consol.
13. Currency, New York.—Effete. To be expressly repealed.
14. CONVEYANCES by Married Women.—Consol.
15. Tonnage duty.—Rep. 14, 15 V. c. 52.
16. Quarter Sessions in Home District.—Rep. 4 G. 4, c. 20.
17. Preservation of Deer.—Rep. 2 V. c. 12. And see 19, 20 V. c. 94.
18. Spirituous Liquors.—Exp.
19. Supplies for remuneration of certain persons.—Effete.
20. Pension to Elizabeth Lawe.—Effete.
21. Remuneration to Surveyor General.—Effete.
22. Supplies.—Effete.
23. Supplies.—Effete.
24. District Treasurers.—Effete.
25. Grant for opening Ottawa River.—Effete.
26. Provision for Clerk of Crown in Chancery.—Exp.
27. Speaker's Salary.—Effete.
28. Relief to John Wagstaff.—Effete.

2 GEORGE IV.—(1st Session)—*Continued.*

Caps.

29. York Roman Catholic Congregation.—P.
30. Relief to Jno. Blanchard and Edmund Mott.—Effete.
31. Relief to Samuel Hull and Esther Plets.—Effete.
32. TYTHES.—Consol.

## 2 GEORGE IV.—(2nd Session.)

Caps.

1. COMMON Law Courts, K. B.—(Consol. s. 44. Rep. 20 V. c. 63, Sch.) s. 15.—Rep. 22 V. c. 96, (1858.)
2. District Courts.—Rep. 8 V. c. 13.
3. Militia.—Exp.
4. Certain persons disqualified, House of Assembly.—Rep. 4 G. 4, c. 3, 2nd Sessn.
5. PRACTICE of Law, Law Society.—Consol. S. 3, Rep. 20 V. c. 63.
6. Gaol Limits.—Rep. 11 G. 4, c. 3.
7. Bank of Upper Canada.—P.
8. Weekly allowance, Insolvent Debtors.—Rep. 19 V. c. 43, s. 318.
9. Sheriffs.—Exp.
10. Appointment of Provincial Agent.—Effete.
11. Cattle running at large.—Rep. 12 V. c. 80.
12. Withdrawal of claims, Forfeited Estates.—Exp.
13. Police in Towns.—Rep. 12 V. c. 80.
14. Osnabruck Township.—L.
15. Market Town of Perth.—12 V. c. 80.
16. Remuneration to Surveyor General.—Rep. 8 V. c. 11.
17. Hemp, grant to purchase Machinery, &c.—Effete.
18. Supplies.—Effete.
19. Commissioners appointed for certain purposes.—Effete.
20. Grant for expenses of Commissioner.—Effete.
21. Midland District.—Effete.
22. William Weeks.—P.
23. Relief of John Crysler.—Effete.
24. Militia Pension to Peter Miller.—P.
25. Militia Pension to John White.—P.
26. Supplies.—Effete.
27. Remuneration of Commissioners, Upper and Lower Canada.—Effete.

## 4 GEORGE IV.—(1st Session.)

Caps.

1. Internal Navigation.—Exp.
2. Courts in Bathurst District.—Effete.
3. Reporter's King's Bench.—Rep. 3 V. c. 2.—18 V. c. 128.
4. War Losses, appointment of Commissioners.—Exp.
5. Militia.—Rep. 1 V. c. 8.
6. Salary to Adjutant General of Militia.—Rep. 18 V. c. 77.
7. Heir and Devisee claims.—Rep. 8 V. c. 8.
8. Construction of Burlington Bay Canal.—Rep. 9 V. c. 37.
9. Improvement of Inland Navigation.—Exp.
10. Importation of Machinery.—Exp.
11. Bank of Upper Canada.—P.
12. Supplies.—Effete.

## 4 GEORGE IV.—(1st Session)—Continued.

Caps.

13. Distillers.—Rep. 9 V. c. 2.
14. Supplies.—Effete.
15. Spirituous Liquors.—Rep. 16 V. c. 184, See 7 W. 4, c. 28.
16. WEIGHTS and Measures.—Consol.—part Rep. 12 V. c. 85.
17. Auctioneers.—Exp.
18. Hawkers and Pedlars.—Exp.
19. Supplies.—Effete.
20. Preservation of Salmon.—Rep. 8 V. c. 47.
21. Allowance to Rev. R. Addison.—Effete.
22. Bank of Upper Canada, pretended.—Rep. 10 G. 4, c. 7.
23. Gaol and Court House, London District.—Exp.
24. Gaol and Court House, Home District.—Exp.
25. Grant for Sheriff's salary, Bathurst District.—Exp.
26. Supplies.—Effete.
27. School Grant for Bathurst District.—O.
28. Grant for Public School in Ottawa District.—Effete.
29. Relief of George Delong and others.—Effete.
30. Quarter Sessions in Home District.—Rep. 7 W. 4, c. 11.
31. St. George's Church, Kingston.—P.
32. Relief of Mathew Crooks.—Exp.
33. Relief of John Boswell.—Exp.
34. Town of Niagara.—Rep. 12 V. c. 80.
35. Cramahe Township.—L.
36. Common School Teachers in Niagara District.—Effete.
37. Burlington Bay Herring Fishery.—Rep. 6 W. 4, c. 15.
38. Ameliasburg divided into two Townships.—L.

