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No. 41.

3d Session, 3d Parliament, 13 Victoria, 1850.

B I L L .

An Act to amend and consolidate the several Acts now in force, regulating the practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof.

Received and Read a first time, Friday, 31st
May, 1850,

Second Reading, Tuesday, 11th June, 1850.

Mr. Sol. Gen. MACDONALD.

BILL.

An Act to amend and consolidate the several Acts now in force, regulating the Practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof.

WHEREAS it is expedient to consolidate and reduce Preamble.
 into one Act the several laws now in force regulating the system and practice of certain Courts in Upper Canada established for the recovery of Small Debts, and to make 5 other provisions therefor: Be it therefore enacted, &c.

And it is hereby enacted by the authority of the same,
 That the Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, Act 4 and 5 Vict. c. 3.
 "An Act to repeal the laws now in force in that part of
 10 "this province formerly Upper Canada, for the recovery of
 "Small Debts, and to make other provisions therefor,"—
 and the Act passed in the eighth year of Her Majesty's Reign, and intituled, "An Act to amend an Act passed
 15 "in the fourth and fifth years of the Reign of Her Majesty,
 "intituled, 'An Act to repeal the laws now in force in
 "that part of this Province, formerly Upper Canada, for
 "the recovery of Small Debts, and to make other pro-
 "visions therefor,'"—[and the Act passed in the twelfth
 20 "year of the Reign of Her Majesty, intituled, "An Act to
 "authorize attachments against personal property for sums
 "of ten pounds and under in certain cases in Upper
 "Canada,"}]—shall be and the same are hereby repealed,
 [upon, from and after the day this Act shall come into force.]

25 II. Provided always, and be it enacted, That the several Division Courts, &c. now existing, to remain until altered.
 Division Courts now established and in existence in each County of Upper Canada and the limits and extent of the same respectively, shall be and remain as they are now, until altered by the provisions hereinafter mentioned.

30 III. And be it enacted, That the number of the said Number of Division Courts, and time of holding them, how fixed.
 Courts in each County shall at no time be less than three, nor more than [the number of Townships in each County, respectively,] and that there shall be one Division Court held in each City and County Town, and that a Court
 35 shall be holden under this Act once in two months in every such Division [or oftener in the discretion of the Judge thereof,] and that it shall and may be lawful for the Judge of the said Court to fix and appoint the times

and the places within such Divisions, when and at which such Courts shall be holden, and in like manner from time to time to alter the same.

Justices
may alter
Divisions, &c.

IV. And be it enacted, That it shall and may be lawful for the Justices of the Peace in each County now or here- 5
after to be erected in Upper Canada, from time to time, to alter the number, limits and extent of such Divisions within their respective Counties, subject to the restrictions herein contained.

Divisions of
Counties, &c.
to be entered
in a book to be
kept by the
Clerk of the
Peace.

V. And be it enacted, That the Divisions of each 10
County so declared and appointed, and the times and places of holding such Courts, and all alterations that may be from time to time made therein as aforesaid, shall be entered and recorded by the Clerk of the Peace, in a book to be by him kept for that purpose, and that it shall 15
be his duty to transmit to the Governor of this Province, a copy of every such entry and record as soon as the same shall have been made.

The Justices
of the Peace
shall number
the Divisions.

VI. And be it enacted, That the Justices so assembled as aforesaid, shall be required to number the said Divi- 20
sions, beginning at number one; and that the Court to be held in each Division shall be known by the name and style of the *The First* (or other, as the case may be) Division Court for the County of

Judges of
County Courts
to preside.

VII. And be it enacted, That the Judges of the County 25
Courts of the several Counties in Upper Canada, shall preside over the Division Courts within their respective Counties, and no such Judge shall during the continuance of his appointment, be capable of being elected or of sitting as a Member of the Legislature of this Province, 30
[or of practising as an Attorney, Solicitor or Counsel, in any of Her Majesty's Courts of Law or Equity.]

Judge, in case
of illness, &c.
may appoint a
deputy properly
qualified.

