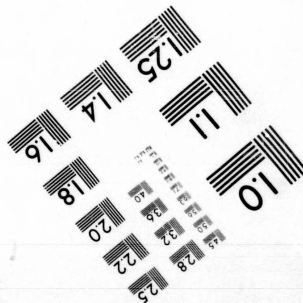
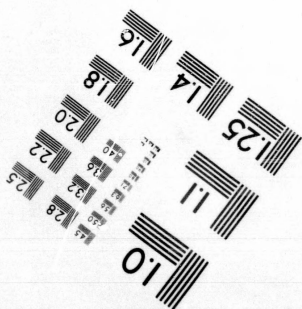
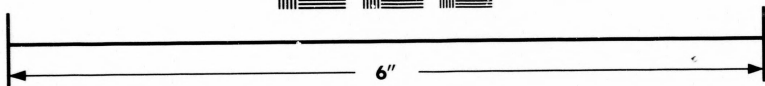
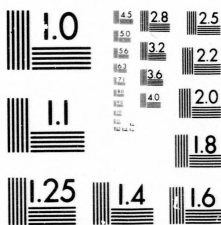


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

Canadian

CIHM/ICMH  
Microfiche  
Series.

CIHM/ICMH  
Collection de  
microfiches.



Canadian Institute for Historical Microreproductions

Institut canadien de microreproductions historiques

1979

Technical Notes / Notes techniques

The Institute has attempted to obtain the best original copy available for filming. Physical features of this copy which may alter any of the images in the reproduction are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Certains défauts susceptibles de nuire à la qualité de la reproduction sont notés ci-dessous.

Coloured covers/  
Couvertures de couleur

Coloured pages/  
Pages de couleur

Coloured maps/  
Cartes géographiques en couleur

Coloured plates/  
Planches en couleur

Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées

Show through/  
Transparence

Tight binding (may cause shadows or distortion along interior margin)/  
Reliure serré (peut causer de l'ombre ou de la distortion le long de la marge intérieure)

Pages damaged/  
Pages endommagées

Additional comments/  
Commentaires supplémentaires

Pages which have been wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image.

---

Bibliographic Notes / Notes bibliographiques

Only edition available/  
Seule édition disponible

Pagination incorrect/  
Erreurs de pagination

Bound with other material/  
Relié avec d'autres documents

Pages missing/  
Des pages manquent

Cover title missing/  
Le titre de couverture manque

Maps missing/  
Des cartes géographiques manquent

Plates missing/  
Des planches manquent

Additional comments/  
Commentaires supplémentaires

The ima  
possible  
of the o  
filming

The last  
contain  
or the s  
applies.

The orig  
filmed w  
institutio

Maps or  
in one e  
upper le  
bottom,  
following

plaire  
Certains  
té de la

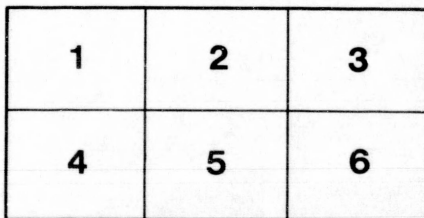
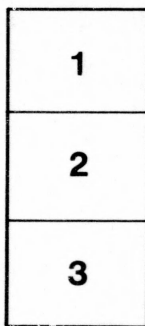
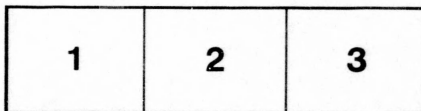
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

The original copy was borrowed from, and filmed with, the kind consent of the following institution:

National Library of Canada

Maps or plates too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



tissues, etc.,

uent

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

L'exemplaire filmé fut reproduit grâce à la générosité de l'établissement prêteur suivant :

Bibliothèque nationale du Canada

Les cartes ou les planches trop grandes pour être reproduites en un seul cliché sont filmées à partir de l'angle supérieure gauche, de gauche à droite et de haut en bas, en prenant le nombre d'images nécessaire. Le diagramme suivant illustre la méthode :

CO

CO

732

THE  
COUNTY COURT MANUAL

BEING A COLLECTION OF THE

STATUTES

RELATING TO THE

PRACTICE, PROCEDURE AND JURISDICTION

OF THE

COUNTY COURTS OF NOVA SCOTIA,

WITH

NOTES, ETC.,

BY

GEORGE BINGAY, Q.C.

*Of the Nova Scotia Bar.*

---

TORONTO:  
CARSWELL & CO., LAW PUBLISHERS.  
1891.

Entered according to Act of the Parliament of Canada, in the year one thousand  
eight hundred and ninety-one, by CARSWELL & Co., in the office of the  
Minister of Agriculture.

PRINTED BY  
THOS. MCORE & CO., LAW PRINTERS  
22 & 24 ADELAIDE ST. EAST  
TORONTO.

T

reg

Co

dis

th

fu

ha

to

se

to

## PREFACE.

---

**T**HE object of the COUNTY COURT MANUAL is to provide a means of ready reference to the enactments regulating the practice, procedure and jurisdiction of the County Courts of Nova Scotia.

Notes have been made, not only of decisions immediately applicable to the sections of the Statutes to which they refer, but also of such decisions as would seem to furnish or suggest aids to interpretation.

The sections of The County Court Consolidation Act have been re-arranged, so as to be more readily referred to ; while any advantage to be derived from their numerical sequence has been preserved by the " Table of Reference to Sections."

G. B.

10 & 11 Boston Marine Building,  
Yarmouth, N. S., January, 1891.



PREFACE

The purpose of this book is to provide a comprehensive and up-to-date account of the history of the United States from the time of its discovery to the present day. It is intended for the general reader who is interested in the history of the country and its people.

The book is divided into three main parts. The first part covers the period from the discovery of the continent to the establishment of the first colonies. The second part covers the period from the founding of the United States to the Civil War. The third part covers the period from the Civil War to the present day.

The author has endeavored to present a fair and balanced account of the events of our history. He has drawn upon the best available sources and has sought to present the facts as they are, without bias or prejudice.

It is hoped that this book will be of interest and value to all who read it.

THE BOSTON MARINE BUILDING

January, 1901.

A  
C  
J  
J  
L  
L  
L  
L  
L  
L

## ABBREVIATIONS.

---

A. R.	Appeal Reports,	Ont.
Coch.	Cochran's Reports,	N. S.
J. C. C.	Judge of the County Court,	
Jud. Act.	The Judicature Act, 1884,	N. S.
L. T.	Law Times Reports,	Eng.
N. B. R.	New Brunswick Reports,	
N. S. R.	Nova Scotia Reports,	
Old.	Oldright's Reports,	N. S.
P. R.	Practice Reports,	Ont.
Pugs.	Pugsley's Reports,	N. B.
P. & B.	Pugsley & Burbidge's Reports,	N. B.
P. & T.	Pugsley & Truman's Reports,	N. B.
R. S. Ca.	Revised Statutes of Canada.	
R. S. N. S.	Revised Statutes of Nova Scotia,	
Thoms.	Thomson's Reports,	N. S.
Tru.	Truman's Reports,	N. B.
U. C. Q. B.	Queen's Bench Reports,	Ont.
W. N.	Law Reports, Weekly Notes,	Eng.
W. R.	The Weekly Reporter,	Eng.

ARRIVED AT THE

Pr  
Al  
Ta  
Ta  
Co  
D  
S  
J  
O  
P  
C  
D  
S  
C  
T  
C  
J  
A  
P  
T  
A  
A

## TABLE OF CONTENTS.

---

	PAGE.
Preface .....	iii
Abbreviations .....	v
Table of References.....	ix
Table of Cases Cited.....	xi
Constitution of the Courts .....	1
Districts .....	2
Seals and Records .....	2
Judges .....	3
Officers and their duties .....	4
Practitioners .....	4
Clerks.....	4
Deputy Clerks .....	4
Sheriffs .....	6
Criers .....	7
Terms or Sittings .....	7
Calendar of the Courts.....	9
Jurisdiction .....	10
Administration and Procedure .....	19
Proceedings against tenants.....	24
Trial and New Trial .....	26
Appeals to the Courts .....	31
Appeals from the Courts.....	35

	PAGE.
Chambers .....	42
Costs .....	43
Repealing clause .....	46
Appeals under chap. 102, R. S. N. S. (5th series).....	47
Appeals under chap. 103, R. S. N. S. (5th series).....	49
Appeals under "The Summary Convictions Act.".....	51
The County Judge's Criminal Court.....	54
The C. C. Judges as Masters of the Supreme Court... 56	
Index .....	59-83

COU

Sec. 1 .  
 " 2 .  
 " 3 .  
 " 4 .  
 " 5 .  
 " 6 .  
 " 7 .  
 " 8 .  
 " 9 .  
 " 10 .  
 " 11 .  
 " 12 .  
 " 13 .  
 " 14 .  
 " 15 .  
 " 16 .  
 " 17 .  
 " 18 .  
 " 19 .  
 " 20 .  
 " 21 .  
 " 22 .  
 " 23 .  
 " 24 .  
 " 25 .  
 " 26 .  
 " 27 .  
 " 28 .  
 " 29 .  
 " 30 .  
 " 31 .  
 " 32 .  
 " 33 .  
 " 34 .  
 " 35 .  
 " 36 .

# TABLE OF REFERENCE

## TO SECTIONS OF THE COUNTY COURT CONSOLIDATION ACT, 1889.

PAGE.	
.....	42
.....	43
.....	46
series).....	47
series).....	49
Act.".....	51
.....	54
ne Court...	56
.....	59-83

	PAGES.		PAGES.
Sec. 1 .....	1	Sec. 37 .....	16
" 2 .....	2	" 38 .....	16
" 3 .....	7	" 39 .....	27
" 4 .....	4, 7	" 40 .....	28
" 5 .....	3, 19	" 41 .....	28
" 6 .....	3, 7	" 42 .....	28
" 7 .....	3, 4	" 43 .....	28
" 8 .....	4	" 44 .....	37
" 9 .....	10	" 45 .....	40
" 10 .....	4	" 46 .....	29
" 11 .....	4, 5	" 47 .....	7
" 12 .....	8	" 48 .....	42
" 13 .....	2	" 49 .....	26
" 14 .....	20	" 50 .....	42
" 15 .....	5	" 51 .....	10
" 16 .....	6	" 52 .....	16
" 17 .....	6	" 53 .....	31
" 18 .....	5	" 54 .....	31
" 19 .....	10	" 55 .....	32
" 20 .....	10	" 56 .....	33
" 21 .....	20	" 57 .....	34
" 22 .....	20	" 58 .....	34
" 23 .....	14	" 59 .....	34
" 24 .....	14	" 60 .....	34
" 25 .....	15	" 61 .....	35
" 26 .....	21	" 62 .....	24
" 27 .....	21	" 63 .....	25
" 28 .....	15	" 64 .....	35
" 29 .....	15	" 65 .....	43
" 30 .....	6	" 66 .....	43
" 31 .....	22	" 67 .....	43
" 32 .....	22	" 68 .....	43
" 33 .....	22	" 69 .....	43
" 34 .....	22	" 70 .....	44
" 35 .....	23	" 71 .....	46
" 36 .....	13, 14	" 72 .....	1

Anderson  
Andrews

Bailey v.  
Bank of M  
Bank of M  
Bates v. C  
Bath Exe  
Belden v.  
Belloni v  
Bonnett  
Brown v.  
Brown v.  
Brown v.

Campbell  
Campbell  
Card v.  
Catherin  
Chapman  
Chapman  
Chesley v  
Chipman  
Cochran  
Commer  
Coolan v  
Cox v. C  
Crowe v

## TABLE OF CASES CITED.

---

Anderson v. Taylor, 17  
Andrews v. Landers, 27, 38

Bailey v. Bleecker, 13  
Bank of Montreal v. Gilchrist, 13  
Bank of Nova Scotia v. McKerrow, 5  
Bates v. Craythorne, 11, 14, 24  
Bath Executor v. Dennison, *et al.*, 11  
Belden v. Chapman, 8  
Belloni v. Murphy, 33  
Bonnett v. Chesley, 36  
Brown v. Black, 27  
Brown v. Shaw, 39  
Brown v. Vaughan, 18

Campbell v. Prince, 30, 39  
Campbell v. Davidson, 13  
Card v. Weeks, 36, 41  
Catherine v. Morrison, 2, 3  
Chapman v. Doherty, 14  
Chapman & Sons v. Withers, 39  
Chesley v. Grassie, 17  
Chipman v. Gavaza, *et al.*, 38  
Cochran v. Larcom, 36  
Commercial Bank v. Price, 30  
Coolan v. McLean, 36  
Cox v. Crocker, 15, 26  
Crowe v. McCurdy, 2, 8, 17

Currier v. Crosby, 39  
Curry v. Le Cras, 33  
Cutten v. Stephens, 36

Doyle v. Gallant, 40

Ferguson v. Savoy, 38  
Fleming v. Livingstone, 12  
Fletcher v. Bernard, 39  
Furnival v. Saunders, 12

Gonaizen v. Burns, 13  
Graham v. Spettigue, 13

Hamilton v. Dunphy, 29  
Harrington v. Stewart, 18  
Harris v. Robinson, 39  
Hilland v. Hamm, 29  
Huestis v. Lyons, 6, 38  
Hunter v. Vanstone, 30

Irving v. Askew, 28

Kandick v. Arthur, 5



- Lewis v. Lewis, 13
- Matheson v. McLean, 36
- McCully, *ex p.*, 39
- McCully v. Barnhill, 18
- McCully v. McKay, 33
- McDonald v. Clarke, 37
- McDonald v. McCuish, 36
- McDonald v. McDougall, 37
- McDonald v. Mills, 33
- McKay v. Allan, 12, 14
- McLaughlin v. Schaeffer, 22
- McLeod v. Chetwynd, 36
- McRitchie v. Morrison, 36
- Moffatt v. McRitchie, 16, 32
- Moir *et al.* v. Ramsay, 33
- Moore v. Gamger, 13
- Morrice v. Fisher, 12
- Morrison v. Corbitt, 2, 5
- Murphy v. Romo, 36
- Murtagh v. Barry, 30
- O'Toole v. Hooper, 37
- Overseers poor, Greenfield, v. Overseers,  
poor, Goshen, 17.
- Park Gate Iron Co. v. Coates, 40
- Pearson v. Glazebrook, 25
- Penton v. Grand Trunk Railway Co., 39
- Portman v. Patterson, 13
- Preedy v. Baldwin, 11
- Queen v. Hawes, 17
- Queen v. Miller, 38
- Queen v. O'Neil, 16
- Queen v. Sheppard, 35, 50, 54
- Queen v. Upham, 35, 50, 54
- Queen v. Wolfe, 36
- Reg. v. Jordan, 15
- Reg. v. Judge of Greenwich County  
Court, 30
- Rhodes *et al.* v. Patrick, 27
- Richards, *ex p.*, 16, 18
- Rose v. Burke, 16, 32, 36
- Rumsey v. Cunningham, 41
- Ryan v. James, 38
- Seaman v. Porter, 37
- Sheriton v. Whelpley, 29
- Steeves v. Lucas, 3, 8
- Taylor v. Gavin, 41
- Taylor v. Marshall, 33
- Thomas v. Ray, 36
- Tomkins v. Jones, 13
- Vogt v. Boyle, 12
- Von Metzke v. Padfield, 36
- Ward v. Raw, 40
- Wier v. Letson, 36
- Willis v. Sweet, 12, 14, 22
- Winchester v. Rablee, 37
- Wood v. Lister, 30
- Woods v. McCann, 38
- Woodworth v. Innis, 33
- York v. McLaughlin, 36

CO

Th  
datio  
This  
1889.

I.  
law a  
Cou  
which  
until  
1874,  
on the  
(Ro

THE  
 COUNTY COURT  
 CONSOLIDATION ACT, 1889.

(52 Vict., c. 9.)

---

TITLE.

This Act may be cited as the "County Court Consolidation Act, 1889."

This Act was passed and came into operation on the 17th of April, 1889.

CONSTITUTION.

**1.** There shall continue to be in this Province courts of law and of record, to be called county courts.

County Courts were first established in Nova Scotia by 37 Vict., c. 18 which was *passed* on the 7th of May, 1874, but did not go into *operation* until proclamation made by the Lieutenant-Governor in Council (Acts 1874, c. 18, s. 57). Proclamation was made and the Act came into force on the 21st of August, 1876.

(Royal Gazette, Aug. 23rd, 1876).

B.C.C.A.—1

**2.** For the purposes of this Act this Province shall be divided into seven districts, to be made up as follows :—

*District Number One*—Of the County of Halifax.

*District Number Two*—Of the Counties of Lunenburg, Queens, and Shelburne.

*District Number Three*—Of the Counties of Annapolis, Digby, and Yarmouth.

*District Number Four*—Of the Counties of Kings, Hants, and Colchester.

*District Number Five*—Of the Counties of Pictou and Cumberland.

*District Number Six*—Of the Counties of Inverness, Antigonish, and Guysboro; and

*District Number Seven*—Of the Counties of Cape Breton, Victoria, and Richmond.

The Court of each District has a separate and distinct jurisdiction, *Morrison v. Corbitt*, 21 N. S. R. 369.

See also repealed section 14, *post* p. 20.

The territorial jurisdiction of County Court Judges does not depend upon their commissions, but upon enactments of the Provincial Legislature which may define, enlarge and extend the districts as it sees fit. *Crowe v. McCurdy*, 18 N. S. R. 301; *Catherine v. Morrison*, 21 N. S. R. 369, *post* p. 3.

#### SEALS AND RECORDS.

**13.** The Governor-in-Council shall provide seals for the various county courts; and the clerk of each county court shall provide all necessary books for the records of such court, which shall be approved of by the judge. The seals

now  
sam

See

5  
who  
app  
Eve  
cour  
ing.

Th

Th  
be re  
dutie  
proc

6  
the  
resp

For

R.  
Cape  
petit  
Cath

Se

7  
con  
law

now established for such courts shall remain until the same shall be altered under the authority of this Act.

*See section 16, post p. 6.*

## JUDGES.

5. There shall continue to be one judge for each district, who shall reside within the district for which he is appointed, and shall hold office during good behavior. Every such judge shall be a barrister of the supreme court of the Province of not less than seven years' standing. \* \* \* \* (part.)