## 4 GEORGE IV.—(2nd Session.)

Caps.

1. Trade regulation with United States.—Rep. 10, 11 V. c. 1
2. Returning Officers of Counties.—Effete.
3. Elections for Assembly.—Rep. 12 V. c. 27.
4. Controverted Elections.—Rep. 14, 15 V. c. 1.
5. Carleton County divided into Carleton and Lanark.—L.
6. Inland Navigation.—Effete.
7. Census.—Rep. 5 W. 4, c. 8.
8. Grant for Common Schools.—Rep. 4, 5 V. c. 18.—12 V. c. 83.
9. Highways.—Rep. 13, 14 V. c. 66.
10. Highways.—Rep. 13, 14 V. c. 66.
11. Custom duties, imports from United States.—Rep. 10, 11 V. c. 31.
12. Remuneration to Commissioner of Customs.—Rep. 10, 11 V. c. 31.
13. Banks.—Exp.
14. Printing of Provincial Statutes.—Effete.
15. Internal Navigation.—Exp.
16. Burlington Bay Canal.—Rep. 9 V. c. 37.
17. Welland Canal Company.—L.
18. Innkeepers' Licenses, Spirituous Liquors.—Effete. to be expressly repealed.
19. Shop Licenses, Spirituous Liquors.—Rep. 16 V. c. 184, and expired.
20. King's Bench Terms.—Rep. 6 G. 4, c. 1.
21. Bank of Upper Canada, pretended.—Rep. 10 G. 4, c. 7.
22. Provisional Agreement between Upper and Lower Canada.—Effete.
23. Grant for Arbitrators expenses, Upper and Lower Canada.—Effete.

## 4. GEORGE IV.—(2nd Session)—Continued.

Caps.

24. Loan to the Province.—Effete.
25. Supplies.—Effete.
26. Supplies.—Effete.
27. Salary of Adjutant General of Militia.—Rep. 18 V. c. 77.
28. Militia pension to James Carrol.—Effete.
29. Supplies.—Effete.
30. Town of Kingston.—Rep. 1 V. c. 27.
31. Relief to Hiram Spafford.—Effete.
32. Loan, Midland District.—Effete.
33. Gaol and Court House, Home District.—Effete.
34. York Presbyterian Congregation.—L.
35. Johnstown District.—Effete.
36. Relief to Jno. Putman Clement.—Effete.
37. James Miles conveyance of land by.—P.

## 6. GEORGE IV.

Caps.

1. King's Bench Terms.—Rep. 7 W. 4, c. 1.
2. Welland Canal Company.—Effete.
3. Supplies.—Effete.
4. Gaol and Court House Loan, Home District.—Effete
5. Ancaster and Flamboro'.—L.
6. Assize of Bread.—Rep. 12 V. c. 81, s. 60.
7. Assessments and Rates.—Rep. 13, 14 V. c. 66, s. 1. Vide Page 679.

## 7 GEORGE IV.

Caps.

1. Grant for relief of Sufferers by fire, New Brunswick.—Effete.
2. Bastard Children.—Disallowed, See 2 W. 4, c. 1.
3. Sentence of Death.—Rep. 4, 5 V. c. 24, ss. 33, 34.
4. Currency.—Rep. 6 W. 4, c. 27.—4, 5 V. c. 93.
5. Patents for Invention.—Rep. 14. 15 V. c. 79.
6. MILITIA PENSIONS.—Consol.
7. Gaol Limits.—Rep. 11 G. 4, c. 3.
8. Accidents by Fire.—Rep. 4, 5 V. c. 43.
9. Grant for Gibraltar Point Light House.—Effete.
10. Tax on Dogs in Towns.—Exp.
11. Fermented Liquors.—Exp.
12. Town of Kingston.—Rep. 1 V. c. 27.
13. London District.—L.
14. Gaol and Court House in London District.—L.
15. Re-survey Townsend Township.—L.
16. Survey of part of Fredericksburg.—L.
17. Protection of Inhabitants of Middlesex.—Exp.
18. Desjardins Canal Company.—L. P.
19. Welland Canal Company.—L. P.
20. Loan to Welland Canal Company.—L. P.
21. Toronto General Burying Ground.—L. P.
22. Relief to James Edward.—P.
23. Relief to Leonard Soper.—P.



7 GEORGE IV—Continued.

Caps.

24. Grant to encourage manufacture of paper.—Effete.
25. Highways.—Effete.
26. Supplies.—Effete.
27. Supplies.—Effete.
28. Legislature, grant for buildings.—Effete.
29. Lower Canada, grant for service of Arbitrator and Secretary.—Effete.
30. Grant for completing monument of Sir Isaac Brock.—Effete.
31. Grant for deepening Burlington Bay.—Effete.

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8 GEORGE IV.