VIII. And be it enacted, That in case of the illness or unavoidable absence of the Judge of any such County Court, it shall be lawful [for the Judge of any County 35
Court for any other County to hold the Court and to act in the place of the Judge so absent and with the same powers, or] for such Judge to appoint some [Barrister duly admitted as such] to act as his deputy; and every person so appointed, shall, during the time for which he shall 40
be so appointed, have all the powers and privileges, and be subject to all the duties [vested or imposed by this Act or by Law on] the Judge by whom he shall have been so appointed [as Judge of the Division Court,] and notice of every such appointment shall be forthwith sent 45
by the Judge or Deputy Judge to the Governor of this Province, and such notice shall specify the name, residence and profession of the Deputy Judge and the cause of his appointment; and no such appointment shall

be continued for more than one calendar month without a renewal of the like notice, and it shall be lawful for the Governor to annul any such appointment of which he shall disapprove:— [Provided always, that whenever from Proviso.
 5 illness of the Judge or Deputy Judge or from any casualty, it may happen that he shall not arrive in time or shall not be able to open any Court to be held under this Act on the day appointed for that purpose, it shall and may be
 10 lawful for the Clerk or Deputy Clerk of such Court, after the hour of eight o'clock in the afternoon of such day, to adjourn by proclamation any Court which shall be appointed to be opened on that day to an hour on the following day to be by him named and so from day to day until the Judge or Deputy Judge shall arrive to open the
 15 same or until he shall receive other direction from such Judge or Deputy Judge.]

IX. And be it enacted, That for every Court holden under the authority of this Act, there shall be a Clerk and one or more Bailiffs; and the Judge of the County
 20 Court shall from time to time appoint, and at his pleasure remove, the Clerks and Bailiffs of the Courts holden by him:— [Provided always, that no person other than a subject of Her Majesty shall be so appointed, and provided also that no practising Barrister, Attorney or Solicitor shall hereafter be appointed to the Office of Clerk
 25 of any Division Court.] Clerk and bailiffs to be appointed.

X. And be it enacted, That it shall be lawful for the Clerk of any such Division Court (with the approval of the Judge thereof,) to appoint from time to time, a De- Clerk may appoint a deputy in case of illness, &c.
 30 puty to act for him in the office of Clerk of the Court, at any time when he shall be prevented by illness or other unavoidable accident from acting in such office, and to remove such deputy at his pleasure; and such deputy during the time for which he shall be so appointed, shall
 35 have the like powers and privileges, and be subject to the like duties as if he were the Clerk of the Court for the time being; and the Clerk of the Court [and his sureties] shall be civilly responsible for all the acts and omissions of his Deputy.

[XI. And be it enacted, That the Clerk or Deputy Clerk shall have full power and authority to administer oaths and receive affidavits of service or process or notices or other papers, and also of the execution of *Cognovits*, in all suits, actions or proceedings commenced in his
 40 own or in any other Division Court in Upper Canada.] Clerk, &c. may administer oaths of service of process.

XII. And be it enacted, That the Treasurer of every County shall be the Receiver General of fees of the several Division Courts within his County; and every such Treasurer shall be paid a per centage of *four* pounds, Treasurer to receive all fees.
 50 on every hundred pounds of the gross produce of the £4.

Judge's salary. fees of the Courts of which he is Receiver General ; and every Judge shall be paid by a certain salary, the salary of a Judge being in no case more than *five hundred* pounds, or less than *two hundred and fifty* pounds; and the Clerk and the Bailiffs of the Court, shall be paid by fees hereby allowed to them ; and the Governor in Council shall fix the remuneration to be paid to the Judges, having due regard to the population [and other circumstances] of the several Counties and Divisions, and the remuneration to be paid to the Judges, may [within the limits aforesaid] be increased, or, diminished by the said authority :—Provided always, that the salaries of the said Judges as at present established, shall remain the same unless otherwise altered by law, or unless vacancies shall occur.

Clerk and bailiffs, how paid.

Proviso.

Certain duties assigned to the Clerks.

Proviso.

Penalty on parties who shall wrongfully hold papers, &c.