The remainder of section 5 will be found *post* p. 19.

The Judges are appointed by the Governor-General in Council and may be removed for misbehavior, incapacity or inability to perform their duties properly, on account of old age, ill health or any other cause. The proceedings for removal are regulated by cap. 138, R. S. Ca., p. 1797.

6. The judges of the several districts shall preside over the courts to be held in the counties comprised within their respective districts. \* \* \* \* (part.)

For remainder of section 6, see *post* p. 7.

R. S. N. S. (5th series) c. 56, s. 11—*Held*, that a J. C. C. sitting in *Cape Breton County* had no jurisdiction to try a municipal election petition to set aside the election of a councillor for *Richmond County*. *Catherine v. Morrison*, 21 N. S. R. 291.

*See Steeves v. Lucas*. 2 Pugs. 70 (N. B.), *post* p. 8.

7. No judge of any court shall practice, carry on or conduct any business in the profession or practice of the law while being such judge.

8. Every judge hereafter appointed shall take the following oath, before some person appointed by the Governor-in-Council to administer the same, that is to say :

"I, A. B., do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of a judge of the county courts in the Province of Nova Scotia."

## OFFICERS AND THEIR DUTIES.

### PRACTITIONERS.

4. \* \* \* \* \* (*part.*) Only attorneys of the supreme court may practice in the county court as attorneys, but a party to a cause *on application* may prosecute or defend, or appear in person, subject to this Act and the rules of law in force in the supreme court.

See section 4, *post* p. 7. Note the words "*on application.*"

### THE CLERKS.

10. Clerks for the several counties in each district shall be appointed by the Governor-in-Council, and each clerk shall give security in the same manner as prothonotaries and shall hold office during pleasure, and shall be paid by fees; provided always that if an attorney of the supreme court shall be appointed to such office he shall not practice in any of the courts of the Dominion during the term of his incumbency. The clerks who hold office at the date of the passing of this Act shall be deemed to have been duly appointed under it.

### DEPUTY CLERKS.

11. The Governor-in-Council shall require the clerk to appoint a deputy in each section of the county in which a

court is held, for whose good conduct the clerk shall be responsible; and the deputy shall receive from the clerk such compensation for his services as may be agreed upon between the clerk and his deputy. The clerk shall have power in case of absence from home, sickness, or being otherwise unable to attend to his duties, to appoint a deputy to act for him, and for whose conduct he shall be responsible.

See section 18 *below*.

*Consol. Co. Court Act, 1880, c. 2, s. 8.*

*Held*, that the deputy clerk had authority to sign writs although the clerk was not ill, absent from home or otherwise unable to attend to his duties. *Bank of Nova Scotia v. McKerrow*, 17 N. S. R. 275, and in *Kandick v. Arthur*, (*ibid.* 289), it was held that the *onus* of proving the illness, absence or disability of the clerk in any event falls upon the person, attacking the regularity of the proceedings.

As to power of clerk to adjourn the Court in the absence of the Judge, see section 12 *post* p. 8.

**18.** Any act or thing which the clerk of the county court is empowered to do, may be done by his deputy.

See section 11, *supra*.

**15.** The clerk of each court and his deputy shall have and exercise, in reference to proceedings in such court, the same powers as the prothonotary of the supreme court; and commissioners to take affidavits in the supreme court shall be commissioners for the like purpose in the county court.

The clerks may not issue process returnable elsewhere than in the Courts of their own District. *Morrison v. Corbitt*, 21 N. S. R. 369.

See also *repealed* section 14, *post* p. 20, and section 31, *post* p. 22.

**16.** The clerk of each court shall file all writs and papers, and shall keep a book in which he shall enter all causes and all rules and orders made therein, and shall also keep a judgment book in which every judgment rendered in his court shall be entered, a copy of which judgment duly certified by him shall be evidence of the same in all courts in the province to the same extent as the copies of the like entries in the supreme court are evidence.

See section 13, *ante* p. 2.

As to Supreme Court having no power to order clerk to enter judgment in the County Court, see *Huestis v. Lyons*, 15 N. S. R. 284, *post* p. 38.

**17.** The clerk of the county court or his deputy shall furnish, when required so to do, a certificate signed by him of such judgment, containing the like particulars as are required in certificates of judgment given by prothonotaries of the supreme court, and such certificate, after registration in the office of the registrar of deeds in any county or district, shall have the like force and effect in binding the lands of the person against whom the judgment was recovered, as a certificate granted by the prothonotary out of the supreme court has of binding the lands of a person against whom a judgment has been recovered in that court.

#### SHERIFFS.

**30.** The sheriff and all other officers of the county courts shall be empowered and be liable to exercise and perform all the duties and offices conferred and imposed upon such officers, in the same manner and to the same extent as such duties and offices are imposed upon such officers in the supreme court.

**47.**  
appoi  
paid  
Halif  
of th  
the c

**3.**  
coun  
but i  
appo  
the p  
for t

**4.**  
time  
plac  
cour  
for l  
with  
Cou  
cour  
tim  
the

**6.**  
at  
Cou  
app  
S

## CRIERS.

**47.** The judge of district No. 1 shall from time to time appoint the crier of his court, who shall continue to be paid for his services by the municipality of the county of Halifax. In the other districts of the Province the criers of the several supreme courts shall continue the criers of the county courts in the several counties.

## TERMS OR SITTINGS.

**3.** The terms or sittings of such courts in the respective counties shall continue so long as the business shall require, but not to a date later than the second day before the day appointed for opening the court at the next place to which the presiding judge at such court shall be about to proceed for the purpose of holding a court.

**4.** The Governor-in-Council may by proclamation from time to time alter, vary and re-arrange the times and places in the several districts for holding the county courts; and may also proclaim additional times and places for holding such courts, and may from time to time dispense with the holding of the same. Until the Governor-in-Council shall make proclamation to the contrary, the county courts shall be held in the several counties at the times and in the places at and in which by proclamation they have been heretofore held.

**6.** \* \* \* \* (*part*), and such courts shall be held at such times and in such places as the Governor-in-Council may have heretofore appointed, or shall hereafter appoint, by proclamation.

See section 6, *ante* p. 3.



**12.** Whenever by reason of unavoidable absence of the judge a county court cannot be held, the clerk or his deputy shall adjourn the court to such a day as he may deem convenient, and he shall enter in the minutes the cause of such adjournment; and whenever by reason of sickness, disability, absence by leave or other cause, any judge of a county court shall be unable to act, or shall be disqualified from acting, such judge may call in and designate any other judge of any other county court in this province to act therein, and such judge so called in and designated as aforesaid shall have the same powers as the regular judge of such court would otherwise have had.

*R. S. N. C., 5th series, c. 105, s. 9.*

*Held*, that the causes of the disqualification are not necessarily *ejusdem generis* with those mentioned, the J. C. C. may take judicial notice of any other disqualification and call in another Judge to act for him. *Belden v. Chapman*, 21 N. S. R. 100.

Under the County Incorporation Act, 1881, c. 1, s. 18, a J. C. C. who is disqualified from trying an election petition may call in another County Court Judge for that purpose. *Crowe v. McCurdy*, 18 N. S. R. 301.

In New Brunswick—

The J. C. C. of St. John and Kings was called in by the J. C. C. of Albert County to try a cause under the County Court Acts, and while sitting in Chambers in St. John issued a summons for a new trial but afterwards discharged it on the ground that he had no power to act in St. John.

*Held*, that the first summons was a nullity and that he had power to issue a new summons in Albert. *Steeves v. Lucas*, 2 Pugs. 70.

Murray Dodd ..... 7  
 { St. Mary's  
 Sydney  
 Beldock  
 Ardenham.

1st Tuesday in May and 1st Tuesday in November.  
 4th Tuesday of January and 1st Tuesday of July.  
 2nd Tuesday of February and 2nd Tuesday of November.  
 1st Tuesday of March and 1st Tuesday of September.

W. E. Peters.....  
 A. Taylor Jr.....  
 D. O. C. Madden.....

CALENDAR OF THE COUNTY COURTS.

JUDGES.	PLACES AT WHICH COURTS ARE HELD.	TIMES OF HOLDING COURTS.	CLERKS.
James W. Johnston. <sup>1</sup>	Halifax. Md. Musquodoboit Tangier.	2nd Tuesdays of January, June and October. 2nd Tuesday of May and 3rd Tuesday of September. 4th Tuesday of April and 1st Tuesday of November.	S. H. Holmes..... W. J. Dauphinee.....
Mather B. DesBrisy. <sup>2</sup>	Lunenburg. Bridgewater. Chester. Liverpool. Shelburne. Barrington.	1st Tuesday in December. 3rd Tuesday in September. 4th Tuesday in June. 2nd Tuesdays in Feb. and May and 1st Tuesday in Nov. Last Tuesday in April and 3rd Tuesday in October. 3rd Tuesday in January.	T. J. Farrell..... William J. Bell..... R. J. Umiacke..... W. B. Stewart.....
Alfred W. Savary. <sup>3</sup>	Annapolis. Bridgetown. Digby. Clare. Yarmouth.	2nd Tuesday of March and 2nd Tuesday of July. 1st Tuesday of November. 1st Tuesday of February and 1st Tuesday of September. 3rd Tuesday of April.	James Huntington..... Chas. F. Rockwell..... H. Ferry Scott..... E. W. Hamilton.....
John P. Chipman. <sup>4</sup>	Kentville. Windsor. Turo.	4th Tuesdays of Jan. and Aug. and 4th Tuesday of Nov. 1st Tuesdays of Feb. and Aug. and 2nd Tuesday of Dec. 4th Tuesday of January and 1st Tuesday of August. 4th Tuesday of February and 4th Tuesday of November.	Robert Matheson..... Arthur Davidson.....
Wm. A. D. Morse. <sup>5</sup>	New Glasgow. Amherst. Pugwash. Parsborough.	2nd Tuesday of September. 1st Tuesday in May and 1st Tuesday in December.	John McKay..... J. C. McKinnon, M.D. Edward C. Peart..... W. D. R. Cameron..... W. E. Peters..... A. Taylor, Jr..... D. O'Q. Madden.....
Angus McIsaac. <sup>6</sup>	Port Hood. Antigonish. Guysborough. St. Mary's.	1st Tuesday in July and 3rd Tuesday in November. 4th Tuesday in April and 2nd Tuesday in November. 4th Tuesday in March and 1st Tuesday in September. 1st Tuesday in May and 1st Tuesday in November.	
Murray Dodd. <sup>7</sup>	Sydney. Baddeck. Arischat.	4th Tuesday of January and 1st Tuesday of July. 2nd Tuesday of February and 2nd Tuesday of November. 1st Tuesday of March and 1st Tuesday of September.	

ence of the  
lark or his  
7 as he may  
minutes the  
y reason of  
cause, any  
or shall be  
all in and  
ourt in this  
lled in and  
wers as the  
ve had.

ssarily *ejusdem*  
l notice of any  
: him. *Belden*

3 J. C. C. who  
ll in another  
8 N. S. R. 301.

he J. C. C. of  
cts, and while  
new trial but  
ower to act in

had power to  
70.

## JURISDICTION.

**9.** The judge of each county court shall be *ex-officio* a justice of the peace in and for the district in which he is judge, but shall not issue any civil process in his capacity as such justice.

The J. C. C. has jurisdiction as a Justice of the Peace under "An Act respecting Prize Fighting." R. S. Ca. c. 153.

**51.** The jurisdiction of the supreme court in summary suits, except as hereinafter provided, is abolished.

**19.** The court shall not have cognizance of any action—

(1st)—Where the title to land is brought in question.

(2nd)—In which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided.

(3rd)—For criminal conversation or seduction.

(4th)—For breach of promise of marriage.

**20.** Subject to the exceptions in the last preceding section, the county court shall have original jurisdiction in all personal actions, actions of replevin, causes and actions relating to debts, covenants and actions where the debt, damage or relief sought does not exceed four hundred dollars, and in case of debt is not less than twenty dollars, and in all actions on bail bonds to the sheriff in any case in the county courts, whatever may be the penalty or amount sought to be recovered, and in all actions against a sheriff or any officer of the county court for any non-feasance or malfeasance in connection with any matter transacted in the county courts; but the jurisdiction hereby conferred is declared to be concurrent with that of the supreme court, except as to actions of debt or assumpsit,

in which  
shall of  
appeal  
tained  
having  
ferred  
cogniza  
defenda  
panies,  
debtors  
dollars

A claim

Held,

N. S. R.

Action  
by insta  
was bro  
condition  
a coven  
unpaid

Held,  
jurisdic  
Bath ex

In an  
other it  
counter  
allowed  
and gav  
\$222.23.

Held,  
benefit  
amount  
McDon  
J. C. C.  
amendr  
pleaded

See s

in which cause of action is less than eighty dollars, which shall only be brought to the supreme court by way of appeal from the county court. But nothing herein contained shall be construed to deprive any county court from having and exercising all the powers and authority conferred on the supreme court in all causes of actions cognizable by the county court in respect of arrest of defendant before final judgment, suits against foreign companies, and proceedings against absent or absconding debtors in which the cause of action is less than eighty dollars.

A claim of \$800 was reduced by cash payments to less than \$300.

*Held*, that the County Court had jurisdiction. *Preedy v. Baldwin*, 17 N. S. R. 80.

Action on bond to secure indebtedness of \$810. The bond was payable by instalments, the first of which for \$161.40, was overdue and action was brought in the County Court to recover that amount. The condition of the bond referred to a contemporaneous mortgage containing a covenant that in default of payment of any instalment the whole sum unpaid should immediately become due and payable.

*Held*, that the debt was indivisible and that the County Court had no jurisdiction to give judgment for the amount of the overdue instalment. *Bath executor v. Dennison et al.*, 12 N. S. R. 303.

In an action on an award the defendant counterclaimed for (besides other items) \$400 damages for a conversion. Plaintiff replied that the counterclaim was beyond the jurisdiction of the Court. The J. C. C. allowed the counterclaim to be amended by reducing the amount claimed and gave judgment in defendant's favour for (including the other items) \$222.23. The plaintiff appealed.

*Held*, per JAMES, J., that the County Court could give the defendant the benefit of his counter-claim to the extent of its jurisdiction, but that the amount awarded was beyond the jurisdiction. Per RITCHIE and McDONALD, JJ., that (under R. S. N. S. 5th series, c. 105, s. 25) the J. C. C. after a plea to the jurisdiction had no right to allow the amendment, such right being limited to cases where no such plea was pleaded. *Bates v. Craythorne*, 19 N. S. R. 250.

See section 36 *post*, p. 13.

Plaintiff owed defendant \$335.90, plaintiff afterwards sold a vessel to defendant for \$600, making a balance in plaintiff's favour of \$224.10, which with two other items made the plaintiff's whole claim \$290.78. This being reduced by a credit of cash and goods left a balance due plaintiff of \$111.73, for which he sued in the County Court. The defendant pleaded to the jurisdiction.

*Held*, in the absence of proof that the debt due the plaintiff had exceeded \$400 and that the defendant's just set-off ever exceeded the amount which plaintiff had credited, that the County Court had jurisdiction. *McKay v. Allan*, 18 N. S. R. 476. See *Fleming v. Livingstone*, 6 P. R. 63 (Ont.).

*R. S. N. S. 5th series, c. 105, s.s. 16 and 17.* Plaintiff joined a claim for \$20.00 for work with a claim for damages for trespass. Defendant as to the work pleaded a special contract for \$10.00 and that it was below the jurisdiction. Plaintiff contended that the whole statement of claim was the cause of action.

*Held*, that the causes of action were separate and distinct. *Willis v. Sweet*, 20 N. S. R. 449.

#### In New Brunswick—

The declaration in replevin should show that the value of the goods does not exceed \$200, otherwise demurrable.

Even if the Court has no jurisdiction to try a cause, it may, nevertheless, give the defendant judgment for costs on that ground. *Morrice, App. v. Fisher, Resp.*, 25 N. B. R. 1.

#### In Ontario—

The County Court has jurisdiction to try a claim up to \$400, made up of a liquidated claim and an unliquidated claim of less than \$200. *Vogt v. Boyle*, 8 P. R. 249.

A plaintiff cannot by giving credit for a set-off compel defendant to set it up or give the County Court jurisdiction. *Furnival v. Saunders*, 26 U. C. Q. B. 119; see, however, *Ibid*, 2 C. L. J. N. S. 245.

Defendant agreed to buy a piano for \$400, and to pay for it by notes at one and two years with interest, with a rebate for cash. The piano was delivered but the defendant after using it refused to give notes or pay the stipulated price. Plaintiff thereupon brought action in

the Cou  
strike o

*Held*,  
for goo  
act of t

Defen  
of land  
did the  
not to  
The qu  
entitled  
in the  
*Spettig*

*Held*  
raise a  
County  
*Bailey*  
Q. B. 2

In B  
Secti  
not hav  
any co

*Held*  
word  
itself  
37 W.

Plain  
for ren  
*Held*  
had ju  
*Lewis*,

Obje  
*Moore*

36  
the ju

the County Court for \$400 *with interest*. At the trial leave was given to strike out the claim for interest.

*Held*, on appeal, that the County Court had jurisdiction in an action for goods sold and delivered, the amount having been ascertained by the act of the parties. *Greenizen v. Burns*, 13 A. R. 481.

Defendants acquired by an agreement under seal a right of *user* of lands for pasturage. There was no demise or right of distress, nor did the agreement make them tenants of S. S., however, covenanted not to allow his own animals or those of others to go upon the lands. The question whether the defendants had such an interest in the land as entitled them to impound cattle, was held not to be a question of *title* in the sense of ousting the jurisdiction of the County Court. *Graham v. Spettigue*, 12 A. R. 261.

*Held*, in an action for rent that the defendart who had attorned could raise a question of *title* to lands so as to oust the jurisdiction of the County Court. *Bank of Montreal v. Gilchrist*, 6 A. R. 659; see also *Bailey v. Bleecker*, 5 C. L. J. N. S. 99; *Campbell v. Davidson*, 19 U. C. Q. B. 222; *Portman v. Patterson*, 21 U. C. Q. B. 237. *not*

In England—

Section 56, County Courts Act, 1888, provides that the Court shall not have cognisance of any action of ejection or in which the title to any corporeal or incorporeal hereditaments shall be in question.