Caps.

1. Rideau Canal.—L.
2. Aid to Welland Canal Company.—L.
3. PHYSIC and Surgery.—Consol.
4. District Accounts.—Effete.
5. Controverted Elections.—Rep. 14, 15 V. c. 1.
6. GUARDIANS.—Consol. except ss. 4, 5, 6, Rep. 22 V. c. 93, (1858.)
7. Fees, Justices of the Peace.—Exp.
8. Further relief of Insolvent Debtors.—Rep. 19, 20 V. c. 43, s. 318.
9. Gaol Limits.—Rep. 11 G. 4. c. 3.
10. Sheriff's Salaries.—Exp.
11. Alehouses.—Rep. 13, 14 V. c. 65, to be repealed expressly.
12. Cataraqi Bridge Company.—L. P.
13. Gore District.—L.
14. Street Surveyors.—Rep. 12 V. c. 80.
15. Eastern District.—L.
16. Chauncey Beadle.—Effete.
17. Aid to Welland Canal Company.—L.
18. Construction of Kettle Creek Harbour.—Rep. 9 V. c. 37.
19. Grant for Burlington Bay Canal.—Effete.
20. Patent for invention, James Radcliffe.—Effete.
21. Atkinson, James, conveyance of land to Trustees.—L. P.
22. McLawrin, J., conveyance of land to Trustees.—L. P.
23. Grant for Bridge across Otonabee River.—Effete.
24. Supplies.—Effete.
25. Supplies.—Effete.

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9 GEORGE IV.

Caps.

1. Forfeited Estates.—L.
2. RELIGIOUS SOCIETIES, lands for sites for Churches.—Consol. See 3 V. c. 73.
3. Assessments.—Rep. 13, 14 V. c. 66.
4. APRONS to Mill Dams.—Consol.
5. Road Surveyors.—L.
6. Ernestown and Gore of Fredericksburg.—L.
7. Erection of False Ducks Light-House.—Effete.
8. Hawkers and Pedlars.—Rep. 16 V. c. 184.
9. Distillers, duty on.—Effete.
10. Auction duties.—Effete.

9 GEORGE IV—*Continued.*

Caps.

11. Bank of Upper Canada, pretended.—Rep. 10 G. 4. c. 7.
12. Burlington Bay Harbour.—Rep. 9 V. c. 37.
13. Finance Loan from Imperial Government.—Effete.
14. Supplies.—Effete.
15. Supplies.—Effete.
16. Grant for Map of Rideau Canal.—Effete.
17. Repayment of money to John Mathews.—Effete.
18. Eliza Thompson and others, claims to forfeited estates.—Effete.
19. Construction of Harbour, Oakville or Sixteen Mile Creek.—L.
20. Will of Quetton St. George.—Disallowed.
21. Naturalization of Aliens.—O.

## 10 GEORGE IV.

Caps.

1. **QUAKERS**, Menonists and Tunkers.—Consol. s. 3, rep. 14, 15 V. c. 65, s. 2.
2. Detention of Debtors.—Exp.
3. Indians on River Credit.—Exp.
4. Heir and Devisee claims.—Rep. 8 V. c. 8.
5. Seditious attempts.—Effete.
6. Ottawa District General Quarter Sessions.—Rep. 7 W. 4, c. 11.
7. Bank of Upper Canada, pretended.—Rep. or effete. 6 W. 4, c. 22.—  
4, 5 V. c. 51.
8. Northumberland County.—L.
9. Niagara Canal Company.—L. P.
10. Forfeited Estates.—O.
11. Cobourg Harbour Company.—L. P.
12. Port Hope Harbour and Wharf Company.—L. P.
13. Line fixed for Lancaster Township.—L.
14. Survey of part of Oxford Township.—L.
15. Dundas and Waterloo Turnpike Company.—Exp.
16. Cataraqui Bridge Company.—L. P.
17. Incorporation of Free Church in Dundas.—L.
18. York Methodist Church.—L.
19. Lunacy Commission for Peter Vanalstine.—Private.
20. Grant for Long Point Light-House.—Effete.
21. Grant for False Ducks Island Light-House.—Effete.
22. Supplies.—Effete.
23. Daniel Erb, and others, enabled to hold lands.—P.

## 11 GEORGE IV.

Caps.

1. **APPROPRIATION** of Fines.—Consol.
2. Gaol Limits.—Rep. 11 G. 4, c. 3.
3. Gaol Limits.—Rep. 19 V. c. 43, s. 318.
4. Indigent Debtors.—Superseded 20 V. c. 57, s. 23, and 13, 14 V. c. 53, s.  
89. To be expressly repealed.
5. **LAW** of Set off extended.—Consol.
6. Currency.—Rep. 6 W. 4, c. 27.—4, 5 V. c. 93.
7. Overseers of Highways and Poundkeepers.—Rep. 5 W. 4, c. 8.
8. General Quarter Sessions, Niagara District.—Rep. 3 W. 4, c. 22.—  
7 W. 4, c. 11.

11 GEORGE IV—Continued.

Caps.