XIII. And be it enacted, That the Clerk of each Division Court, shall issue all summonses [and furnish copies thereof with the notices thereon in the form given in the Schedule to this Act annexed marked D. and particulars of the Plaintiff's Claim or demand and of the Defendant's set off and also shall issue all] warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all such summonses, executions, and other process of the Court, and shall take charge of, and keep an account of all Court fees and fines payable or paid into Court, and of all suitor's money paid into and out of Court, and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book [shall at all times be accessible to the Judge of the said Division Court and also] shall be open to all persons desirous of searching the same, on payment of three pence for each search, and shall from time to time, at such times as shall be directed and appointed by the Governor, submit his accounts to be audited or settled by the Treasurer of his County ; [and all papers, processes, proceedings, accounts, moneys, books and all matters whatsoever in the possession of the said Clerk by virtue of or appertaining to his office, shall upon his resignation, removal or death, immediately become the property of the Treasurer of the County in which the Division for which he was Clerk is situate, who shall hold the same for the benefit of the public until the appointment of another Clerk to whom the same shall be respectively delivered over by the said Treasurer :—Provided always, that it shall not be lawful for the said Treasurer so to deliver over the same until such Clerk and his sureties shall have executed the covenant hereinafter mentioned :—And it is hereby declared that any person or persons whatsoever wrongfully holding or getting possession of such papers, processes, proceedings, accounts, moneys, books and matters aforesaid, or any of them, shall be guilty of a misdemeanour, and shall upon the written declaration of the Judge pre-

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siding over the Division Court for the time being in which such wrongful holding or getting possession as aforesaid shall take place, of any person or persons having held or obtained such wrongful possession thereof as aforesaid, and upon the order of a Judge of any of Her Majesty's Superior Courts of Law in Upper Canada, founded thereon, be arrested by the Sheriff of any County in which such person or persons shall be found, and be by him committed to the Common Gaol of his County, there to remain without Bail or mainprize until such Judge or such Superior Court shall be satisfied that such person or persons has or have not and never had or held any such matters or moneys he or they may have been charged with wrongfully holding or obtaining or that he or they has or have fully accounted for the same or delivered up the same to such Treasurer, or until he or they shall be otherwise discharged by due course of Law] and the Bailiffs of the Court shall serve all summonses, and execute all such orders, warrants, precepts and writs.

Duty of bailiffs.

XIV. And be it enacted, That there shall be payable on every proceeding in the Division Courts holden in pursuance of this Act, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to this Act annexed [marked A.] or which shall be set down in any Schedule of reduced fees, under the power hereinafter given for that purpose, and none other; and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks of Division Courts; and the fees upon every proceeding shall be paid in the first instance by the Plaintiff, on or before such proceeding, and the Bailiff's fees upon executions, shall be paid to the Clerk of the Court, at the time of the issue of the warrant of execution, and shall be paid over by such Clerk to the Bailiff, upon the return of the warrant of execution, and not before:—Provided always, that if the Bailiff shall neglect to make a return, within the time required by law, of any summons, process or execution, he shall, for each such neglect, forfeit his fees on such summons, process, or execution, and all fees so forfeited, shall be accounted for and paid by the Clerk of the Court, to the Treasurer of the County, to form part of the General Fee Fund.

Fees to be those in the Schedule A, or in any Schedule of reduced fees.

Proviso; As to bailiff neglecting to return process.

XV. And be it enacted, That the Clerk of each Division Court shall, from time to time, and as often as he shall be required so to do by the Treasurer of his County, and at least once in every three months, deliver to him a full account in writing of the fees received in such Court, under the authority of this Act; and a like account of all fines levied by the Court, (accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine, in pursuance of the power hereinafter given,)

Clerks to render certain accounts to the County Treasurers.

and a like account of the moneys paid into and received out of Court, by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court, or under process of the Court, and of the balance then remaining in Court, belonging to the Plaintiffs or Defendants in the Court, and the amount of such fees, payable to the General Fee Fund, from time to time received by such Clerk, shall be paid over from time to time to the Treasurer, (such payment being made, at least, once in every three months,) and shall form part of a fund, to be called the General Fee Fund of the Division Courts, which fund shall be applied towards the payment of the salaries of the Judges and Clerks of such Courts.