*Held*, in an action where the title to leasehold was in question, that the word "hereditaments" used to describe not the interest but the land itself ousted the jurisdiction. *Tomkins v. Jones*, 22 Q. B. D. 599; 37 W. R. 328; 60 L. T. 939.

Plaintiff claimed £220, defendant pleaded set-off amounting to £203 for rent, the set-off was admitted.

*Held*, that the claim being reduced to less than £50, the County Court had jurisdiction and the cause was remitted to that Court. *Lewis v. Lewis*, W. N. (1887), 188; 20 Q. B. D. 56.

Objection to jurisdiction waived by appearing and contesting action, *Moore v. Gamgee*, 25 Q. B. D. 244; W. N. (1890), 136.

**36.** The defence that the claim sued for is below or above the jurisdiction of the court shall only be taken advantage

of by being specially pleaded to the jurisdiction in the statement of defence. Such defence need not be verified by affidavit, and may be pleaded with other defences; and if no such defence be pleaded, the judge shall permit the plaintiff to reduce his claim to an amount within the jurisdiction of the court, and the cause shall thereupon proceed; and he may give judgment for the amount proven although it be below twenty dollars.

As to reducing claim after plea to the jurisdiction see *Bates v. Craythorne* (19 N. S. R. 250) ante p. 11; *McKay v. Allen*, ante p. 12; *Willis v. Sweet*, p. 12.

“The counter claim under the new practice is, in my opinion, in the nature of a cross action, and the defendant in such cases is in the same position as regards the pleading as a plaintiff, and if the question of jurisdiction is raised in the answer to the counter claim, the defendant cannot amend and reduce his claim, but is in the same position as if he were plaintiff.” *Per Ritchie, J. Bates v. Craythorne*, 19 N. S. R. 250 (at p. 253).

In New Brunswick—

The powers given to a plaintiff by Consol. Stats. c. 51 s. 41, to abandon part of his claim does not apply to actions of tort. *Chapman, App. v. Doherty, Resp.* 25 N. B. R. 271.

**23.** The jurisdiction of the city court of the city of Halifax in all cases of torts and for forcible entry and detainer, is abolished, and the same is hereby vested in the county court for district number One.

**24.** The county courts and all the judges thereof shall have and exercise all the powers conferred upon the county court by chapter 126 of the Revised Statutes, “Of Forcible Entry and Detainer,” notwithstanding that the title to land is brought in question in any cause or action instituted under the provisions of said chapter.

See sections 62 and 63 *post* p. 24 as to tenants overholding.

23  
now  
agreed  
response

fore  
istra  
and

dition in the  
not be verified  
defences; and  
all permit the  
within the juris-  
upon proceed;  
proven although

see *Bates v. Cray-*  
*ce* p. 12; *Willis v.*

ny opinion, in the  
es is in the same  
f the question of  
m, the defendant  
position as if he  
9 N. S. R. 250 (at

s. 41, to abandon  
*Chapman, App. v.*

of the city of  
ble entry and  
y vested in the

s thereof shall  
pon the county  
, "Of Forceible  
he title to land  
tion instituted

lding.

**25.** With respect to all causes and actions which may now be only brought in the supreme court, if both parties agree by a memorandum signed by them or their solicitors respectively that the judge of the county court named in

force or hereafter to be in force relating to the admin-  
istration of justice, the liberty of the subject, witnesses  
and evidence, and other matters so far as the same



of by being specially pleaded to the jurisdiction in the statement of defence. Such defence need not be verified by affidavit, and may be pleaded with other defences; and if no such defence be pleaded, the judge shall permit the plaintiff to reduce his claim to an amount within the jurisdiction.

## JURISDICTION BY CONSENT.

### APPEAL.

*Note to sections 25 (p. 15), 49 (p. 26), and 64 (p. 35).*

Since the notes to sections 25 and 49 were in print the point has been mooted whether, under section 64, an appeal lies in a case where jurisdiction has been conferred by consent of parties. Whether the words of section 64 "except orders made in the exercise of such discretion as by law belongs to a judge," are to be read parenthetically, or whether the exception is to be extended to the remainder of the section, appears to be the question. It is not probable that the legislature intended to take away the appeal in cases tried under section 49, which enables the judge to try a cause out of term, and if the words of section 64 above quoted are not to be read as if in brackets, grammatical construction would seem to require that the sentence should be read "and also, *orders made, in all actions*" etc., which would manifestly not include "judgments," or "decisions." Perhaps, however, the meaning of section 64 is not clear enough to warrant the unqualified statement in the note to that section.

is brought in question in any cause or action instituted under the provisions of said chapter.

See sections 62 and 63 *post* p. 24 as to tenants overholding.

25  
now  
agree  
respe  
such  
actio  
same

Not  
this s  
See

28  
have  
and  
dicti  
auth  
supr

The  
viz., t

The  
enabl  
viousl  
N. S.

Cor  
ceedir

29  
and  
supr  
force  
istra  
and

**25.** With respect to all causes and actions which may now be only brought in the supreme court, if both parties agree by a memorandum signed by them or their solicitors respectively that the judge of the county court named in such memorandum shall have power to try causes and actions, such judge shall have jurisdiction to try the same.

Notwithstanding that consent is necessary to give jurisdiction under this section an appeal lies from the judgment or decision.

See section 64 *post* p. 35.

**28.** The county court and every judge thereof shall have and exercise the same powers to enforce these rules and orders, to punish for contempt, and within their jurisdiction shall have and exercise all the powers and authority that may be had and exercised by a judge of the supreme court.

The "rules and orders" referred to are those mentioned in section 26, viz., those of The Judicature Act, *post* p. 21, see also section 22, *post* p. 20.

The J. C. C. has discretionary power to grant a *second* continuance to enable a plaintiff to procure testimony, notwithstanding his having previously granted a continuance for that purpose. *Cox v. Crocker*, 19 N. S. R. 21.

Committal for contempt of court—right of appeal questioned—proceedings being *quasi* criminal. *Reg. v. Jordan*, W. N. (1888) 152.

**29.** The county courts or any judge thereof shall have and exercise all the powers and authority conferred on the supreme court by any statute of the province now in force or hereafter to be in force relating to the administration of justice, the liberty of the subject, witnesses and evidence, and other matters so far as the same

shall be applicable to matters cognizable by the county courts.

See section 28 *ante* and section 22 *post* p. 20.

As to discretion of J. C. C. in awarding costs. *Bonnett v. Chesley*, 19 N. S. R. 184.

**37.** The county courts and judges thereof shall have and exercise within their respective districts, "as to persons imprisoned under civil process issued out of magistrates' courts or out of the county courts," the same jurisdiction and powers exercised by the supreme court and the judges thereof under chapter 117 of the Revised Statutes, "Of securing the liberty of the subject."

**38.** Writs of *certiorari* shall issue from the county court of the county where the original cause originated or was tried, in the same manner as writs of *certiorari* from the supreme court.

*Certiorari* to remove conviction under the Canada Temperance Act to County Court, writ of prohibition granted by Supreme Court. *Queen v. O'Neil*, 20 N. S. R. 531.

See as to quashing proceedings on appeal to the County Court, *Moffatt v. McRitchie*, and *Rose v. Burke*, *post* 32.

Where party has elected to appeal he cannot have *certiorari*. *Ex p. Richards*, 2 Pags. 6.

**52.** There shall be an appeal from the justices', stipendiary magistrates', city and municipal courts, and from all decisions, orders, and judgments of justices, stipendiary magistrates, and also from any order of filiation, judgment, or order of justices of the peace in bastardy cases, and from refusal to make such orders, and appeals from orders or decisions relating to the removal of

paup  
in t  
tried  
have  
filiat  
mak  
case  
chap  
Whe  
the c  
place  
Cha  
The  
enact

" I  
" infe  
" give  
" cien

And  
Queen

R. S  
Court  
given  
on th  
provid  
triffin

Hel  
Grassi

R. S  
from  
Poor C

paupers, to the next sitting of the county court to be held in the county where the cause appealed was originally tried, or, where such order was made; and the judge shall have power to alter, amend or set aside the order of filiation, or where overseers of the poor are appellants, to make such order of filiation, as the circumstances of the case demand. The appeal mentioned in section 10 of chapter 67, Revised Statutes, shall be to the county court. Where there is more than one place in each county where the county court is held, the appellant may designate the place at which the appeal shall be heard.

Chapter 67 R. S. N. S., 5th series "Of Fences and Impounding Cattle."

The territorial jurisdiction of C. C. judges depends upon provincial enactments. *Crowe v. McCurdy*, 18 N. S. R. 301.

(INHERENT JURISDICTION OF COUNTY COURTS.)

"I entertain no doubt whatever that an inherent right exists in an inferior court as well as in this Court without any legislative power given, to set aside either an interlocutory or a final judgment on sufficient grounds, to let in a trial on the merits."

*Anderson v. Taylor* (per Smith, J.), 12 N. S. R. at p. 533, see also *The Queen v. Hawes*, 15 N. S. R. 270.

R. S. N. S., 3rd series, c. 1, s. 8, provided "that appeals to the Supreme Court shall be allowed by justices of the peace from every judgment given by them in all cases tried before them in the same manner and on the same terms as in civil suits, except when otherwise specially provided." A complaint of assault was dismissed as being of a trifling nature.

Held, that the plaintiff was not entitled to an appeal. *Chesley v. Grassie*, 7 N. S. R. 191.

R. S. N. S. c. 89, s. 14, removal of paupers. No appeal lay directly from the decision of two justices to the Supreme Court (1859). *Overseers Poor Greenfield v. Overseers Poor Goshen*, 5 N. S. R. (1 Old) 695.

R. S. N. S. c. 144, s. 7. Where no witnesses were examined by plaintiff in justices' court, an appeal was not allowed him. *McCully v. Barnhill*, 4 N. S. R. (Coch.) 81.

In New Brunswick—

Where a party has elected his remedy by applying for a review of the judgment of an inferior court the court will not grant a *certiorari*. *Ex p. Richards*, 2 Pugs. 6.

The County Court and the City Court of St. John are both of limited jurisdiction, having concurrent jurisdiction in suits for the recovery of debts. A suit to recover a debt being brought in the County Court, the J. C. C. may not stay the proceedings on payment of debt without costs, on the ground that if the suit had been brought in the City Court the costs would have been less. *Hanington v. Stewart*, Stevens Dig. 381.

The County Courts or the Judges thereof (as the case may be) have jurisdiction under the following Statutes :

CANADA.

The Speedy Trials Act, Stats. Can., 1889, p. 170 (52 Vict., c. 47). (See also constitution of Court under N. S. Statutes, 1889, c. 11.) See County Judges' Criminal Court, *post*, p. 54, *et seq.*

The Summary Convictions' Act, R. S. Ca., c. 178.

(For Practice on Appeals *see post*, p. 51, *et seq.*)

The Electoral Franchise Act, R. S. Ca., c. 5.

The Dominion Elections Act, R. S. Ca., c. 8, s. 54 *et seq.*

The Wreck and Salvage Act, R. S. Ca., c. 81, s. 48.

The Seamen's Act, R. S. Ca., c. 74. (See *Brown v. Vaughan*, 22 N. B. R. [1 P. T.] 258.)

"The Pilotage Act," R. S. Ca., c. 80, s. 101.

NOVA SCOTIA.

Trial of controverted elections of municipal and town councillors, etc. R. S. N. S. (5th series), c. 57, amended by Acts 1886, c. 26; 1889, c. 58; 1890, c. 37.

Of s  
R. S. 1  
c. 38.

(App

Of c  
c. 102,

(App  
PRACTIC

Of t  
c. 118,

(App

To ei  
prescri  
as are  
diary r  
person  
penalty  
the St  
R. S. N

As o  
c. 104,

As M  
amende

(As t

The  
tion, bu  
civil pr  
of seve

5.  
shall l

Nova  
See s

Of summary convictions and orders by Justices of the Peace. R. S. N. S. (5th series), c. 103, amended by Acts 1889, c. 35, and 1890, c. 38.

(Appeal regulated by s. 66 of c. 103, for PRACTICE see *post*, p. 49.)

Of civil procedure in Magistrates' Courts. R. S. N. S. (5th series), c. 102, amended by Acts 1887, c. 33.

(Appeal regulated by s. 34 *et seq.* of c. 102 and s. 4 of c. 33, 1887, for PRACTICE see *post*, p. 47.)

Of the Relief of Indigent Debtors Confined in Jail. R. S. N. S., c. 118, amended by Acts 1885, c. 21 ; 1888, c. 33 ; and 1889, c. 49.

(Appeal regulated by s. 27 of c. 118, R. S. N. S.)

To entertain suits for the recovery of penalties under Statutes which prescribe no particular mode for their recovery, except such penalties as are recoverable before a justice or justices of the peace or stipendiary magistrates. Such suits are to be brought in the name of the person suing therefor as for a debt due him, and the amount of the penalty should be within the civil jurisdiction of the County Court, as the Supreme Court has jurisdiction also from \$80 upwards. See R. S. N. S. (5th series), c. 1, s. 16.

As official referees under The Judicature Act, R. S. N. S. 5th series, c. 104, s. 40.

As Master *ex-officio* of the Supreme Court under Acts, 1886, c. 50, amended by Acts, 1887, c. 10, and 1890, c. 11.

(As to subjects of jurisdiction see page 56.)

The foregoing are some of the principal Statutes conferring jurisdiction, but jurisdiction, exclusive or concurrent, especially in the matter of civil procedure for the recovery of penalties, arises under the provisions of several other Statutes of Canada and Nova Scotia.

## ADMINISTRATION AND PROCEDURE.

5. \* \* \* (*part*). The judges of the county court shall be governed by the decisions of the supreme court of Nova Scotia and supreme court of Canada.

See section 5, *ante* p. 3.

**14.** All process, mesne or final, issued out of any county court shall be directed to the sheriff of the county where the same is to be executed, and shall in all cases be made returnable to the town or place where the clerk or deputy clerk as the case may be resides and shall be sealed by the clerk of the county court where the same is issued, or his deputy, and shall be made returnable in the like time as if issued out of the supreme court; but when the sheriff is a party to a cause all process shall be directed to and executed by a coroner. (Repealed, see below.)

The foregoing section 14 is repealed by Act, 1890, c. 15, s. 1.

By section 3 of chapter 15, it is provided that "all process, *mesne* or *final*, heretofore issued out of the County Court, and which may be void or voidable for want of, being directed to the proper officer by the provisions of the said section 14 of the Act hereby amended is hereby declared legal and valid."

**21.** Any executor or administrator may sue and be sued in any of the county courts in like manner as in the supreme court, and judgment and execution shall be such as in the like case would be given or issued in the supreme court, and he may be sued for the amount or part of the amount of a distributive share duly ascertained by the proper court under an intestacy, or of any legacy under a will, provided in all cases that the cause of action is within the jurisdiction of the county court as to amount.

**22.** Every county court shall as regards all causes or actions within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress or remedy, or combination of remedies, either absolute or conditional, and shall in every

such  
grou  
(subj  
Act, c  
as ful  
in the

See s  
Secti  
in so fe

**26**  
cedur  
embo  
and t  
or am  
be in  
and s  
court,  
of the  
by su  
and l  
therec  
confer  
Judic  
suit b  
by th  
actor  
amou

See s

**27**  
for th

such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provisions in section 45 of the Judicature Act, cap. 104, Revised Statutes, 5th series, contained), in as full and ample a manner as might and ought to be done in the like case by the supreme court.

See sections 28 and 29 *ante* p. 15.

Section 45 of the Judicature Act saves existing law and practice except in so far as altered by that Act and Rules made under its authority.

**26.** The pleadings, practice, process, forms and procedure of the supreme court for the time being, as embodied in the Judicature Act and amendments thereof, and the orders and rules therein now in force, or any new or amended orders and rules hereafter to be made and to be in force, shall apply to and extend to the county court, and shall be in force and receive effect in every county court, and in all actions and matters within the jurisdiction of the county court so far as the same shall be cognizable by such county court, except as the same may be modified and limited by this Act. (And the county court or a judge thereof shall have and exercise all the powers and authority conferred on the supreme court by order xlv. of said Judicature Act in respect of arrest of the defendant in a suit before final judgment in all cases of action cognizable by the county court when the affidavit shows a cause of action within the jurisdiction of the county court as to amount.)

See also Jud. Act, 1884, c. 104, R. S. N. S., s. 44.

**27.** In the process and forms the words "county court for the district No.—," and the words "clerk or deputy



clerk," as the case may be, and any other word or words necessary to make the forms and process applicable to the county court, shall be substituted for the words supreme court and prothonotary, and other word or words requiring to be changed as aforesaid in said process and forms.

**31.** The county courts may issue writs of execution and writs of subpoena, and other writs and process, in any other county to be served or executed therein, and all such writs shall be of equal force as if the same had issued from the court of the county to or into which they may be issued.

**32.** All questions of law, motions, special cases and other matters, may be argued at sittings, term or chambers, as the judge shall direct.

**33.** It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the county courts.

**34.** In case the several claims made by the plaintiff in one action or matter in the aggregate exceeds the jurisdiction conferred on the county courts in consequence of the uniting in the same action or matter several causes of action, the process of the court shall not affect the competence or the duty of the court or the judge to dispose of the whole matter in controversy if each several claim laid is within the jurisdiction.

See *McLaughlin v. Schaeffer*, 13 A. R. 253 ; *Willis v. Sweet*, 20 N. S. R. 449.

As to practice where defence or counter claim involves matters beyond the jurisdiction, see R. S. N. S. (5th series), Judicature Act, c. 104, s. 43 *post* p. 23.