9. Inkeepers Licenses.—Rep. 13, 14 V. c. 65.—16 V. c. 184. To be expressly repealed.
10. Agricultural Societies.—Exp.
11. Aid to Welland Canal Company.—Effete.
12. Aid to Burlington Bay Canal.—Rep. 9 V. c. 37.
13. Trustees of Grantham Company, incorporated.—O.
14. Grant for Highways and Bridges.—Effete.
15. Survey of Cornwall Township confirmed.—L.
16. Survey of 5th concession line of Yonge Township corrected.—L.
17. Destruction of Wolves.—Exp.
18. Pension to Charlotte Pomeroy.—Private.
19. Finance Loan authorized.—Effete.
20. INSANE DESTITUTES.—Consol.
21. Grant for War losses.—O. Sec. 5, Rep. 4, 5 V. c. 14.
22. Loan authorized for War losses.—Rep. 3 W. 4, c. 25.
23. Militia Pensions.—Effete.
24. Grant and Loan for Highways.—Effete.
25. Supplies.—Effete.
26. Grant for Don and Humber Bridges.—Effete.
27. Grant for Burlington Bay Canal.—Effete.
28. Grant for erection of Long Point Light-House.—Effete.
29. Gaol and Court House in Eastern District.—Effete.
30. Grant for Road between River aux Perches and Townsend.—Effete.
31. Aid to York Hospital.—Effete.
32. Aid to Kingston Female Benevolent Society.—Effete.
33. Relief to Samuel Theal.—Effete.
34. Patent to Thomas Horner for thrashing machine.—Effete.
35. Jno. Eastwood and Colin Skinner, remission of custom duties.—Effete.
36. MARRIAGES.—Consol. Stet. ss. 1, 2.

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1 WILLIAM IV.

Caps.

1. VARIANCES.—Consol.
2. CONVEYANCES by Married Women.—Consol. Stet. s. 3.
3. Market in Amherstburg established.—Rep 12 V. c. 80.
4. Gaol and Court House, Eastern District.—Effete.
5. Completion of Newcastle District Gaol and Court House.—Effete.
6. Erection of Prince Edward District.—L.
7. Naturalization of Aliens.—O.
8. Saltfleet and Binbrook.—L.
9. Market in Town of York.—Rep. 4 W. 4, c. 23.
10. Tay Navigation Company.—L. P.
11. Marmora Foundry Company.—Rep. 16 V. c. 253.
12. Niagara Harbour and Dock Company.—L.
13. Supplies.—Effete.
14. Salary of Receiver General.—Effete.
15. Salary of Clerk of the Crown in Chancery.—Exp.
16. Highways and Bridges.—Effete.
17. Welland Canal.—Effete.
18. Grant for Improvement of River aux Raisins.—Effete.
19. Highways and Bridges.—Effete.
20. Burlington Bay Canal.—Effete.

## 1 WILLIAM IV—Continued.

Caps.

21. Thames River.—Effete.
22. Supplies.—Effete.
23. York Hospital.—Effete.
24. Oakville Harbour.—Effete.
25. Kettle Creek Harbour.—Effete.
26. Quetton St. George, estate vested in W. W. Baldwin.—P.

## 2 WILLIAM IV.

Caps.

1. BASTARDS.—Consol.
2. LAKES and Rivers.—Consol.
3. Commissioners of Customs.—Rep. 10, 11 V. c. 31.
4. JUSTICES of the Peace.—Consol.
5. Absconding Debtors.—Rep. 19, 20 V. c. 43, s. 318.
6. STOCK in Companies.—Consol.
7. Aliens.—O.
8. King's Bench.—Rep. 7 W. 4, c. 1, s. 6.—I. S. 3, 4 V. c. 35, s. 44,—See 4 W. 4, c. 8.
9. Home District.—Effete.
10. Bank of Upper Canada.—P.
11. Commercial Bank.—P.
12. Niagara Canal Company.—L. P.
13. Grand River Navigation Company.—L. P.
14. Port Dover Harbour Company.—L. P.
15. Port Burwell Company.—L. P.
16. Prince Edward District.—L.
17. Brockville.—Rep. 12 V. c. 80.
18. Carlton and Lanark.—Effete.
19. Niagara Township.—L.
20. Spirituous Liquors.—Rep. 16 V. c. 184.
21. Alehouses.—Effete.
22. Cobourg Harbour Company.—Effete.
23. Port Hope Harbour Company.—Effete.
24. Desjardins Canal Company.—Effete.
25. Nicholson's Island and Ducks Lighthouse.—Effete.
26. Burlington Bay Canal.—Effete.
27. Supplies.—Effete.
28. Kingston Hospital.—Effete.
29. York Hospital.—Effete.
30. Provincial Penitentiary.—Effete.
31. Highways and Bridges.—Effete.
32. War Losses.—Effete.
33. Supplies.—Effete.
34. Emigrants.—Effete.
35. PARTITION of Real Estate.—Consol.

## 3 WILLIAM IV.

Caps.

1. Court of Requests.—Rep. 4, 5 V. c. 3.
2. PRISONERS, Witnesses.—Section 8, Consol. residue Rep. 4, 5 V. c. 24.—16 V. c. 179.—14, 15 V. c. 96.

3 WILLIAM IV—*Continued.*

Caps.

3. CAPITAL OFFENCES.—Consol. See 4, 5 V. c. 24, 25, 26, 27.
4. CORRUPTION of Blood.—Consol.
5. Outlawry.—Effete.
6. FUGITIVE OFFENDERS.—Consol.
7. CORPORATIONS.—Consol. s. 3, Rep. 7 W. 4, c. 9.
8. SHERIFFS.—Consol.
9. DOWER.—Consol.
10. Controverted Elections.—Rep. 14, 15 V. c. 1.
11. Returning Officers of Counties.—Rep. 12 V. c. 27.
12. Official Oaths.—Rep. 13, 14 V. c. 18.
13. Spirituous Liquors.—Effete.
14. Niagara District.—L.
15. York and Lincoln.—Effete.
16. Town of Hamilton.—Rep. 12 V. c. 80.
17. St. Lawrence River.—Rep. 9 V. c. 37.
18. British America Fire Insurance Company.—P.
19. St. Lawrence Marine Insurance Company.—P.
20. St. Catharines Salt Company.—P.
21. Grand River Navigation Company.—L.
22. Louth Harbour Company.—L.
23. Prince Edward District.—Effete.
24. Eastern District.—Effete.
25. War Losses.—Effete.
26. War Losses, grant for.—Effete.
27. Police in York, Sandwich and Amherstburg.—Rep. 4 W. 4, c. 23
28. THAMES RIVER.—Consol.
29. WHITE FISH Fisheries.—Consol. part rep. 22 V. c. 86, (1858.)
30. Brantford.—L.
31. Toronto Harbour.—Rep. 9 V. c. 37.
32. Newcastle District.—Rep. 9 V. c. 37.
33. Trent River.—Rep. 9 V. c. 37.
34. LIGHTHOUSES.—Consol.
35. Nine Mile Point, Kingston Lighthouse, grant.—Effete.
36. Burlington bay Canal.—Effete.
37. Town of York.—Effete.
38. North Gwillimbury.—L.
39. Point Pelé Island.—L.
40. Market in Brockville.—Rep. 12 V. c. 80.
41. Thames River.—L. P.
42. Commercial Bank.—P.
43. PROVINCIAL PENITENTIARY.—All Effete except Sec. 3, Consol.
44. Hawkers and Pedlars.—Effete.
45. DESTITUTE INSANE.—Consol.
46. Gibraltar Point Lighthouse.—Effete.
47. Boards of Public Health.—Exp.
48. Supplies.—Effete.
49. Supplies.—Effete.
50. Parliamentary Buildings.—Effete.
51. Emigrants at Prescott.—Effete.
52. York Hospital.—Effete.
53. Cholera expenses.—Effete.
54. Welland Canal.—L. and. O.
55. Common Schools.—Effete.
56. Cholera expenses.—Effete.

## 3 WILLIAM IV—Continued.

Caps.

57. Remuneration to J. H. Dunn.—Effete.
58. Finance Loan.—O.
59. Highways and Bridges.—Effete.
60. M. Merrick, and other aliens, naturalized.—P.

## 4 WILLIAM IV.

Caps.

1. REAL PROPERTY.—Consol.
2. JUDGES, K. B.—Consol.
3. Mesne Process.—Rep. 19, 20 V. c. 43, s. 318.
4. PETTY TRESPASS.—Consol.
5. BAIL.—Consol.
6. Debtors.—Rep. 8 V. c. 13.
7. REPLEVIN.—Consol.
8. King's Bench.—Effete.
9. Attorney and Solicitor General.—Rep. 20 V. c. 63.
10. Gaol limits.—Rep. 19, 20 V. c. 43, s. 318.
11. Township Officers.—Rep. 5 W. 4, c. 8.
12. Fences, lines and watercourses.—Rep. 8 V. c. 20.—12 V. c. 80.
13. Menonists and Tunkers.—Rep. 1 V. c. 8.—2 V. c. 9.
14. Elections.—Rep. 12 V. c. 27.
15. Northumberland and Durham.—Rep. 14, 15 V. c. 5.
16. Releases of Mortgage.—Rep. 9 V. c. 34, s. 24.
17. Justices of the Peace.—Rep. 14, 15 V. c. 119.
18. Spirituous liquors.—Rep. 22 V. c. 99, s. 403.
19. Township Sophiasburg.—L.
20. Gore between Fredericksburg and Ernestown.—L.
21. Louth.—L.
22. Niagara Canal.—L.
23. Toronto.—Rep. 12 V. c. 80.
24. Belleville.—Rep. 12 V. c. 80 ; 6 W. 4, c. 14.
25. Cornwall.—Rep. 12 V. c. 80.
26. Port Hope.—Rep. 12 V. c. 80.
27. Prescott.—Rep. 12 V. c. 80.
28. Cobourg Railroad Company.—L. P.
29. London and Gore Railroad Company.—L. P.
30. Port Hope and Rice Lake Canal Company.—Exp.
31. Richmond Canal Company.—Exp.
32. Credit Harbor Company.—L. P.
33. Bath School Society.—L.
34. Hamilton and Port Dover Road.—L. P.
35. Long Point Piers.—Effete.
36. Tunks, Richard, Mill-dam across river Thames.—L. P.
37. Provincial Penitentiary.—Rep. 9 V. c. 4.
38. Provincial Penitentiary.—Effete.
39. Welland Canal.—L.
40. St. Lawrence River.—Rep. 9 V. c. 37, s. 39.
41. Auctioneers' Licenses.—Effete.
42. Tay Navigation Company.—Effete.
43. Dunnville.—Rep. 9 V. c. 37, s. 39.
44. Paris.—Rep. 9 V. c. 37.
45. Upper and Lower Canada Arbitrator.—Rep. 9 V. c. 37.