T  
3  
ques  
relat  
so e  
the  
fide  
caus  
the  
said  
land  
reas  
cour  
decl  
proc  
the  
caus  
prot  
brot  
afte  
to t  
sam  
men  
cons  
of t  
incu  
"  
any  
mat  
or

## TRANSFER OF ACTIONS TO SUPREME COURT.

**35.** When it is intended by a pleading to bring into question the title to land, or to any duty or other custom relating to or issuing out of lands or tenements, it shall be so expressly stated in the pleading. If in the opinion of the judge it shall appear that the title to land comes *bona fide* in question, he shall then direct all proceedings in said cause in the county court to be stayed, and shall certify to the supreme court all the papers and pleadings filed in said cause, and that in his opinion the question of title to land has *bona fide* come into dispute; and whenever by reason of interest or relationship any judge of the county court shall be disqualified from acting in any cause, whether declaration, summary or appeal, he shall then direct all proceedings in said cause to be stayed, and shall certify to the supreme court all papers and pleadings filed in said cause; and in all such cases the clerk shall transmit to the prothonotary of the county in which the action was brought such papers, pleadings and certificate, and thereafter the supreme court shall have power and jurisdiction to try said cause in the same manner and subject to the same rules as if the said cause had been originally commenced in the supreme court; and such cause shall be considered to be in the supreme court on and after the date of the judge's certificate. The costs which have been incurred in the county courts shall be costs in the cause.

(R. S. N. S. (5TH SERIES) c. 104, s. 43), *The Judicature Act, 1834.*

“**43.** When in any proceeding before any county court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the

word or words applicable to the words supreme words requiring and forms.

f execution and ss, in any other , and all such had issued from may be issued.

cial cases and term or cham-

f to divide any o or more suits

he plaintiff in s the jurisdic- quence of the eral causes of ffect the com- e to dispose of eral claim laid

et, 20 N. S. R. 449. s matters beyond Act, c. 104, s. 43.

duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim. Provided always that in such case it shall be lawful for the supreme court or any judge thereof if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such court to the supreme court; and in such case the record in such proceeding shall be transmitted by the clerk or other proper officers of the county court to the said supreme court, and the same shall thenceforth be continued and prosecuted in the said supreme court as if it had been originally commenced therein."

See *Bates v. Craythorne*, 19 N. S. R. 250, *ante* p. 14, also p. 11.

See also section 36, *ante* p. 13.

#### PROCEEDINGS AGAINST TENANTS, ETC.

**62.** When any tenant shall after the expiration or other determination of his tenancy refuse to deliver up possession of the premises to the landlord, or to the person entitled to the immediate possession of the premises, such landlord or person so entitled to the immediate possession, or his agent or attorney, may apply to the judge of the county court in the district where the premises are situate, and having made oath that such tenant has held and occupied the premises designated in the affidavit for a certain period then expired, and that due notice to quit when necessary has been given, such judge shall issue a summons in the form in schedule A, giving at least fourteen days' notice, to be served with a copy of the affidavit

on tl  
persc  
shew  
atten  
judge  
the  
prem  
posse  
of th  
taxed  
unde

**63**  
the li  
a wr  
court  
unde

See

In F  
The  
remed  
involv  
the ju  
L. R. :

A.  
law, ]

cause  
the s

Da

on the tenant, or by leaving the same with some adult person of the household living in his dwelling house, to shew cause why he holds over. If the tenant neglect to attend, or attend and no sufficient cause be shown, the judge may issue his warrant in the form in schedule B, to the sheriff, directing him to deliver possession of the premises to the landlord or party entitled to the immediate possession, to be executed by him according to the terms of the warrant; and the costs of such proceeding shall be taxed and allowed, and payment thereof may be enforced under the warrant.

**63.** The sheriff's fees for executing the warrant under the last preceding section shall be the same as for executing a writ of *habere facias possessionem* out of the supreme court, and all such fees shall be included in and recoverable under the warrant issued under the same section.

See also section 24 *ante* p. 14 as to forcible entry and detainer.

In England—

The 50th section of 19 & 20 Vic., c. 108, giving landlords a summary remedy in the county court does not apply where a question of title is involved; and if the alleged tenant makes a *bona fide* claim of ownership, the jurisdiction of the J. C. C. is ousted. *Pearson v. Glazebrook*, L. R. 3 Ex. 27, but note as to "question of title," section 24 *ante* p. 14.

#### *Schedule A.*

A. B., of———, having made the affidavit required by law, I therefore require you to appear before me on the ——day of———next (or instant), at———, to shew cause, if any you have, why you should not deliver up to the said A. B. the premises described in said affidavit.

Dated this———day of———, A. D. 18—.

E. F., J. C. C.

*Schedule B.*

To the Sheriff of \_\_\_\_\_

Whereas, A. B. claims the premises situate [*here describe the premises*] now in the possession of C. D., who holds over and refuses to deliver up the same, the matter having been heard before me pursuant to law, I do adjudge that the said A. B. shall be forthwith put in possession, and shall recover his costs, being \_\_\_\_\_, besides your fees for executing this writ; you are hereby commanded to put the said A. B. into immediate possession of said premises, and to levy off the goods and chattels of the said C. D. the sum of \_\_\_\_\_ for his costs, besides your fees, and for want of goods and chattels to take the said C. D. and deliver him to the keeper of the jail in said county, who will safely keep him for \_\_\_\_\_ days, unless said costs be sooner paid; and make return hereof and what you have done within \_\_\_\_\_ days from this date.

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

E. F., J. C. C.

#### TRIAL AND NEW TRIAL.

As to right of J. C. C. to grant continuances see *Cox v. Crocker*, ante p. 15.

**49.** The judge of any county court shall have power and jurisdiction to try any cause whether by appeal or otherwise, at any time out of term or sittings, provided both parties shall agree in writing to try the same out of term or sittings, and provided also that no judge shall be

obli  
pur

Co  
the j  
Se

**3**  
her  
as  
bro  
doll  
trov

Se  
Ur  
jurie  
the  
prop  
facts  
Land

Co  
He  
gener  
in w  
findi

Rhoc  
Rr  
cenci

On  
R. S.  
1886,  
had  
s. 52  
ensui

He  
21 N

obliged to go out of the county where he resides for the purpose of trying the same.

Consent to a trial out of term or sittings would not seem to prejudice the parties as to their rights of appeal.

See section 64 *post* p. 35.

**39.** All causes shall be tried without a jury except as hereinafter provided, and the judge shall decide the facts as well as law; unless the judge before whom a suit is brought in which the claim or demand is over eighty dollars, deem it proper to have any fact or facts controverted in the cause tried by jury.

See section 40, *post* p. 28.

Under *Consol. Co. Court Act*, 1880, c. 2. it was questioned whether juries in the County Court, other than those mentioned in section 55 of the Act, should be instructed to give a general verdict and whether the proper procedure is not to obtain their findings on the controverted facts which the Judge may deem proper to submit to them. *Andrews v. Landers*, 16 N. S. R. 236, *per* RIGBY, J., at p. 240.

*Consol. Co. Court Act*, 1880, c. 2, ss. 51 and 52.

*Held*, that a jury should find a special verdict on facts and not a general verdict, but it appearing that all parties acquiesced in the manner in which the case was put to the jury and the facts warranting the finding the objection was merely formal and the verdict was sustained. *Rhodes et al. v. Patrick*, 18 N. S. R. 233.

RIGBY and McDONALD, JJ., dissenting as to the effect of the acquiescence which could not give *jurisdiction*.

On April 10th, 1888, plaintiff obtained an order for a jury under R. S. N. S., 5th series, c. 105, s. 52, the cause was at issue October 11th, 1886, but trial was postponed at defendant's instance after notice thereof had been given. On April 16th, 1888, c. 8, s. 7, was passed repealing s. 52 of c. 105, and on the following day notice of trial was given for the ensuing May sittings.

*Held*, that the plaintiff was entitled to have a jury. *Brown v. Black*, 21 N. S. R. 349.

**40.** The judge shall have power to order any cause tried before him to be re-tried by a jury at any time previous to his having delivered judgment therein.

See section 39, *ante* p. 27.

A J. C. C. cannot, except by consent of parties or after a new trial, alter a judgment which he has formally given. *Irving v. Askeu*, L. R. 5 Q. B. 208.

**41.** In case a jury is ordered the sheriff or his deputy shall summon ten men qualified and eligible to serve as petit jurors, being within five miles from the court house where the same is to be tried, to attend at some day during the term or sittings to be named by the judge, and the jury shall be empannelled to try such fact or facts, and the judge shall in such case postpone the further trial of said cause to such day. But nothing in this section shall operate to prevent any such cause being made a remanet as other causes are.

**42.** Five jurors shall be empannelled and sworn for the trial of such facts, four of whom, in case they cannot agree after two hours' absence, may render a verdict. The provisions of section 57 of chapter 106 of the Revised Statutes, shall apply to trials by jury in the county court.

**43.** The jurors so returned or summoned shall be subject to the like pains and penalties that may be inflicted by a judge of the supreme court. Where a jury is ordered each jurymen shall be entitled to receive a dollar for each day he shall attend, such sum to be paid by the county treasurer, out of any county funds in his custody or under his control, on the order of the judge.

## NEW TRIAL.

**46.** On application, which shall be by notice of motion, every judge of the county court in any action at the trial of which he has presided, shall have power to set aside the verdict or finding of a jury rendered in such action, and to order a new trial of the action or of any fact or facts therein submitted to such jury in accordance with the practice and on like grounds as the supreme court, and in like manner to set aside all orders made by him at the trial, and to review and set aside his judgment, and to order a new trial, and to rehear all matters argued before him. The notice shall state the grounds of the application, and in case of findings it shall designate which of the said findings is complained of. The notice of the motion shall be served within ten days after service of the order for judgment, but the judge either before or after the expiration of that period may enlarge the time for giving notice. The notice may be amended at any time by the judge or court on such terms as he shall think just. Such notice may be made returnable either at chambers or to the court at its sittings. This section shall be applicable to all motions and arguments at and to all chamber judgments.

## In New Brunswick—

On an appeal from an order of the J. C. C. refusing a rule for a new trial on the ground of the verdict being against evidence.

*Held*, that the Court of Appeal would not interfere with the finding below. *Hilland v. Hamm*, 17 N. B. R. (1 P. & B.) 289; *Hamilton v. Dunphy*, 21 N. B. R. (5 P. & B.) 214; *Sheriton v. Whelpley*, 20 N. B. R. (4 P. & B.) 75.

Jury having found for the defendant the J. C. C. made an *ex parte* order for a new trial. On appeal the order was reversed and the case remitted to the County Court with directions to issue an order calling on



the defendant to show cause why a new trial should not be granted. *Commercial Bank v. Price*, 1 Pugs. 97.

In Ontario—

Where a new trial has been refused by the County Court upon a matter of discretion, the Court of Appeal will not ordinarily interfere. *Campbell v. Prince*, 5 A. R. 330.

Where the J. C. C. being dissatisfied with a verdict, granted a new trial the Court of Appeal refused to interfere with his discretion, as it did not clearly appear that he was wrong. *Hunter v. Vanstone*, 6 A. R. 337.

In England—

Prohibition will not lie to a J. C. C. who has granted a new trial on the ground of the misconduct of the jury although there was no evidence to warrant him in so doing; if the subject of the suit and the application for a new trial were within his competence and jurisdiction (affirming 36 W. R. 668.) *Reg. v. Judge of Greenwich County Court*, 37 W. R. 132; 60 L. T. 248.

*51 & 52 Vict. c. 43, s. 128.* A J. C. C. has jurisdiction to direct a new trial of an action although he has previously directed it to be struck out for want of jurisdiction. *Wood v. Lister*, 23 Q. B. D. 329; 37 W. R. 734.

Section 93 of the County Courts Act (1888) does not give the J. C. C. an absolute power to grant a new trial, but only gives him power to grant it for reasons which would be sufficient in law for granting it in the superior courts. *Murtagh v. Barry*, W. N. (1890) 94; 24 Q. B. D. 156.

(ACTS 1886, CHAP. L.)

**5.** Upon the trial of any cause, either by or before a judge, it shall be the duty of such judge to take the evidence of the witnesses fully in writing, together with his rulings on the admission or rejection of evidence.

**6.** The solicitor on either side upon the said judge ruling against him on a question of evidence may reduce said question to writing and hand the same to the judge, who shall transcribe the same on his minutes or attach the same thereto, and said judge shall thereupon enter upon his minutes his rulings thereon.

**9.** In all cases tried before a judge sitting without a jury the judge shall write out and attach to the copy of the pleadings his decision upon each of the issues for trial.

(Applicable alike to the Supreme and County Courts and Judges, (s. 13.) and not affected by repealing section 71 [1889, c. 9], see Acts 1890, c. 11, s. 2.)

### APPEALS TO THE COUNTY COURT.

As to the appellate jurisdiction, see section 52, *ante* p. 16.

#### PROCEDURE.

**53.** All causes brought up by appeal and contested shall be tried anew.

**54.** The appellant shall in all cases after the first term give the appellee notice of trial, as in cases brought in the county court. Notice of trial shall be given in all cases in the county court; and although the amount sued for shall be under eighty dollars. All appeal causes shall be entered by the appellant on the docket of causes for trial at the ensuing term after the same shall have been appealed, provided the appeal has been perfected, or the cause at issue one week before the commencement of said court; and if any cause when called is not tried either party shall be at liberty to move the court on the last day of said term, or at any previous time, to be named by the judge, that the judgment below be affirmed or reversed as the case may be, with costs, which order the judge shall make unless the other party shall make application for a continuance supported by satisfactory affidavits accounting for his not having tried the same when called as aforesaid, and disclosing a good cause of action or defence on the merit.

**55.** All motions to set aside or quash the appeal for irregularity appearing in the papers sent up, shall be made the first day of the term or sittings, or at such other time as the judge shall order, and shall be heard and determined before the cause is tried, and no appeal shall be quashed by reason of the appeal bond being for a larger sum than may be by law required, provided that the judge shall have power, upon being satisfied by affidavit that any defect in the papers or appeal, even if such defect be such as make the appeal a nullity, occurred through mere inadvertence and without fault of the appellant, and without any intention to evade the requirements of the statute, and that the appellant has within the time limited for taking out his appeal *bona fide* endeavored to appeal, to allow the appellant to amend and perfect his appeal on such terms as to costs and time of trial as to him shall seem just.

Where an insufficient deposit was made by the plaintiff under R. S. N. S. (5th series), c. 102, s. 2, and the magistrate nevertheless gave judgment for the plaintiff and the defendant having appealed to the County Court moved, on affidavit, for judgment which was refused, and the cause tried on its merits, when judgment was given for the plaintiff; the J. C. C. having stated a case on the interlocutory application,

*Held, per* WEATHERBEE, J., that the question of the insufficiency of the deposit should have been brought up by *certiorari* and did not properly arise on the appeal to the County Court (*per* McDONALD, C.J.) that the proceedings before the magistrate were void and an appeal from void proceedings gave the County Court no jurisdiction to adjudicate on the subject matter of the cause. *Moffat v. McRitchie*, 19 N. S. R. 228.

A conviction before magistrates under the license law was quashed by the J. C. C. on appeal without any trial *de novo*.

*Held*, that he acted rightly in doing so *per* DESBARRES, J. "Every Judge has the power of setting aside all informal processes instituted in his Court or brought before him by appeal." *Rose v. Burke*, 13 N. S. R. 94.

Wl  
Cour  
" bef  
He  
v. Im  
An  
the c  
statu  
v. Ra  
(As  
justic  
The  
requir  
goes i  
Murph  
R. §  
allowe  
(2 Thc  
R. S  
clerk c  
was se  
follow  
*Held*  
*McKay*  
A mi  
Provin  
6 N. S.  
**56**  
paper  
bond  
below  
entitle  
as the  
B.

the appeal for  
, shall be made  
uch other time  
and determined  
all be quashed  
rger sum than  
dge shall have  
t any defect in  
e such as make  
e inadvertence  
ithout any in-  
tute, and that  
for taking out  
, to allow the  
on such terms  
seem just.

e plaintiff under  
nevertheless gave  
g appealed to the  
was refused, and  
for the plaintiff ;  
plication,

insufficiency of the  
did not properly  
LD, C.J.) that the  
appeal from void  
adjudicate on the  
S. R. 228.

w was quashed by

RES, J. "Every  
sses instituted in  
se v. *Burke*, 13

Where through inadvertence an affidavit for appeal from a Magistrate's Court was defective (not being entitled in the cause and the words "before me" being omitted from the *jurat*).

*Held*, that the J. C. C. had power to order an amendment. *Woodworth v. Innis*, 18 N. S. R. 295.

An affidavit for appeal made before a justice not concerned in trying the cause was held bad, and further held that independently of the statute, misconduct of the magistrate cannot give an appeal. *Moir et al. v. Ramsay*, 18 N. S. R. 126 *Curry v. Le Cras*, 16 N. S. R. 31.

(As to swearing affidavit for appeal before any justice whether the trial justice or not, see R. S. N. S. (5th series) c. 102, s. 34.)

The objection to the want of notice on a magistrate's summons required by N. S. Act (1865) c. 1, s. 6, is waived by the defendant when he goes into his evidence at the trial before the magistrate. *Belloni v. Murphy*, 6 N. S. R. (2 Old) 166.

R. S. N. S. chapter 22, license laws (*circ.* 1858), original summons allowed to be amended on appeal. *Taylor v. Marshall*, 3 N. S. R. (2 Thoms) 10.

R. S. N. S. c. 22, s. 32 (1859) license laws. Plaintiff was described as clerk of the county when only clerk for a district in the county, process was served by a person not a constable, and conviction did not precisely follow the statute.

*Held*, not sufficient irregularity to quash the proceedings. *McCully v. McKay*, 4 N. S. R. (Coch.) 82.

A magistrate's summons not endorsed with the notice required by the Provincial Act of 1865, c. 1, s. 6, is absolutely void. *McDonald v. Mills*, 6 N. S. R. (2 Old) 165.

**56.** The justices shall send to the county court all the papers in the cause appealed, together with the appeal bond and a transcript of his judgment, and the costs below to which each party would have been respectively entitled in the event of his having succeeded below, so far as the same can be ascertained.

**57.** The papers in all cases and convictions appealed to the county court shall be sent by the justice or justices before whom the same was tried, to the clerk of the county court not later than one week after the appeal shall have been perfected ; but the judge may extend the time on cause shown.

**58.** Any order may be moved for and granted on any chamber day or in term after the expiry of the time mentioned in the last preceding section, directing the justice or justices to return to the county court forthwith the appeal papers, or show cause why he has or they have neglected so to do, and the costs of the application shall be paid by the justice or justices unless the judge shall otherwise order, and execution shall issue for the same when taxed, to be levied on the personal property of the justice or justices.

**59.** The justice or justices shall be entitled to recover their costs against the party applying for the order hereinbefore mentioned, provided he or they make it appear to the judge granting such order that the papers were not sent up or not received within the period specified through no default of his or theirs, and execution may issue for such costs when taxed.

**60.** In appeal causes where the judgment below is affirmed, the final judgment shall include the debt and costs below, with the further costs of the county court, and execution shall issue for such debt and costs, or for costs only, as the case may require. When the original judgment is reversed, increased or diminished, the final judgment shall include the costs below, together with the amount for which

jud  
the  
cos  
jud  
aft  
sha  
mer

6  
exec  
app  
tim  
the  
on t  
satis  
on t  
the

6  
court  
decis  
in co  
of su  
all a  
coun

Hel  
The p  
Con  
R. S. 1  
Con

judgment shall be given in the county court, with the further costs, and execution shall issue for the same or for costs only as the case may require, and when the original judgment shall have been reversed, increased or diminished after the same shall have been enforced, the final judgment shall include the amount levied under the original judgment, together with the costs of such reversal.

**61.** In appeal causes the respondent may take out execution against the appellant or have recourse to the appeal bond, or may pursue both remedies at the same time, provided that the bail shall be at liberty to apply to the judge at any time to stop the proceedings against them on the bail bond, on the ground that the judgment has been satisfied by execution or otherwise, who on being satisfied on that point may make an order staying the proceedings, the costs to be in his discretion.

#### APPEALS FROM THE COUNTY COURT.

**64.** In all actions an appeal shall lie to the supreme court sitting *in banco* from every judgment, rule, order or decision of the county court, or of a judge thereof, made in court or at chambers, except orders made in the exercise of such discretion as by law belongs to a judge, and also in all actions and causes where the parties agree that the county court judge shall have jurisdiction.

*Held*, that there is no appeal from the County Court in criminal cases. The provisions of the County Court Act apply to civil proceedings only.

*Conviction under chapter 159 "of offences against religion," (App. A. R. S. N. S. p. 24.) Queen v. Upham, 20 N. S. R. 480.*

*Conviction under Liquor License Act 1886. Queen v. Sheppard, ibid 476.*

As to appeals from the J. C. C. as an *ex officio* Master of the Supreme Court, see Acts 1886 c. 50, s. 1, *post* p. 56.

A conviction before two justices under The Canada Temperance Act was appealed to the County Court and there quashed.

*Held*, that no appeal lay from the decision of the County Court although the County Court Acts gave a general appeal to the Supreme Court. *McDonald v. McCuish*, 17 N. S. R. 1; *The Queen v. Wolfe*, 19 N. S. R. 24.

As to granting or withholding stay of proceedings being matter of discretion. *Card v. Weeks* (16 N. S. R. 93), *post* p. 41.

Acts 1881 c. 1, s. 18, made decision of judge below final; section 69 gave an appeal from "every order and decision."

*Held*, that the latter section prevailed. *McRitchie v. Morrison*, 19 N. S. R. 66. (See Acts 1890, c. 17, s. 18.)

Under Act 1877, c. 6, s. 5, it was held that the Supreme Court could not review findings of fact. *York v. McLaughlin*, 12 N. S. R. 185; *Wier v. Letson*, *ib.* 299; *Von Metzke v. Padfield*, 13 N. S. R. 17; *Rose v. Burke*, *ib.* 94. See also *Cutten v. Stephens*, 12 N. S. R. 94.

It was further held under the same Act that any causes originating in the magistrates' courts and appealed to the County Court could not be further appealed to the Supreme Court. *Coolan v. McLean*, 12 N. S. R. 479; *Cochran v. Larcom*, *ib.* 480.

Under Consol. Co. Court Act 1880 the Supreme Court on appeal could reverse the judgment of County Court on the weight of evidence. *Murphy v. Romo*, 14 N. S. R. 175. Same held under 1889 Act, *McLeod v. Chetwynd*, 10 C. L. Times 345.

Acts 1878, c. 9, s. 14, permitted the J. C. C. to *grant* an appeal in all cases.

*Held*, that in a cause originating in the magistrate's court and appealed to the County Court, the J. C. C. could *grant* a further appeal. *Thomas v. Ray*, 14 N. S. R. 135.

But under Acts 1879, c. 20, s. 8, which contained a similar provision, an appeal was taken out on *filing security*, and it was held in a cause originating in the magistrate's court that no appeal could be entertained, inasmuch as it had not been *granted* by the J. C. C. *Matheson v. McLean*, 14 N. S. R. 176.

## PROCEDURE.

**44.** All the rules except rule 10 of order 57 of the Nova Scotia Judicature Act of 1884, shall apply to and be the procedure in appeals from the county court to the supreme court, and in respect of rule 10 the word "court" shall be held to mean the supreme court. Copies of all papers required in the supreme court on appeal shall be prepared, and shall be examined and compared with the originals, by the clerk of the court, who shall certify to their correctness, and for which examination and certificate the party procuring the same shall pay a fee of one dollar, to be taxed as part of the costs in the cause. The papers so certified shall form the case on appeal. All papers shall be copied by the clerk of the court, provided that either party shall be at liberty by himself, his solicitor or counsel, or the clerk of either, to copy in the office of the clerk of the court all papers deemed necessary for the appeal, on payment to the clerk of a fee of fifty cents, to be taxed as costs in the cause. The notice of motion in appeals shall be headed in the said county court.

*Seemle*, that the J. C. C. may direct that a statement in a summary form may be substituted for the printing of all the affidavits and other matter for use on appeal or the parties may prepare issues or have them settled by a Judge. *McDonald v. Clarke*, 20 N. S. R. 254.

The question was raised in *O'Toole v. Hooper*, 13 N. S. R. 484, whether the rule for appeal should not be certified. See also *Winchester v. Roblee*, 14 N. S. R. 88; *McDonald v. McDougall*, *ibid*, 168.

A guardian of a lunatic brought an action in the County Court in his own name for a debt due the lunatic,

*Held*, that the Court of Appeal could amend by substituting the lunatic as plaintiff. *Seaman v. Porter*, 16 N. S. R. 292.

Where it was contended on appeal that the action was commenced in the name of the wrong party,



*Held*, that the objection could not be entertained, having been raised for the first time on the appeal. *The Queen v. Miller*, 16 N. S. R. 361; see also *Andrews v. Landers*, *ibid* 236, *ante* p. 27.

In an appeal from the County Court, no one appearing for the appellant, the respondent's counsel, after moving to dismiss the appeal on that ground, was called upon to argue the case. *Chipman v. Gavaza et al.*, 14 N. S. R. 181.

The Court dismissed an appeal from the County Court for an irregularity in the form of the *rule*, and granted an order directing the clerk of the County Court to enter judgment in the County Court against the defendant.

*Held*, that the order was in excess of jurisdiction and conferred no authority on the clerk of the County Court to enter judgment. *Huestis v. Lyons*, 15 N. S. R. 284.

#### In New Brunswick—

To give the Supreme Court jurisdiction in appeal the proceedings from the County Court must be certified by the J. C. C. Where proceedings in appeal had been taken,

*Held* (in the absence of a certificate), that the party holding the judgment below is not entitled to costs of appearing to answer the appeal. *Ryan v. James*, Stevens' Dig. 379.

The return to an appeal should state all the grounds taken below, otherwise the appellant will be confined to the objections stated in the return. The proper course is to apply to have the return amended. *Woods, App.*, v. *McCann, Resp.*, p. 25 N. B. R. 213.

A defendant having otherwise perfected his appeal attended the clerk's office to enter it upon the appeal paper but was unable to do so. He then requested the deputy clerk to enter the cause but the latter neglected to do so.

*Held*, that it was the attorney's duty to see that the cause was entered and having made the deputy clerk his agent for that purpose he was responsible for his omission. *Ferguson v. Savoy*, 23 N. B. R. 87.

Defendant appealed and the J. C. C. made an order staying proceedings till judgment on the appeal; this order he afterwards rescinded and plaintiff proceeded to judgment, the defendant's attorney attending the taxation of costs without objection.

co  
3 1

da  
jud  
obt

1  
apl

A  
def  
c. 5  
beli  
s. 5

I

T  
app  
proc

A  
the  
Har

J  
Can

Ir

W  
the  
bers  
no p  
it.

A  
an a  
not

of la  
Vic.  
Coun  
(188

*Held*, that the defendant was barred by the order of the J. C. C. and could not thereafter have the appeal heard. *Fletcher v. Bernard*, 3 Pugs. 650.

The defendant took no steps to perfect his appeal until after the twenty days limited for appealing had expired. The plaintiff did not enter judgment as he might have done. The defendant having filed a bond obtained a stay of proceedings pending appeal.

*Held*, that 30 Vic. c. 10 and 33 Vic. c. 20 did not prevent defendant's appeal being prosecuted. *Currier v. Crosby*, 3 Pugs. 610.

An order of the J. C. C. setting aside a judgment and allowing defendant to come in and defend on terms, under Consol. Stats. N. B. c. 51, is not a decision upon a point of law, but depends upon the Judge's belief that there is a defence on the merits and there is no appeal under s. 57 of c. 51. *Ex p. McCully*, 20 N. B. R. 87.

#### In Ontario—

The Court will not entertain objections to the hearing of County Court appeals unless such objections appear or should properly appear upon the proceedings certified. *Penton v. The G. T. R. W. Co.*, 28 U. C. Q. B. 367.

As the defendant might be said to have appealed in compliance with the wish of the C. C. J., costs were not allowed on dismissing the appeal. *Harris v. Robinson*, 25 U. C. Q. B. 247.

Judgment varied on a matter of discretion no costs of appeal given. *Campbell v. Frince*, 5 A. R. 330.

#### In England—

Where an appeal from a County Court is struck out on the ground that the order giving leave to appeal has been granted by a Judge at Chambers, without jurisdiction, the Court of Appeal from inferior Courts has no power to grant costs to the party who appears to show cause against it. *Brown v. Shaw*, 1 Ex. D. 425.

A J. C. C. entered judgment *pro forma* for plaintiff "in order to expedite an appeal to the High Court." The Appeal Court held that there was not any "determination" or "direction" of the County Court "in point of law," within the meaning of the County Courts Act, 1850, (13 & 14 Vic. c. 61, s. 14), and refused to hear the appeal, remitting the case to the County Court for judgment. *Chapman & Sons v. Withers & Co.*, W. N. (1887) 235.

Parties to an appeal from a County Court may waive the limit of time prescribed for appealing, and their consent to the signature of the case for appeal by the J. C. C. is sufficient evidence of such waiver. *Ward v. Raw*, L. R. 15 Eq. 83.

The provisions of 13 & 14 Vic. c. 61, s. 14, requiring the party appealing from a decision of a J. C. C. to give a notice of appeal and security for costs are not conditions precedent to the jurisdiction of the Court to try the appeal, and may therefore be waived by the respondent. *Park Gate Iron Co. v. Coates*, L. R. 5 C. P. 634.

**45.** After the judge is satisfied that a notice of motion in appeal has been duly given he shall file his minutes as taken at the trial with the clerk where the cause was tried, and also all rules, orders or other papers held by him relating to the cause appealed. In chamber appeals he shall file all papers used at the hearing when notice of appeal shall have been duly given. When notice of appeal shall have been duly given in any case the further proceedings in the judgment, rule, order or decision of the county court, or of the judge thereof, may be stayed in whole or in part until the said appeal shall be heard and determined or on such terms as the court or judge may think fit. The appellant however shall be entitled to an order so staying the proceedings on filing a bond with two sureties, who shall justify in such reasonable amounts as the court or judge shall direct, to respond the judgment to be finally given in the cause or matter. An application to the county court or to the judge thereof for such stay of proceedings, shall not prejudice the appellant's right to apply to the court of appeal or to a judge thereof for such stay.

The Supreme Court has no power to amend the minutes of the J. C. C. and the establishment of such a principle would lead to a perpetual investigation of facts upon affidavit. *Doyle v. Gallant*, 14 N. S. R. 86.

the limit of time  
 ture of the case  
 raiver. *Ward v.*

party appealing  
 and security for  
 the Court to try  
 ent. *Park Gate*

ice of motion  
 is minutes as  
 ise was tried,  
 held by him  
 r appeals  
 n notice of  
 tice of appeal  
 ther proceed-  
 of the county  
 d in whole or  
 d determined  
 ink fit. The  
 er so staying  
 ies, who shall  
 ert or judge  
 ally given in  
 unty court or  
 ngs, shall not  
 the court of

es of the J. C. C.  
 to a perpetual  
 4 N. S. R. 86.

After an appeal on the merits had been perfected, application was made to the J. C. C. to amend his minutes by adding evidence that had been rejected as irrelevant, the application was refused and an appeal taken from the order of refusal under Consol. Co. Court Act 1880, c. 2, s. 99.

*Held*, by majority of Court, that there was no appeal from refusal of J. C. C. to amend his minutes, but all agreed that there was no such appeal after an appeal in the cause had been perfected. *Rumsey v. Cunningham*, 18 N. S. R. 19.

On motion to dismiss an appeal a new bond was ordered to be filed in the place of an appeal bond, defective under s. 100 of the Consol. Co. Act 1880, c. 2. *Taylor v. Gavin*, 18 N. S. R. 296.

Appeal from order of J. C. C. discharging an order *nisi* for security for costs. Defendant applied for a stay of proceedings.

*Held*, that the granting or refusal of the stay of proceedings by the J. C. C. was a matter within his discretion. *Card v. Weeks*, 16 N. S. R. 93.

#### ACTS 1886, CHAP. L.

**10.** Within five days after judgment has been declared or decree filed on trial of any action or issues by or before a Judge, the Judge shall, if required by either party to the action, file with the prothonotary or clerk of the Court his original minutes of evidence as taken upon such trial, and his ruling with regard to the acceptance or rejection of evidence tendered and on the issues.

**12.** In appeals from the County Court, after the same are perfected, if either party is dissatisfied with the Judge's minutes taken at the trial thereof, application may be made to the Judge who tried the same to have the said minutes amended, provided notice of said application and the amendments proposed to be made, shall be served on the opposite party four days before said application.

(The foregoing sections are applicable to Supreme and County Courts and Judges, Acts 1836, c. 50, s. 13, and are not affected by repealing section 71 (Acts 1889, c. 9.) *See* Acts 1890, c. 11, s. 2.)

## CHAMBERS.

**48.** The judge of each district, except when on circuit, shall hold chambers for the transaction of the chamber business of his district, or for the transaction of the business of any other district whenever by reason of sickness, disability, absence or other cause, the judge of such other district shall be unable to act. Such chambers may be held in the shire town, or any other town or place in the district over which the judge presides, and except when engaged, he shall set apart one day or more in each week on which to hold the same, and the chamber sittings may be continued from day to day until the docket of causes for trial at such chambers or sittings is concluded; but no judge shall be obliged to hold such chambers during the time when the judges of the supreme court have midsummer vacation.

As to trials in Chambers, see *ante* s. 49, p. 26.

As to review by J. C. C. of his decisions, etc., s. 46 *ante* p. 29.

As to referring arguments of questions of law, etc., to Chambers, s. 32 *ante* p. 22.

As to jurisdiction of J. C. C. as *ex officio* Master of the Supreme Court, see p. 56.

## CHAMBER RULES.

**50.** The judges of the respective county courts may each for himself frame such orders and regulations for regulating the order and practice before him at chambers as may be most convenient; and may direct the clerks and deputy clerks of their respective courts how and in what manner the several chamber dockets shall be made up.

## COSTS, Etc.

**65.** The costs and fees for services performed in suits for debts under eighty dollars shall be as in the appendix hereto.

**66.** The sheriff shall be allowed for all services performed under this Act the same fees as are now provided for the like services in the supreme court, except when other fees are herein provided for.

**67.** The clerks' and deputy clerks' fees for all services performed under this Act shall be for declaration suits the same as for like services in the supreme court, and for all summary causes the fees mentioned in the appendix hereto.

**68.** The fees of the clerk and deputy clerk for chamber entries, and for entries on the docket, and all other entries, shall be in all causes the sum mentioned in the appendix hereto; and the clerk or deputy clerk, as the case may be, shall enter the items in the costs presented to the judge to be taxed. Where a jury is ordered each jury man shall be entitled to receive a dollar for each day he shall attend, such sum to be paid by the county treasurer out of any county funds in his custody or under his control, on the order of the judge.

**69.** The table of fees in causes over eighty dollars shall be the same as those in the supreme court for the like services, with the exception of cases in which a different scale of costs is authorized by this Act.

**70.** In summary and appeal causes one-half of the costs for work done other than mentioned in schedule of costs hereto, shall be taxed as are allowed in causes for sums over eighty dollars, unless otherwise provided for.

As to sheriff's costs for executing warrant against a tenant under s. 62, *ante* s. 63, p. 25.

## COSTS.

In action *ex contractu* when the amount claimed is under eighty dollars, and appeal cases :—

Clerk or deputy clerk's fees, for filing præcipe and signing and selling writs.....	\$ .50
Signing and sealing writs of <i>capias</i> , taking affidavits, administering oath, filing præcipe.....	1.00
For any alias writ and <i>capias</i> .....	.50
Signing and sealing every subpoena, including filing præcipe .....	.20
Signing and sealing any dockets.....	.10
Entering judgment.....	.50
Signing, sealing and filing when returned any execution	.25
Copy of docket and certificate of judgment.....	.30
There shall be no charge for other entries on the court docket but one, and no more than two entries altogether .....	.10
Entry of any cause on chamber docket when made...	.10
Receiving, entering, filing, and auditing every appeal suit .....	.25

Commissioners, appraisers, sheriffs, witness, crier, constable, coroner, fees, same as in Supreme Court.

SOLICITORS' FEES.