## 4 WILLIAM IV—Continued.

Caps.

46. Kingston Female Benevolent Society.—Effete.
47. Highways and Bridges.—Effete.
48. Roads and Bridges.—Effete.
49. Distillers.—Effete.
50. Spirituous Liquors.—Effete. To be expressly repealed.
51. Supplies.—Effete.
52. Supplies.—Effete.
53. Finance.—Effete.
54. E. H. Spalding and others, naturalized.—P.
55. London District.—Rep. 14, 15 V. c. 5.
56. Canboro' and Simcoe Road.—Exp.

## 5 WILLIAM IV.

Caps.

1. BILLS of Exchange and Promissory Notes.—Consol.
2. ERROR.—Consol.
3. Imprisonment for Debt.—Rep. 19 V. c. 43, s. 318.
4. District Courts.—Rep. 8 V. c. 13.
5. Absconding Debtors.—Rep. 19 V. c. 43.
6. House of Assembly.—Rep. 12 V. c. 80.
7. Grain.—Rep. 16 V. c. 193.
8. Township Officers.—Effete.
9. Indians.—Exp.
10. PUBLIC HEALTH.—Consol.
11. Agricultural Societies.—Exp.
12. Light-houses.—Exp.
13. Road Acts.—Exp.
14. Stony Creek Harbor Company.—L. P.
15. Saltfleet Salt Company.—L. P.
16. Grimsby Breakwater.—L.
17. Hamilton and Port Dover Railroad Company.—L. P.
18. Cayuga Glass Manufacturing Company.—L.
19. Erie and Ontario Railroad Company.—L. P.
20. King Township.—L.
21. Wolford Township.—L.
22. Niagara District, Quarter Sessions.—Rep. 7 W. 4, c. 11.
23. Port Dover Harbor Company.—L. P.
24. Welland Canal.—L. P.
25. Prince Edward District.—Exp.
26. Norwich Township.—L.
27. Indians.—Exp.
28. Supplies.—Effete.
29. Common Schools.—Effete.
30. Steam Dredge Machine.—Effete.
31. Finance Loan.—L.
32. Cholera Expenses.—Effete.
33. Supplies.—Effete.
34. Desjardins Canal.—L. P.
35. Remuneration to D. S. Howard for Trent Bridge.—Effete.
36. MILITIA PENSIONS.—Consol.
37. False Ducks Lighthouse.—Effete.
38. Mechanics' Institute, Toronto.—Effete.

## 5 WILLIAM IV—Continued.

Caps.

39. Heartley's Point.—Effete.
40. Mechanics' Institute, Kingston.—Effete.
41. Gull Island.—Effete.
42. Provincial Penitentiary.—Effete.
43. Cobourg Harbor Company.—Effete.
44. County of Leeds.—Exp.
45. Commercial Bank.—P.
46. Gore Bank.—P.
47. Relief of heirs of Peter Desjardins.—P.

## 6 WILLIAM IV.

Caps.

1. Wages of Members of Assembly.—Rep. 12 V. c. 80.
2. Township Officers.—Rep. 1 V. c. 21.
3. PUBLIC LANDS.—Consol.
4. Spirituous Liquors.—Rep. 13, 14 V. c. 65.—16 V. c. 184. See 14, 15 V. c. 120. To be expressly repealed.
5. Toronto and Lake Huron Company.—L.
6. Niagara and Detroit Railway Company.—L. P.
7. Burlington Bay and Lake Huron Railway.—L. P.
8. Gananoque and Wiltsie Navigation Company.—L. P.
9. Toronto Gas Light Company.—L. P.
10. Cayuga Bridge Company.—L. P.
11. Hamilton Water Works.—L. P.
12. Niagara River Suspension Bridge Company.—L. P.
13. Brockville.—Rep. 12. V. c. 80.
14. Belleville.—Rep. 12 V. c. 80.
15. FISHERY in Burlington Bay.—Consol.
16. Rideau Canal.—L.
17. Port Hope Harbor and Wharf Company.—L. P.
18. MUTUAL Insurance Companies.—Consol.
19. Cobourg Railroad Company.—L. P.
20. British America Fire Insurance Company.—L.
21. Road Acts.—Effete.
22. Bank of Upper Canada, pretended.—P.
23. Newcastle District.—L.
24. Thames River.—L.
25. Admission as Attorney, &c., of William Keele.—Effete.
26. Allowance to Andrew Deacon.—Effete.
27. Currency.—Rep. 4, 5 V. c. 93.
28. West Gwillimbury.—L.
29. DESTRUCTION of Wolves.—Consol.
30. Home District.—Effete.
31. Supplies.—Effete.
32. Leeds County.—Exp.
33. Highways and Bridges.—Effete.
34. Welland Canal.—Effete.
35. Newcastle Inland Navigation.—Rep. 9 V. c. 37.
36. Rouge River.—Effete.
37. War Losses.—Effete.
38. Provincial Penitentiary.—Rep. 9 V. c. 4.
39. Light-houses.—Effete.