In all causes *ex contractu* where the amount claimed is under forty dollars :—

Writ of summons, and copy and statement of claim...	\$2.50
For affidavit and order to arrest.....	.60
Any alias writ of summons and order to arrest.....	.30
Entering appearance, and filing and serving defence.	.60
On final judgment.....	2.00
Every subpoena.....	.30
Every copy subpoena.....	.30
Execution .....	.70
Brief and copy not less than \$1.00, not more than (in the discretion of judge, taxing master, or clerk)..	2.00
Counsel fee when cause tried, not to exceed \$5.00, to be taxed by and in the discretion of the judge...	5.00

In all causes *ex contractu* where the amount claimed is under eighty and not less than forty dollars, and appeal causes :—

Writ of summons and copy and statement of claim...	\$3.00
Appeal bond in case of appeal.....	1.50
For affidavit and order to arrest.....	.75
Any alias writ of summons and order to arrest.....	.40
Entering appearance, and filing and defence.....	.75
On final judgment.....	2.50
Every subpoena... ..	.30
Every copy subpoena.....	.40
Execution .....	.80



Brief and copy not less than \$1.00, nor more than (in the discretion of the judge, taxing master, or clerk) .....	\$3.00
Counsel fee when cause tried not to exceed \$7.50, to be taxed by and in the discretion of the judge or taxing master.....	

When cause is tried by a jury the counsel fee shall be taxed at fifteen dollars. In all other causes the solicitor's fees shall be the same as in the Supreme Court.

**71.** Chapter 105, Revised Statutes, 5th Series, "Of the County Courts and procedure therein," rule 17, order 57 of the Judicature Act rules, and all Acts and parts of Acts in amendment thereof, as far as the same shall add to or conflict with the powers, authority, practice and procedure of the county courts hereby established, are repealed, except sections 5 and 6 of chapter 11 of the Acts of 1887.

This section does not repeal chapter 50, Acts 1886, or Acts in amendment. Acts 1890, c. 11, s. 2.

By Acts 1887, c. 11, s. 5, the J. C. C. is to be allowed his travelling expenses and also his other expenses not exceeding \$2.50 a day, when engaged in trying a controverted municipal election petition in any municipality of his district other than that in which he resides, such expenses to be paid out of the municipal or town treasury on the Judge's certificate.

By section 6 provision is made for the appointment of a deputy clerk at New Glasgow in Pictou County. and his duties are defined.

Acts 1889, c. 10, provides for the appointment and defines the duties of a deputy clerk at Weymouth, Digby County. This Act passed 11th April, 1889, the repealing s. 71 *ante* passed 17th April, 1889.

## APPEALS

UNDER

## CHAPTER 102 R. S. N. S., 5TH SERIES.

## OF CIVIL PROCEDURE IN MAGISTRATES' COURTS.

*Analysis of Statutory Provisions.*

## RIGHT OF APPEAL.

The party dissatisfied with the judgment may appeal to the next term or sittings of the County Court in the county in which the trial is had. Section 34.

## CONDITIONS OF APPEAL.

Within ten days after judgment in the cause the appellant, or in his absence, his agent shall make an affidavit in writing that he is dissatisfied with the judgment and feels aggrieved thereby and that such appeal is not prosecuted for the purpose of delay, and shall file the same with the justice, and such justice, or if the action be before two justices the first one applied to therein, if thereto required, shall *prepare* the affidavit. The affidavit may be *sworn* before any justice of the peace. Section 34; also Acts 1887, c. 33.

For form of affidavit see R. S. N. S. (5th series), p. 740.

## STAY OF PROCEEDINGS.

Execution if not issued when the appeal is applied for and the appellant or his agent shall make or be ready to make the affidavit shall be stayed, and if execution has issued before the appeal is applied for it shall be stayed on the same being *perfected* (see below as to bond) on the order of the issuing justice to be granted at the instance of the appellant and duly served upon the constable. Section 34.

## APPEAL BOND, Etc.

The party so appealing, or in his absence his agent, shall within ten days after the judgment enter into a bond with sufficient surety in a penalty not less than double the amount of the judgment and not in any case less than \$25, with a condition that the appellant shall enter and prosecute his appeal and perform the judgment of the Court or render the body of the appellant and pay the costs accruing on the appeal, or shall before the first day of the term of such Court pay the amount of the judgment together with all costs thereon subsequently accruing. Such justice, or if the action be before two justices, the first one applied to therein if thereto required, shall prepare the appeal bond which may be executed before any credible witness and need not be executed before the justice or justices who tried the cause. Section 34.

(See form of appeal bond R. S. N. S. [5th series] 741, which form seems to contemplate *two* sureties.)

## BAIL.

If the defendant have given bail, his bail shall continue liable notwithstanding his personal appearance until they shall render him or he shall give an appeal bond within the ten days prescribed. Section 34.

## OBLIGATION OF JUSTICE TO GRANT APPEAL.

The justice or justices shall be bound to grant the appeal returnable to the next term of the County Court in the county in which the trial was had, if applied for at any time within ten days after judgment in the cause. Section 34.

*See APPEALS TO COUNTY COURT ante, p. 31 et seq. ; also p. 16 et seq.*

---

## APPEALS

UNDER

R. S. N. S. (5TH SERIES), CAP. CIII.

## OF SUMMARY CONVICTIONS AND ORDERS BY JUSTICES.

## AMENDMENTS.

Section 13 amended Acts 1890, p. 56. Section 17 repealed and new section substituted Acts, 1889, p. 99. Section 19 amended Acts, 1889, p. 99. Section 97 added; *as to costs*, Acts 1889, p. 97.

## ANALYSIS OF STATUTORY PROVISIONS.

Section 66. Any person who thinks himself aggrieved by such conviction or order may appeal to the County Court of the district where the cause of the information or complaint arose, unless otherwise provided in any special Act.

(1) If conviction or order is made more than twelve days before the next ensuing term of the Court of Appeal, the appeal is made to that term, if made within twelve days then to the second term after conviction.

(2) Notice of appeal in writing to be given to the prosecutor or to the convicting justice or one of the convicting justices for him within four days after the conviction or order. [Form of Notice, R. S. N. S. (5th series) 797.]

(3) Provisions for *person aggrieved* to remain in custody, enter into recognizance, or in case of money penalty, to make deposit of money until holding of Court.

B.C.C.M.—4

(4) Provides for the hearing of the appeal and the order of the Court thereupon, and also makes provision for the adjournment of the hearing from one term to another or others of the said Court.

(5) Provides for certificate on quashing of conviction or order.

Section 67. At the request of either appellant or respondent the Appeal Court may empanel a jury to try the facts of the case, otherwise the Court shall try and be the absolute judge of the law and facts.

Evidence not given below may be given on the appeal.

As to further appeal from the County Court, see *ante* p. 35. *Queen v. Sheppard*, 20 N. S. R. 480; *Queen v. Upham*, *ib.* 476.]

NOTE.—Proceedings under this chapter are limited to the recovery of penalties or to the inflicting of punishment under the laws of Nova Scotia, and to such proceedings as are within the jurisdiction of a justice or justices, or police or stipendiary magistrate. Section 1.

The chapter does not apply to proceedings,

- (1) Where by any Act other proceedings are provided, (s. 1).
  - (2) Nor to proceedings under caps. 35, 37 and 75, R. S. N. S. (s. 2).
  - (3) Nor to proceedings in the City Criminal Court, Police Court, or before the stipendiary magistrate of the city of Halifax, (s. 2).
  - (4) Nor to proceedings under any statute imposing a fine or penalty, and declaring that it shall be sued for or recovered as a private debt or as a debt, [s. 2 (1)]. *Provided*, that in case a fine or penalty not exceeding \$40 is imposed by any statute or by-law, and it is not expressly declared that such fine or penalty is to be sued for or recovered as a debt or as a private debt then two justices or a stipendiary magistrate shall have jurisdiction with respect thereto under this chapter, [s. 2 (1)].
- 

se  
77  
  
I  
tut  
M  
6  
S  
S  
  
T  
Se  
ame  
para  
for  
away

## APPEALS

UNDER

## THE SUMMARY CONVICTIONS ACT.

*R. S. Can. cap. 178.*

Revised Criminal Law of Canada 1887, c. 178, amended as follows :

*Acts 1888, c. 45.*

The following sections repealed and new sections substituted. Repealing sections in brackets. 29 and 30 (s. 1), Form E<sup>2</sup> (s. 2), 37 (s. 5), 7C (s. 7), 77 (s. 8), 85 (s. 9), 92 (s. 10).

The following sections amended : 31 (s. 3), 32 (s. 4), 59 (s. 6).

*Acts 1889, c. 45.*

The principal Act (c. 178) amended as follows :

Form N. 3 (s. 3), 22 (s. 4), section 11 repealed and new section substituted (s. 5).

New sections added :

61A (s. 2), and s. 7, tariff of fees.

Section 6, Acts 1888, c. 45, repealed (s. 1).

Section 7, s-s. 2, Acts 1888, c. 45, amended (s. 6).

*Acts 1890, c. 37.*

The principal Act amended as follows :

Sections repealed and new substituted. 78 (s. 25) and 80 (s. 26), 87 amended (s. 28). Paragraph *d* of s. 8, Acts 1888, c. 45, repealed and new paragraph *d* substituted (s. 24). Section 28 allows justices to state a case for the opinion of the Supreme Court except where special Act takes away appeal.

## ANALYSIS OF STATUTORY PROVISIONS.

## RIGHT OF APPEAL.

Unless otherwise provided in any special Act under which a conviction takes place or when an order is made for the payment of money or dismissing an information or complaint, the prosecutor or complainant, as well as the defendant may appeal (*in Nova Scotia*) to the County Court of the district or county where the cause of information or complaint arose. Acts 1888, c. 45, s. 7.

## CONDITIONS OF APPEAL.

Unless otherwise provided in any special Act :

(a) If conviction or order is made more than 14 days before the sittings of the Court of Appeal such appeal shall be to the then next sittings, if made within 14 days then to the *second* sittings after such conviction or order.

(b) Within 10 days after conviction or order the appellant must give to the respondent or to the convicting justice, a written notice of such appeal.

(For *form. of notice* see Form R, p. 344, Revised Criminal Law of Canada, c. 178.)

(c) Appellant remains in custody, or enters into recognizance, with two sureties, to appear personally at the Court, to try the appeal, to abide the judgment and to pay costs awarded. Or if only a penalty or sum of money is ordered to be paid (although imprisonment be awarded in default of payment), the appellant may in lieu of remaining in custody or entering into recognizance make a deposit of money with the convicting justice sufficient in the latter's opinion to cover the sum or penalty awarded with costs below and on appeal. On giving recognizance or making deposit the appellant, if in custody, shall be liberated. Acts 1888, c. 45, s. 8.

(d) The Court of Appeal hears and determines the matter of appeal and makes such order as to it seems meet with or without costs to either party including costs below. If conviction or order be affirmed it is ordered and adjudged that the appellant be punished according to the

conviction, or be required to pay amount of money penalty and such costs as are awarded. The Court of Appeal may issue process to enforce its judgment, and if deposit has been made by appellant, may order money penalty and costs below and on appeal, to be paid thereout, and the balance to be paid the appellant, and if conviction be quashed shall order appellant's deposit to be returned to him. Acts 1890, c. 37, s. 24.

(e) The Court of Appeal may order an adjournment of the hearing from one sittings to another or others, the order to be indorsed on the conviction or order.

(f) Provision made for certificate when conviction quashed. Acts 1888, c. 45, s. 8.

## DEFECTS IN FORM, Etc.

No judgment shall be given in appellant's favor if appeal be based on alleged defects, variances, etc., unless objection was taken below, nor unless it is proved that the justice, notwithstanding objection, refused to adjourn hearing. Section 79, chapter 178, Rev. Crim. Law, Ca. p. 312.

## PROCEDURE ON APPEAL.

The Appeal Court tries and is the absolute judge both of facts and law. Any party may call witnesses and adduce evidence (whether such witnesses were examined or evidence was given below or not), as to credibility of witness or as to any other fact material to the inquiry. If Court of Appeal is satisfied by affidavit or otherwise that personal attendance of any witness cannot be obtained, his evidence taken below may be read on appeal. Acts 1890, c. 37, s. 25.

(There is no longer a trial by *jury* in appeals under the Summary Convictions Act.)

Court of Appeal may, notwithstanding defects in any conviction or order, and notwithstanding that the punishment imposed or order made may be in excess of jurisdiction of Court below, hear and determine the charge on its merits, and make such order as the Court thinks just, and may exercise powers of justice appealed from, and such order has same



effect and may be enforced as if made by each justice, and may also order as to costs. The Court of Appeal may also enforce any order or conviction, made on appeal, by its own process. Acts 1890, c. 37, s. 26.

If appeal is not legally abandoned after notice of the appeal is given, the appellant may be made to pay costs. Rev. Crim. Law, c. 178, s. 81.

If respondent succeeds on appeal the justice may issue warrant of distress as if no appeal had been brought. R. C. L., c. 178, s. 82.

The convicting justice is required to transmit *every* conviction or order to the Court, having appellate functions before the time when an appeal may be heard, and if appeal has been taken and deposit made shall also return the deposit into said Court. The burden of proof to show that there is an appeal is on the party asserting the fact. Acts 1888, c. 45, s. 9.

#### TARIFF OF FEES.

A tariff of fees for justices and constables is now provided by Acts 1889, c. 45, s. 7.

As to further appeal from the County Court, see *ante* p. 35. *Queen v. Sheppard*, 20 N. S. R. 480; *Queen v. Upham*, *ib.* 476.

#### THE COUNTY JUDGE'S CRIMINAL COURT.

This Court was constituted by Statute of N. S. 1879, c. 11, passed 11th of April, 1889.

The title of the Court is "The County Judge's Criminal Court for the County of \* \* \*" Act 1889, c. 11, s. 2.

The judge of every County Court is constituted a court of record for the trial of any persons committed to jail on a charge of having been guilty of any offence, and for which the person so committed consents to be tried without a jury, and the Court so constituted shall have the powers and duties which the "Speedy Trials Act" and any amendment thereto purports to give so far as the Legislature of the Province can give the same. Act 1889, c. 11, s. 1.

The practice of the Court is regulated by "The Speedy Trials Act," assented to 16th April, 1889. Stat. Ca. 1889, c. 47, amended by Stat. Ca. 1890, c. 37, s-s. 29 and 30.

The trial of the accused depends upon his consent (ss. 5 and 7, c. 47, 1889, and s. 30, c. 37, Acts Ca. 1890). The Court has no jurisdiction to try any person accused of any treason or of any felony punishable with death, or offences under ss. 21, 22 and 23 of the "Act respecting offences against the person" (relating to explosives and corrosive substances), or offences under ss. 60 to 76, inclusive, of "The Larceny Act" (relating to frauds by agents, bankers or factors). S. 5, c. 47, 1889 R. S. Ca. c. 174, ss. 4, 5 and 6.

## POWERS OF THE COUNTY COURT JUDGES

AS

## EX-OFFICIO MASTERS OF THE SUPREME COURT.

ACTS 1886, CAP. L.

1. The Judges of the County Court shall be *ex-officio* masters of the Supreme Court and (shall whenever application is made to them, 1887, c. 10, s. 2) as such masters subject to the same appeal as is allowed from the decision of Judges at Chambers, hear motions, make orders and transact all such business and exercise all such authority and jurisdiction in the following proceedings and matters in the Supreme Court as under the Judicature Act, or the rules made in pursuance thereof may be transacted and exercised by a Judge of the Supreme Court at Chambers, that is to say:—

- (a) Security for costs.
- (b) Leave to issue executions as provided by Order XL., rules 22 and 23 of said Act.
- (c) Attachment of debts as provided by Order XLIII.
- (d) Arrest as provided by Order XLIV.
- (e) Enlarge or abridge (time 1887, c. 10, s. 1) as provided by Order LX.
- (f) Service of writ of summons as provided by Orders IX. and X. (1887, c. 10, s. 3).
- (g) Service out of the jurisdiction as provided by Order XI. (1887, c. 10, s. 3)
- (h) Discovery in aid of execution as provided by Order XL., rules 44, 45, 46 and 47 (1887, c. 10, s. 3).

(i) Taxation of costs (1887, c. 10, s. 3).

2. The Masters of the Supreme Court being Judges of the County Courts are hereby empowered (to fix or settle the sum due, 1890, c. 11, s. 1) to grant orders for foreclosure and sale and to tax costs in uncontested actions claiming the foreclosure of mortgages.

3. (They) may appoint guardians for insane persons under the provisions of chapter 38, R. S. N. S., 5th series "Of lunatics."

4. (They) may order the letting for a term of years the sale, mortgage or other disposal of the real estate of lunatics and persons *non compos mentis*, and of infants under the like circumstances and in the same manner as the Supreme Court or a Judge thereof may order the same.

(This act and amendments are not affected by section 71, chapter 9, Acts 1889, *ante* p. 46, see Acts 1890, c. 11, s. 2.)

AE

AC

AI

AI

A

# INDEX.

---

## ABSCONDING DEBTORS—

jurisdiction as to, 11.

## ACTION—

on bail bond to sheriff, 10.

causes of, may not be divided, when, 22.

distinct, tried separately, 22.

transfer of, to Supreme Court, where defence, etc., beyond jurisdiction, 23

where title to land pleaded, 23.

## ADMINISTRATORS—

may sue and be sued, 20.

## AFFIDAVIT—

for appeal, defective, amended, 33.

on appeal to County Court, in civil suits, 46.

power of Commissioners of Supreme Court to take, 5.

plea to jurisdiction need not be verified by, 14.

## AMENDMENT—

of notices of motion for new trial, etc., 29.

of appeals to County Court when and how allowed, 32.

AMENDMENT—*Continued.*

- by substituting plaintiff on appeal from County Court, 37.
- of minutes of J.C.C., how obtained, 40.
- the Supreme Court cannot order, 40.