6 WILLIAM IV—*Continued.*

Caps.

40. Bois Blanc Island Light-house.—Effete.
41. Gibraltar Point Light-house.—Effete.
42. Steam Dredge.—Effete.
43. Gull Island Light-house.—Effete.
44. FELONS.—Consol.
45. Militia Pension to Jno. McMillan.—P.
46. Relief to John Pearse and others.—Effete.
47. Ottawa District.—Effete.
48. Common Schools.—Effete.

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7 WILLIAM IV.

Caps.

1. KING'S BENCH.—Consol.
2. COURT of Chancery.—Consol. Except ss. 1, 2.
3. AMENNDMENT OF LAW.—Consol. Except s. 1.
4. LARCENY.—Consol.
5. BILLS of Sale, Exchange and Promissory Notes.—Consol.
6. CRIMINAL OFFENCES.—Consol.
7. CONVICTS.—Consol.
8. SEDUCTION.—Consol.
9. CORPORATIONS.—Consol.
10. ESTREATS.—Consol.
11. GENERAL Quarter Sessions.—Consol. Except ss. 1 and 3.
12. Courts of Requests.—Rep. 4, 5 V. c. 3 ; 8 V. c. 37.
13. Private Banks.—Rep. 13, 14 V. c. 21.
14. STATUTES.—Consol. Except s. 14 to 20, so far as applicable to any Corporations.
15. PRACTICE of Law.—Consol. secs. 1, 3 and 4, Rep. 20 V. c. 63, Stet. s. 2.
16. King's College.—Rep. 12 V. c. 82.
17. Demise of Crown.—Effete.
18. DISTRICT FUNDS.—Consol.
19. Taxes.—Rep.—13, 14 V. c. 66.
20. Township Officers.—Rep. 1 V. c. 21.
21. Franking Letters.—Disallowed.
22. NAVIGATION Consol Joint Except.—s. 2, 4, 5. Rep. 22. V. c. 19, (1859.)
23. Agricultural Societies.—Exp.
24. Houses of Industry.—Rep. 12 V. c. 80 ; 22 V. c. 99, (1858.)
25. Imports from United States.—Rep. 8 V. c. 4 ; 10, 11 V. c. 31.
26. Public Health.—Effete.
27. Spirituous Liquors.—Effete.
28. Ale-houses.—Effete.
29. Insane Destitute.—Effete.
30. Brock District.—L.
31. Victoria District.—L.
32. Simcoe County.—L.
33. Talbot District.—L.
34. Bank of British North America.—P.
35. Bank of Montreal.—P.
36. William Johnson.—P.
37. John White.—P.
38. Ottawa District.—L.
39. Toronto City.—Rep. 12 V. c. 80.

## 7 WILLIAM IV—Continued.

Caps.