## APPEAL FROM COUNTY COURT—

- in what cases, 35.
- none in criminal cases, 35.
- from order for new trial, 29.
- as to granting stay of proceedings on, 36.
- where conflicting sections of statutes, 36.
- decisions as to review of findings of fact, 36.
- where J.C.C. had power to grant, 36.
- Rules of Judicature Act to apply to, 37.
- case on, how made up, 37.
- how and by whom certified, 37.
- notice of motion in, how headed, 37.
- statements of facts may be substituted for case on, when, 37.
- what papers should be certified on amendment by substituting new plaintiff on, 37.
- where question raised on, not raised below, 38.
- course where appellant did not appear, 38.
- dismissal of, for irregularity, 38.
- where stay of proceedings on, rescinded and appeal waived, 38.
- perfecting after expiry of time limited for, 39.
- none, from discretion of J.C.C., 35, 39, 41.
- costs where J.C.C. advises, 41.
- Judge to file minutes of trial, etc., on, where and when, 40, 41.
- Judge to file papers on, in Chamber matter, 40.
- stay of proceedings on, when and how obtained, 40.
- costs of showing cause against, when granted without jurisdiction, 38, 39.
- no appeal from *pro forma* judgment, 39.
- waiver of limit of time for, 40.
- waiver of conditions of, 40.
- from committal for contempt of court, whether any, 15.
- duty of solicitor to enter, 39.
- none from refusal of J.C.C. to amend his minutes, 41.
- defective, amended by ordering new bond to be filed, 41.
- no further, from judgment of County Court on appeal under N. S. or Canada Summary Convictions Acts, 35.
- appeal from orders of J.C.C., made as Master of the Supreme Court, 56.

## APPEAL TO COUNTY COURT—

- quashing proceedings on, 16, 32.
- no certiorari, where party has taken, 16.
- from what Courts there is an, 16.
- and in what cases, 16.
- when to be tried, 16.
- powers of Court on, 16.
- trial of, when appellant can designate place, 17.
- from Justice's Court, 16.
- from stipendiary magistrates, 16.
- and municipal courts, 16.
- under R. S. N. S. 3rd series, c. 1, s. 8 : 17.
  - cap. 89 (removal of paupers), 17.
  - (5th series) c. 67 : 17.
- where no witnesses examined by plaintiff below, 18.
- effect of defects in, through inadvertence of appellant, 32, 33.
- when certiorari proper remedy, 32.
- none from void proceedings, 32.
- to be tried *de novo*, 31, 32.
- notice of trial of, to be given when and by whom, 31.
- to be entered, when, 31.
- motion on, to affirm or dismiss judgment below, 31.
- continuance of, when and how granted, 31.
- motion to quash, when to be made and when heard, 32.
- amendment of when allowed and on what terms, 32.
- quashing conviction on without new trial, 32.
- defective affidavit for, amended, 33.
- none, on ground of misconduct of Justices, 33.
- what defects insufficient to quash, 33.
- Justice to transmit papers on, 33.
- what papers, etc., to transmit on, 33, 34.
- when papers to be transmitted on, 34.
- how transmission of papers obtained on, 34.
- judgment on, what to include, 34.
- enforcal of judgment on, 35.
- costs on, tariff of fees, etc., 44, 45.

## UNDER STATUTE OF CIVIL PROCEDURE, ETC.—

- who may appeal, 47.
- to what term or sittings, 47.
- appellant to make affidavit, 47.



APPEAL TO C. C.—UNDER STATUTE OF CIVIL PROCEDURE—*Continued.*

who to prepare, 47.  
 what affidavit must contain, 47.  
 form of, 47.  
 stay of proceedings, how obtained on, 47.  
 bond on, how prepared and its requisites, 48.  
 effect on bail, of, 48.  
 Justices bound to grant when, 48.

UNDER STATUTE OF SUMMARY CONVICTIONS, N. S.—

who may appeal, 49.  
 to what Court, 49.  
 when to ensuing sittings, 49.  
 notice of, form and on whom to be served, 49.  
 appellant to give recognizance on, 49.  
 hearing on, 50.  
 adjournment of hearing of, 50.  
 certificate of quashing conviction of, 50.  
 jury how obtained on, 50.  
 what evidence to be given on, 50.  
 no further appeal after, 35.

UNDER THE SUMMARY CONVICTIONS ACT, CANADA.—

in what cases, 52.  
 to what sittings, 52.  
 notice to be given on, form, etc., 52.  
 appellant to give recognizance, etc., 52.  
 proceedings on, 52.  
 adjournment of hearing of, 53.  
 certificate on quashing conviction, 53.  
 defects in form, effect of, on, 53.  
 law and facts to be judged on by Appeal Court, 53.  
 when evidence below may be used on, 53.  
 what witnesses may be examined on, 53.  
 powers of Court on hearing of, 53.  
 Justices to transmit papers on, 54.  
 no farther appeal after, 35.

APPEAL BOND—

Respondent may sue on and issue execution, 35.  
 bail on when entitled to stay of proceedings, 35.

**ARGUMENTS—**

may be heard at Sittings or in Chambers, 22.

**ARREST—**

of defendant, power of County Court, 11.

powers of County Court as to persons under, by civil process from certain Courts, 16.

before final judgment, 21

in Supreme Court proceedings, powers of J.C.C., 56.

**ATTACHMENT—**

of debts in Supreme Court, powers of J.C.C., 56.

**ATTORNEY—**

Judge may not practise as, 3.

only, can practise, 4.

cannot practise, if Clerk, 4.

**ATTORNMENT—**

effect of, as to jurisdiction, 13.

**BAIL—**

actions on bail bonds to sheriff, 10.

when entitled to stay of proceedings on appeal bond, 35.

effect of appeal to County Court on, in civil suits, 48.

**BASTARDY—**

orders, appeals from, 16.

**BEQUESTS—**

County Court cannot try validity of, 10.

**BOND—**

action on bail bond to sheriff, 10.

for instalments, jurisdiction, 11.

on appeal to County Court larger than law requires cannot be quashed, 32.

on appeal from County Court, requisites of, 40.

defective, amended on appeal, 41.

on appeal to County Court, in civil suits, requisites of, 48.

## CALENDAR OF COUNTY COURTS, 9.

## CANADA TEMPERANCE ACT—

*certiorari* to County Court prohibited, 16.  
conviction under, no appeal from County Court, 36, 50, 54

## CAPIAS—

powers of County Court as to, 11.

## CAUSES—

Clerk to keep record of, 6.

## CERTIFICATE—

of judgment, registry of binds lands, 6.  
of quashing of conviction, 50, 53.  
of proceedings, when cause transmitted to Supreme Court on question of title to lands, 23.

## CERTIORARI—

power to issue, 16.  
conviction under the Canada Temperance Act, County Court no power to, 16.  
cannot have, where appeal is taken, 16.

## CHAMBERS—

to be held, where and when, 42.  
none, in vacation, 42.  
in case of sickness, etc., of the J.C.C., who to hold, 42.  
rules regulating practice in, to be made by J. C. C., 42.  
questions of law, motions, special cases, etc., may be argued at, 22.  
judgments in, may be reviewed, how and when, 29.  
section 46 (County Court Consol. Act), applicable to proceedings in, 29.  
notice of motion for new trial may be made returnable to, 29.

## CITY COURT, HALIFAX—

jurisdiction in tort and forcible entry abolished, 14.

## CITY CRIMINAL COURT, HALIFAX—

cap. 103, R. S. of Summary Convictions does not apply to, 50.

## CLAIM—

- reducing after plea to jurisdiction, 11, 12.
  - where no plea, 14.
  - in actions of tort, 14.
- where distinct claims in the aggregate, exceed jurisdiction, 22.
- See* Jurisdiction.

## CLERKS—

- how appointed, 4.
- to give security, and how, 4.
- tenure of office, 4.
- how paid, 4.
- cannot practice as attorneys, 4.
- old, continued in office, 4.
- to appoint deputies, 4.
  - be responsible for conduct of deputies, 5.
  - pay deputies, 5.
- deputies to have same powers as, 5.
- to have the same powers as the prothonotaries, 5.
- duty of, to file all writs and papers, 6.
  - to enter all causes, etc., in book, 6.
  - to keep a judgment book, 6.
  - to grant certified copies of judgments,
- Supreme Court no power to order judgment to be entered in County Court,
- to adjourn sittings in absence of Judge, 8.
- list of, 9.
- to transmit papers to prothonotary when cause remitted on question of title to lands, 23.
- duties and fees on preparing and certifying appeals to the Supreme Court, 37.
- fee in declaration suits, 43.
  - summary suits, 43, 44.
  - Chambers matters, 43, 44.
- See* also Deputy Clerks.

## COMMISSIONERS OF THE SUPREME COURT—

- power to take affidavits in the County Courts, 5.
- B.C.C.M.

## CONTEMPT OF COURT—

- power to punish for, 5.
- right of appeal from committal for, 5.

## CONTINUANCE—

- power of J.C.C. to grant a second, 15.
  - to grant, 26.
- for purposes of re-trial by jury, 28.
- of appeal to County Court, when and how granted, 31.
- See also Appeals to County Court.

## CONTRACT—

- rescission of, jurisdiction, 13.

## CONVICTION—

- quashing, without trial *de novo*, 32.
- not precisely following statute, 33.
- under Canada Temperance Act quashed in County Court, no appeal, 36.
  - chapter of Offences against Religion, 35.

## COSTS—

- may be awarded where no jurisdiction, 12.
- discretion of J.C.C. as to, 16.
- where cause transmitted after question of title to lands raised, 23.
- of each party in Justice's Court to be made up and sent to County Court on appeal, 33.
  - application to compel Justice to transmit appeal papers, 34.
  - on appeal from County Court where papers not certified, 38.
  - where appeal taken in compliance with wish of J.C.C., 39.
  - where judgment varied on appeal as to matter of discretion, 39.
  - of opposing appeal granted without jurisdiction, 39.
  - security for stay of proceedings, how far discretionary, 41.
  - table of, in suits under \$80: 44.
  - in suits over \$80, to be same as in Supreme Court, 43.
  - sheriff's fees not otherwise provided for, 43.
  - of Clerk in declaration suits, 43.
    - summary suits, 43.
    - Chambers matters, 43.
  - Jury, how much and how paid, 43.
  - in summary and appeal cases, 44.

COSTS—*Continued.*

- of Judges, on trial of municipal election petition, 46.
- where Appeal under Summary Conviction Act not legally abandoned, 54.
- in Supreme Court, power of J.C.C. to order security for, 56.
- taxation of by J.C.C., 57.

## COUNTY JUDGE'S CRIMINAL COURT—

- how constituted, 54.
- practice regulated by Speedy Trials Act, 55.
- trial in, depends on consent of accused, 55.
- no jurisdiction to try, what offences, 45, 46.
- See also* Speedy Trials Act.

## COURTS—

- See* County Court, Supreme Court, etc.

## CRIERS—

- how appointed and paid in District No. 1; 7.
- who to be, in other districts, 7.

## CRIMINAL CONVERSATION—

- County Court cannot try action for, 10.

## DAMAGES—

- counter-claim for, beyond jurisdiction, 11.
- joinder of action for, with debt jurisdiction, 12.

## DEBT—

- joinder of action for, with trespass jurisdiction, 12.

## DEFECTS—

- in appeal bonds and on appeal to the County Court, when and how cured, 32.
- summons not served by constable, conviction not following statute, and misdescription of plaintiff, 33.
- in form under Summary Convictions Act (Ca.), 53.

## DEFENCE—

- plea to jurisdiction, effect of, 11.
- that claim is above or below jurisdiction must be pleaded, 14.
- and may be pleaded with other defences, 14.
  - need not be verified by affidavit, 14.
- plea to jurisdiction, effect of not pleading, 14.
- involving matters beyond jurisdiction, no bar to trial of plaintiff's action, 24.

## DEPOSIT—

- on appeal under Summary Convictions Act, 49, 52.

## DEPUTY CLERKS—

- how appointed, when, where, and by whom, 4, 5.
- clerk to be responsible for, 5.
- how paid, 5.
- to have powers of clerk, 5.
  - same powers as prothonotaries, 5.

## DEVISE—

- validity of, when the County Court cannot try, 10.

## DISCRETION OF JUDGE—

- no appeal from, 35, 39.
- setting aside judgment is matter of,  
*See* New Trial.

## DISQUALIFICATION OF JUDGE, 8.

## DISTRICTS—

- of County Court, 2.

## ESTATE—

- distributive share of intestates may be sued for, 20.

## EVIDENCE—

- certified copy of County Court judgment to be, 6.
- powers of County Court as to, 15.
- on trial, to be taken in writing, 30.
- rulings on, to be noted by Judge, 30.

**EVIDENCE—Continued.**

questions ruled out may be transcribed in or attached to minutes, how and when, 30.  
 minutes of and rulings on, to be filed when, 41.  
 (under N. S. Sum. Conv. Act) not given below may be given on appeal, 50.  
 (under Sum. Conv. Act (Ca.)) not given below may be given on appeal, 53.  
 given below may be used on appeal, when, 53.

**EXECUTION—**

may issue to other Counties, 22.  
 on judgment on appeal, 35.  
 leave to issue, in Supreme Court, powers of J.C.C. as Master, 56.  
 discovery in aid of, (Supreme Court), 56.

**EXECUTORS—**

may sue and be sued, 20.

**FENCES—**

appeals from Justices under c. 67 R. S., 17.

**FORECLOSURE—**

powers of J.C.C. as Master in, 57.

**FORMS—**

of Judicature Act, to apply, 21.  
     to be changed to make them apply, 21, 22.  
 summons for tenant, 25.  
 warrant to evict tenant, 26.

**FORCIBLE ENTRY AND DETAINER—**

jurisdiction of City Court of Halifax abolished, 14.  
 County Courts to have jurisdiction in, notwithstanding question of title, 14.  
*See* Tenants.

**GUARDIAN—**

of insane, power of the J.C.C. to appoint, 57.



## INFANTS—

power of J.C.C. to order sale of lands of, 57.

## INSANE—

power of J.C.C. to appoint guardians of, 57.  
to order sale of lands of, 57.

## INSTALMENT—

action for, on bond, 11.

## ISSUES—

Judges' decision on, to be noted, 31.

## JOINDER OF CAUSES OF ACTION—

does not give jurisdiction if none separately, 12.  
distinct causes of action to be tried separately, 22.

## JUDGE OF COUNTY COURT—

how appointed, 3.  
how removed, 3.  
and for what causes, 3.  
proceedings for removal, 3.  
to be one for each district, 3.  
qualifications and tenure of office, 3.  
to preside over Courts in each county of their districts, 3.  
cannot try municipal election petition sitting in another county, 3.  
cannot practise law, 3.  
oath of office, 4.  
absence of, adjournment on, 8.  
sickness of, power to call in another, 8.  
powers of Judge called in, 8.  
disqualified, who to act, 8.  
    act of a nullity, 8.  
may take judicial notice of any disqualification, 8.  
list of Judges, 9.  
is *ex officio* Justice of the Peace, 10.  
jurisdiction of, in forcible entry, etc., 14.  
power of, to enforce rules, 15.  
    to punish for contempt, 15.  
    co-extensive, within jurisdiction, with that of a Judge of  
    the Supreme Court, 15.

JUDGE OF COUNTY COURT—*Continued.*

- to be Official Referee under the Judicature Act, 19.
- bound by decisions of Supreme Courts of N.S. and Canada, 19.
- not obliged to leave his county of residence to try causes out of term, 26.
- may order trial by jury, when, 27, 28.
- cannot alter judgment formally given, except when, 28.
- to order jury to be paid, and by whom, 28.
- may set aside verdicts and review judgments and orders, 29.
- his right to order new trial, not absolute 29, 30.
- may order new trial of cause previously struck out for want of jurisdiction, 30.
- to note his decisions on issues, 30.
  - upon copy of pleadings, 31.
- to take trial evidence in writing, 30.
- to note his rulings on evidence, 30.
- to note questions ruled out, how and when, 30.
- to file minutes of trial, when and where, 40.
- to file papers on Chamber appeals, 40.
- to file minutes of, and rulings on evidence, when, 41.
- to hold Chambers, where and when, 42.
- sickness, etc., of, who to hold Chambers, 42.
- to make rules regulating practice in Chambers, 42.
- costs of, on trial of municipal election petition, 46.
- criminal jurisdiction of, under The Speedy Trials Act, 54. 55.

## JUDGMENT—

- to be entered in book by clerk, 6.
- certified copy of, to be evidence, 6.
- Supreme Court, no power to order Clerk to enter, 6.
- certificate of, what to contain, 6.
- registered, to bind lands. 6.
- for less than \$20, when no plea to jurisdiction, 5.
- County Court may set aside its own, 17.
- J.C.C. cannot alter, formally given, 28.
- may be reviewed, how and when, 28, 29.
- on appeal, to include what, 34.
  - how enforced, 35.
- appeal from *pro formá*, quashed, 39.

## JUDICATURE ACT—

rules and orders of, made applicable to the County Court, 21.

## JURISDICTION—

each District Court is distinct, 2.  
 territorial, defined by the Provincial Legislature, 2.  
 municipal election petition, to try, 3.  
 of Supreme Court in summary suits abolished, 10.  
 County Court has none, to try title to lands, 10.  
 nor the validity of devises, bequests or limitations, except when, 10.  
 nor actions for *crim. con.* or seduction, 10.  
 nor breach of promise of marriage, 10.  
 as to amount and subject matter of, 10.  
 in actions for instalments on bond, 11.  
 counterclaim exceeding, 11, 23.  
 defence exceeding, 23.  
 effect of plea to, 11, 14.  
 as to mutual debts, 11.  
 where debt claimed below, joinder of claim for damages cannot  
   give, 12.  
 in replevin, affidavit should show value within, 12.  
 costs, where no, 12.  
 plaintiff crediting set-off, does not compel defendant to set it up, or  
   give, 12.  
 where refusal to perform contract, 12.  
 mere right of user not matter of title to lands, 13.  
 tenant attorning cannot question, 13.  
 objection to, how waived, 13.  
 plea to, must be pleaded specially, 14.  
   effect of not pleading, 14.  
   need not be verified, 14.  
 ousted in action respecting leasehold, 13.  
 reducing claim, where no plea to, 14.  
   where plea to, 11, 12.  
   in tort, 14.  
 of City Court of Halifax in forcible entry and detainers and tort  
   abolished, 14.  
 in forcible entry and detainer notwithstanding question of title to  
   lands, 14.  
 same as Supreme Court when writter consent to, 15.