40. Home District.---L.
41. Toronto City.---Rep. 12 V. c. 50.
42. Cobourg Police.---Rep. 12 V. c. 80.
43. Kingston Fire.---Rep. 1. V. c. 27.
44. Hallowell and Picton.---Rep. 12 V. c. 80.
45. St. Lawrence River Navigation.---Rep. 9 V. c. 37, s. 39.
46. Fort Erie Canal Company.---P. L.
47. Grafton Harbor Company.---P. L.
48. Colborne Harbor Company.---P. L.
49. Port Darlington Harbor Company.---P. L.
50. Goderich Harbor.---P. L.
51. Beverley Navigation Company.---P. L.
52. London and Devonport Railroad Company.---P. L.
53. Newcastle Inland Navigation.---Rep. 9 V. c. 37.
54. Lyndhurst Mining Company.---P. L.
55. Caledonia Mineral Springs Company.---P. L.
56. Regiopolis College, Kingston.---P. L.
57. Ottawa Survey.---Effete.
58. Chatham and Camden.---L.
59. Saltfleet and Binbrook.---L.
60. Toronto and Lake Huron Railroad Company.---P. L.
61. London and Gore Railroad Company.---P. L.
62. Great Western Railroad, aid to.---Rep. 8 V. c. 86.
63. Great Western Railroad, and Toronto and Lake Huron, aid to.---Rep. 8 V. c. 86.
64. Toronto Harbor.---Rep. 9 V. c. 37.
65. Desjardin's Canal Company.---L. P.
66. Trent River Navigation.---Rep. 9 V. c. 37.
67. Louth Harbor Company.---P. L.
68. Erie and Ontario Railroad Company.---P. L.
69. Gananoque and Wiltsie Navigation Company.---P. L.
70. Credit Harbor Company.---P. L.
71. Whitby Harbor.---Effete.
72. Port Burwell Harbor Company.---P. L.
73. Grand River Navigation Company.---L. and P.
74. Cobourg Railroad Company.---P. L.
75. Tay Navigation Company.---P. L.
76. Yonge Street.---Effete.
77. Hurontario Street.---P. L.
78. Hamilton and Brantford.---Effete.
79. Dundas and Waterloo.---L.
80. Johnstown District.---L.
81. Kingston and Napanee.---L.
82. Queenstown and Grimsby.---L.
83. Chatham Bridge.---Rep. 9 V. c. 37. See 3 V. c. 51, s. 4.
84. Loan to Grantham Academy.---P.
85. Dunville Bridge.---Effete.
86. Port Dover Harbor Company.---P. L.
87. Rouge-River-Hill.---Effete.
88. Gull Island.---Effete.
89. War Losses.---Effete.
90. Provincial Penitentiary.---Effete.
91. Burlington Bay Canal.---Rep. 9 V. c. 37.
92. Welland Canal.---P. L.

7 WILLIAM IV—Continued.

Caps.

93. Thames River.---Effete.
94. South Petite Nation River.---Effete.
95. Grant for Light-houses.---Rep. 14, 15 V. c. 52.
96. GRANT for salaries of Keepers of Light-houses (permanent).---Consol.
97. Toronto Hospital.---Effete.
98. Kingston Hospital.---Effete.
99. Provincial Library.---Effete.
100. Remuneration to Arbitrators in Upper and Lower Canada.---Effete.
101. J. H. Dunn.---Effete.
102. H. C. Thompson.---Effete.
103. MILITIA PENSIONS.---Consol.
104. Poor and Destitute of Toronto.---Effete.
105. Common Schools.---Effete.
106. London District.---Rep. 16 V. c. 186.
107. Highways and Bridges.---Effete.
108. Supplies.---Effete.
109. Judge in Equity.---Effete.
110. Clerk of Crown in Chancery.---Effete.
111. Supplies.---Effete.
112. Supplies.---Effete.
113. Midland District School Society.---P.
114. House of Assembly.---Rep. 7 V. c. 65; 6 V. c. 2.
115. Colborne District.---L.
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# CORRECTIONS.

The Corrections mentioned below may be made with a Pen  
in the proper places.

- 
- Page 1, c. 1, should refer to 22 V. c. 30 (1859) passim.  
“ 31, s. 2, add reference to 8 V. c. 13, s. 38.  
“ 52, s. 30, the reference should be to P. 278, s. 9.  
“ 81, schedule, refer also to 20 V. c. 58, ss. 19, 23.  
“ 82, s. 32, in the table c. 99 should be c. 90.  
“ 85, s. 40, refer to 16 V. c. 119, s. 5.  
“ 89, s. 60, add s. 14, to 20 V. c. 59.  
“ 162, s. 155, reference to s. 6 should be to s. 60.  
“ 180, s. 1, add s. 60 to 8 V. c. 13.  
“ 181, s. 3, dele reference to 20 V. c. 59, s. 27.  
“ 191, ss. 29, 30, reference should be to 19 V. c. 43, s. 22, not c. 49.  
“ 280, s. 18, “ “ 22 V. c. 33, s. 11, (1859).  
“ 328, s. 14, “ “ also to s. 9.  
“ 333, s. 7, dele 9 V. c. 56, s. 5, and refer to 7 V. c. 30 s. 5.  
“ 426, s. 6, “ 20 V. c. 5, ss. 20, 21.  
“ 438, c. 41, should refer to 22 V. c. 47, (1859), passim.  
“ 697, s. 16, dele reference 3 V. c. 17, s. 3.  
“ 698, s. 21, refer to 3 V. c. 17, s. 3.  
“ 699, s. 27, reference should be to 12 V. c. 85, s. 14,  
“ 725, s. 25, No. 8, “ “ 16 V. c. 186, s. 11, No. 5.  
“ 733, s. 27, No. 2, “ “ 13, 14 V. c. 48, not c. 18,---16 V. c.  
185, not c. 182.  
“ 790, s. 12, “ “ 20 V. c. 66, s. 3 and 7, not 37.  
“ 852, s. 5, 2nd line, dele 2nd “ or”.  
“ 854, s. 2, reference to 2 V. c. 6, s. 1, should be s. 2.  
“ 862, s. 22, add s. 8, to s. 7 last reference.  
“ 883, s. 11, reference should be 22 V. c. 99, s. 50, not c. 95.  
“ 904, s. 10, “ “ 12 V. c. 71, not c. 7.  
“ 936, ss. 5, 6, “ “ 1 V., not 3 V.