JURISDICTION—*Continued.*

to enforce rules, 15.  
 to punish for contempt, 15.  
 as to administration of justice, 15.  
     liberty of the subject, 15.  
     witnesses and evidence, 15.  
 under R. S. C. 117, "of liberty of the subject," when, 16.  
 as to *certiorari*, 16.  
 none to *certiorari* convictions under Canada Temperance Act, 16.  
 territorial, law defined, 2, 17.  
 inherent to set aside what judgments, 17.  
 none to stay its own proceedings in what case, 18.

## UNDER STATUTES OF CANADA—

The Speedy Trials Act, 18, 54.  
 The Summary Convictions Act, 18.  
 The Electoral Franchise Act, 18.  
 The Dominion Elections Act, 18.  
 The Wreck and Salvage Act, 18.  
 The Seamen's Act, 18.  
 The Pilotage Act, 18.

## UNDER STATUTES OF NOVA SCOTIA—

controverted elections of municipal and town councillors, 18.  
 of civil procedure in Magistrates' Courts, 19.  
 of the relief of indigent debtors, 19.  
 to entertain suits for penalties, 19.  
 of Judge, as Master of the Supreme Court, 19, 56.  
 of Judge, as official referee, 19.  
 to entertain suits for legacies and shares of intestate estates, 20.  
 to give redress or relief in same manner as the Supreme Court, 20.  
 in arrest before final judgment, 21.  
 where distinct claims in aggregate exceed, 22.  
 where claim reduced by admitted set-off, 13.  
 where defence or counter-claim involve matters beyond, 23.  
 and procedure in matters of tenants overholding, 24.  
 where tenant claims ownership, 25.  
 to try causes out of term by agreement, 26.  
 to try causes without a jury, 27.  
 to retry causes with a jury, 28.  
 to order new trial, 29.

JURISDICTION—*Continued.*

- none on appeal from void proceedings, 32.
- to enter judgment on appeals, 34.
- costs where appeal granted without, 39.
- J.C.C. has, as Master in what cases, 56.
- appeal from J.C.C. as Master, 56.

## JURY—

- causes to be tried without, 27.
- Judge may order, when, 27.
- may be ordered on re-trial, 28.
- whether, should find general verdict or special findings, 27.
- right to, under special circumstances, 27.
- how summoned, 28.
- who qualified to sit as, 28.
- five men to constitute, 28.
- four may give verdict, when, 28.
- s. 57, c. 106 R. S. to apply to trials by, 28.
- penalties for non-attendance, 28.
- pay for attendance, 28, 43.
- who to pay, 28, 43.
- misconduct of, new trial granted, 30.
- fees, what and how paid, 28, 43.
- on appeal under N. S. Act of Summary Convictions, etc., 50.

## JUSTICE OF THE PEACE—

- J.C.C. to be *ex officio*, 10.
- appeal to County Court from, 16.
- to transmit what papers, on appeal, 33.
- to prepare transcript of his judgment, 33.
- to make up costs, 33.
- when to transmit papers, 34.
- how compelled to transmit papers on appeal, 34.
- when compelled to pay costs for neglect to transmit papers on appeal, 34.
- may recover costs, where neglect to transmit not his fault, 34.
- bound to grant appeal, when, 48.
- duties of, on appeal to County Court in civil suits, 46.

## LAND—

- bound by registered judgment, 6.
- County Court no jurisdiction to try title to, 10.
- action for rent of, effect of tenant attorning, 12.
- County Court has jurisdiction in forcible entry, etc., notwithstanding question of title to, 13.
- question of title to, must be pleaded, 23.
- procedure when question of title to, raised, 23.
- effect of tenant claiming ownership of, 25.
- action respecting leasehold jurisdiction of County Court ousted, 13.
- of infants and lunatics, power of J.C.C. to order sale, etc., 57.

## LEGACIES—

- may be sued for in the County Court, 20.

## LIBERTY OF THE SUBJECT—

- powers of the County Court relating to, 15.
- cap. 117 R. S. N. S. jurisdiction of the County Court, 16.

## LIMITATIONS—

- validity of, County Court cannot try, when, 10.

## MAGISTRATES SUMMONS—

- want of notice on, how waived, 33.
- amended on appeal, 33.
- where not served by a constable, 33.
- when absolutely void, 33.

## MARRIAGE—

- breach of promise of, County Court, cannot try action for, 10.

## MASTER OF THE SUPREME COURT—

- powers of J.C.C. as, 56.

## MINUTES—

- Judge's, to contain evidence on trial and rulings, 30.
- question ruled out may be transcribed on, how and when, 30.
- of trial, when and where to be filed, 40.
- of trial evidence, to be filed when and within what time, 41.
- of J.C.C., how amended, 41.

when and how application for amendment of, made, 41.  
 no appeal from refusal of the J.C.C. to amend his, 41.  
 particularly, when appeal has been taken in cause, 41.  
 Supreme Court, no power to amend the J.C.C.'s, 40.

#### MISCONDUCT—

of jury, ground for new trial, 30.  
 of magistrate, no ground for appeal, 33.

#### MOTION—

to affirm or reverse judgment below on appeal, when and how made,  
 31.  
 to set aside or quash appeal to County Courts, when and how made  
 and when heard, 32.  
 to quash appeal when insufficient deposit below, 32.

#### MUNICIPAL ELECTION PETITIONS—

J.C.C. sitting in another county cannot try, 3.  
 disqualified to try, may call in another Judge, 8.  
 jurisdiction to try contested, 18.  
 costs, on trial of, 46.

#### NEW TRIAL—

J.C.C. may, on application, order, 29.  
 application for, how made, 29.  
 notice of motion for, what to contain, 29.  
     when to be served, 29.  
     may be amended, 29.  
     where returnable, 29.  
 appeal from order, refusing, 29.  
*ex parte* order for, 29.  
 can be ordered after cause struck out for want of jurisdiction, 30.  
 right of J.C.C. to order, not absolute, 30.  
 may be granted for misconduct of jury, 30.  
 appeals to be tried *de novo* in the County Court, 31.  
 quashing conviction without, 32.

## NOTICE—

- of application to amend minutes of the J.C.C., when and on whom to be served, 41.
- of appeal under (N.S.) Summary Convictions Act, 49.  
The Summary Convictions Act (Ca.), 52.

## NOTICE OF MOTION—

- for new trial, what to contain and when to be served, 29.
- enlargement of time for service, 29.
- where to be returnable, 29.
- how headed, in appeals to the Supreme Court, 37.

## NOTICE OF TRIAL—

- when to be given in appeal cases to County Court, 31.
- to be given in all cases, 31.

## OATH—

- of Judge, 3.

## OFFICIAL REFEREE—

- J.C.C. to be, under Judicature Act, 19.

## ORDER—

- of J.C.C. may be reviewed, how and when, 29.
- to compel Justice to transmit papers, 34.
- when and where to be moved for, 34.

## PARTY—

- may on application sue or defend in person, 4.

## PAUPERS—

- appeals from orders for removal of, 16.

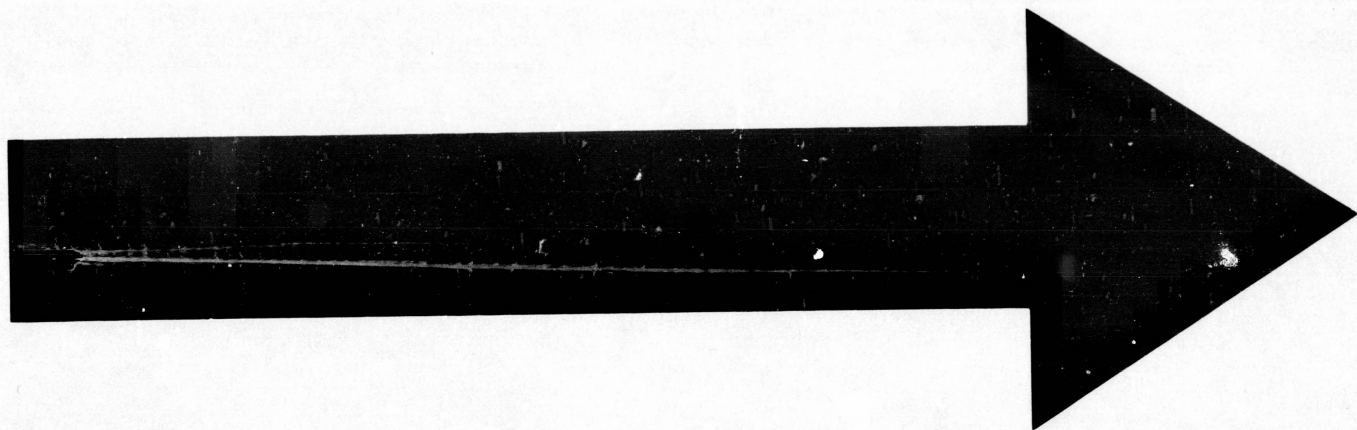
## PENALTIES—

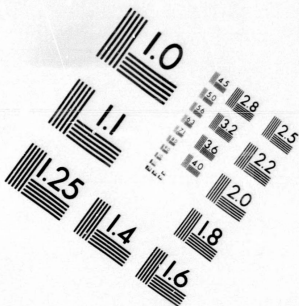
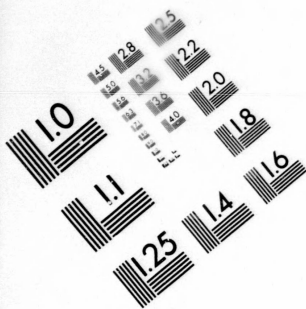
- on jurors neglecting to attend, 28.
- suits for, *See* Jurisdiction.

## PLAINTIFF—

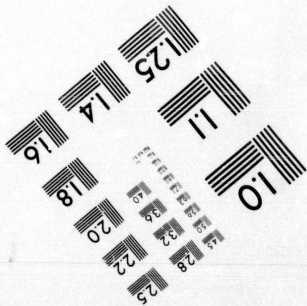
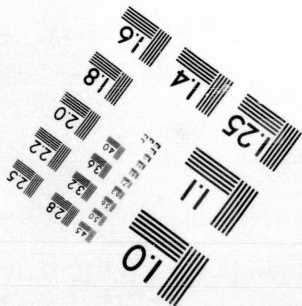
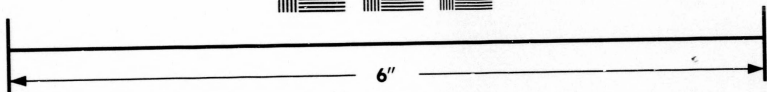
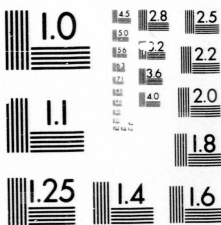
- right of, to reduce claim, 11, 12, 14.
- may not divide his cause of action, when, 22.
- substituting on appeal, 37.







**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

0  
1.6  
1.8  
2.0  
2.2  
2.5  
2.8  
3.2  
3.6  
4.0

10  
11  
12  
15  
18  
20  
22  
25  
28  
32  
36  
40

## PLEADINGS—

to be same as in the Supreme Court except when specially provided, 21.  
copy of, for Judge, to have his decisions on issues noted thereon, 31.  
*See also* Forms.

## PLEA TO JURISDICTION—

effect of, 11, 13.

## POLICE COURT, HALIFAX—

cap. 103, R.S.N.S., does not apply to, 50.

## PRACTICE—

Attorneys, in County Court, 4.  
to be same as in the Supreme Court.  
    except when specially provided, 21.  
on application for new trial and review of judgment or order, 29.

## PROCEDURE—

to be same as in the Supreme Court, except as specially provided, 21.  
orders and rules of the Judicature Act to apply to, 21.  
when title to land pleaded, 23.  
to evict tenants, 24.  
    obtain new trial or review, 29.

## PROCESS—

may issue to other counties, 21.  
void or voidable under repealed s. 14, legalized, 20.

## PROHIBITION—

none on granting of new trial for misconduct of jury, 30.  
on *certiorari* to remove conviction under Canada Temperance Act, 16.

## QUASHING PROCEEDINGS—

on appeal, 16, 32.  
*See* Appeals to County Courts.

## RECOGNIZANCE—

on appeal under Summary Convictions Act, (N.S.), 49.  
under Summary Convictions Act, (Ca.), 51.

## RECORDS—

Clerks to provide books for, 2.

## REMEDIES AND RELIEF—

County Court can grant same as Supreme Court, 20.

## RENT—

action for, attornment, effect of, 13.

## REPEALING CLAUSE—

does not affect c. 50, Acts 1886, 46.

## REPLEVIN—

affidavit for, should show value within jurisdiction, 12.

## RE-TRIAL BY JURY—

may be ordered and at what stage, 28.

## REVIEW—

*See* New Trial.

## RULES AND ORDERS—

Clerk to keep record of, 6.  
in Chambers, to be made by J.C.C., 42.

## SEALS OF COUNTY COURTS—

by whom provided, 2.  
old to be used until when, 2.

## SECURITY—

to be given by Clerk, 4.

## SEDUCTION—

County Court cannot try action for, 10.

## SET-OFF—

mutual debts, jurisdiction, 11.  
plaintiff cannot compel defendant to set up, by pleading, 12.  
admitted reducing claim to jurisdiction, 13.

**SHERIFF—**

- to have same powers as in Supreme Court, 6.
- actions on bail bonds to, 10.
- fees on evicting tenants, 25.
  - in cases not provided for 43.

**SITTINGS—**

- how long to continue, 7.
  - varied and rearranged, 7.
- additional may be proclaimed, 7.
- to be as heretofore unless altered, 7.
  - adjourned and how, in absence of Judge, 8.
- power of Judge to call in another Judge to hold, 8.
- calendar of, 9.
- questions of law, motions, special cases may be argued at, 22.
- notice of motion for new trial, or review may be returnable to, 29.

**SOLICITOR—**

- duty of, to enter appeal, 39.

**SPEEDY TRIALS ACT—**

- summary of provisions, 54.

**STAY OF PROCEEDINGS—**

- when question of title to lands raised, 23.
  - granted in suit on appeal bond, 35.
- discretionary, on appeal from the County Court, 36.
- order for, rescinded and judgment entered, effect on appeal, 39.
- on appeal from the County Court, how obtained, 40.
- refusal of J.C.C. to grant, no bar to application to the Court of Appeal, 40.
- how far discretionary in application for security for costs, 41.
  - obtained on appeal to the County Court in civil suits, 46.

**STIPENDIARY'S COURT—**

- County Court entertains appeals from, 16.

**STIPENDIARY'S COURT, (HALIFAX)—**

- cap. 103 R.S. does not apply to, 50.

**SUBPOENAS—**

may issue to other counties, 22.

**SUITS—**

may be prosecuted by parties in person, 4.  
summary, Supreme Court no jurisdiction, 10.  
two or more may not be brought on divided cause of action, 22.

**SUMMARY CONVICTIONS ACT, (N.S.)—**

proceedings under, limited to what cases, 50.  
does not apply to what courts, 50.  
nor under what statutes, 50.  
amendment to, 49.  
*See* Appeals to County Court.

**SUPREME COURT—**

Attorneys of to practice in County Court, 4.  
no power to order Clerk to enter judgment in County Court, 6, 38.  
officers of County Court to have powers of officers of, 6.  
jurisdiction of, in summary suits abolished, 10.  
Judges of County Courts bound by decisions of, 19.  
cause transmitted from County Court considered to be in, from what time, 23.  
transfer of action to, when defence or counter-claim exceeds jurisdiction of County Court, 23.  
power to review findings of fact on appeal from County Court, 36.  
to amend on appeal, 37.  
to stay proceedings on appeal from County Court, when, 40.

**SUPREME COURT OF CANADA—**

Judges of County Courts bound by decisions of the, 19.

**TENANTS—**

jurisdiction where ownership claimed by, 25.  
overholding, landlord may apply to the J.C.C., 25.  
procedure to evict, 24.  
summons for, 25.  
warrant to evict, 26.  
*See* Forcible Entry and Detainer.

**TENURE OF OFFICE—**

Judges, 3.  
Clerks, 4.

**TERMS. See SITTINGS—****TIME—**

enlargement or abridgement of, in Supreme Court proceedings,  
powers of J.C.C., 56.

**TITLE TO LAND—**

must be pleaded, 23.  
when pleaded, what procedure, 23.  
costs in such cases, 23.  
*See Land.*

**TORT—**

reducing claim in action of, 14.  
jurisdiction of City Court of Halifax abolished in actions of, 14.  
*See Jurisdiction.*

**TRANSFER—**

of action to Supreme Court where defence exceeds jurisdiction, 23.  
where title to land comes in question, 23.

**TRIAL—**

may be out of term on what conditions, 26.  
without jury in all cases, 27.  
Judge may order, by jury, 27.  
or re-trial by jury, 28.  
may be postponed for purpose of re-trial by jury, 28.  
by jury, c. 106, s. 57 R.S. applies to, 28.  
Judge to take evidence on, 30.  
note rulings on evidence, on, 30.  
of appeals to County Court to be *de novo*, 31.  
quashing conviction, without new, 32.  
before Magistrate, waiver of objection to summons, 33.

**VACATION—**

no County Court Chambers in, 42.



## VERDICT—

- as to finding facts by, 27.
- may be set aside, when and how, 29.
- review of findings by, on appeal to Supreme Court, 36.

## VOID PROCEEDINGS—

- no appeal from, 32.
- when Magistrate's summons void, 33.

## WAIVER—

- of objection to jurisdiction, 13.
- of limit of time for appeal, 40.
- of conditions of appeal, 40.
- of defect in Justice's summons, 33.

## WARRANT—

- to evict when granted, 25.
- form of, 26.

## WITNESSES—

- powers of County Court as to, 15.
- not examined below may be examined on Appeal under Summary Conviction Act (Ca.), 53.
- under Summary Conviction Act, (N.S.), 50.
- See Evidence.*

## WRITS—

- and papers to be filed by Clerk, 6.
- may issue to other counties, 22.
- of summons, (Supreme Court), service of, powers of J C.C., 56.
- service out of jurisdiction, 56.