And to pay over moneys to the Treasurer.

Treasurer to account for and pay over moneys to the Receiver General, twice every year.

Penalty for default.

If the fees be insufficient to meet the disbursements, the Governor may pay the difference out of the public moneys.

Treasurer's accounts to be public accounts.

Proceedings in case any Treasurer or Clerk resigning or removed, shall refuse to pay over

XVI. And be it enacted, That the Treasurer of every County shall, on or before the Thirteenth day of June and the Thirty-first day of December, in every year, render to the Inspector General of this Province a true account, in writing, of all moneys received, and of all moneys disbursed by him on account of the Division Courts holden under the authority of this Act, during the period comprised in such account, in such form, and with such particulars as the said Inspector General shall from time to time require; and shall, within ten days after the rendering of every such account, pay over the amount of any surplus of such fees to the Receiver General of this Province; and if default shall be made in such payment, the amount due by the said Treasurer shall be deemed a speciality debt to Her Majesty.

XVII. And be it enacted, That in case the amount of fees received in the Division Courts in any County shall not be sufficient to repay the disbursements required on account of such Courts, during the period comprised in the said account, it shall be lawful for the Governor of this Province forthwith to issue his warrant on the Receiver General of this Province, in favour of the County Treasurer, for the amount which shall be required to make up the deficiency, and the amount of such warrant shall be charged upon the Consolidated Revenue Fund of this Province.

XVIII. And be it enacted, That the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law now or hereafter to be in force for auditing public accounts.

XIX. And be it enacted, That if any person having resigned or having been removed from the office of Treasurer, or of Clerk of a Division Court, shall neglect, after twenty-one days notice to such person, to account for and pay to the Treasurer of the County for the time being,

or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands of moneys received under the authority of this Act, it shall be lawful for such Treasurer for the time being, in addition to any
 5 other proceeding in this Act contained, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person with costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt; in which action
 10 it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which the action shall be brought, may, at the instance of either of the parties, refer the account in dispute in a summary
 15 manner, to be audited by any officer of the Court or other fit person, who shall have power to examine [all parties interested in the subject matter,] upon oath; and upon the report of the referee, (unless either of the parties shall shew good cause to the contrary,) the Court may make
 20 a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession, for
 25 such sum as upon the report shall appear to be due.

XX. And be it enacted, That in case of the death of any person during the time that he shall be holding the office of County Treasurer or of Clerk of any Division Court, or after he shall have resigned or be removed
 30 from such office, the Treasurer for the time being may, in his own proper name, or by his name and description of office, sue and recover from the executors or administrators of such person deceased [and his sureties] all such sums as shall have been remaining in his hands, of money
 35 received under the authority of this Act, by an action of debt in any Court of Record in this Province having competent jurisdiction, in which it shall be competent for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for
 40 the purposes of this Act; and that the deceased died possessed of money had and received for the purposes of this Act, whereby an action hath accrued to the plaintiff, to demand and have the same from such executors or administrators; and a like action may be brought against
 45 any executors or administrators of executors or administrators; and in all such actions the defendant or defendants may plead in like manner, and avail themselves of the like matters in defence as in any action founded on simple contract of the original testator or intestate, and
 50 the Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as in the case mentioned in the next preceding section.

moneys in his hands.

Proceedings in case of the death of any Treasurer or Clerk having moneys in his hands.

In suits brought by a Treasurer, plaintiff's Treasurer to be *prima facie* evidence of his being so.

XXI. And be it enacted, That in all actions to be brought, as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer by virtue of this Act, proof of his acting in the execution of the office of Treasurer shall be sufficient evidence of his holding such office, unless the contrary shall be shown in evidence by the defendants in such actions or the parties against whom such proceedings shall be instituted or carried on.

Treasurers, Clerks and bailiffs to give security.

XXII. And be it enacted, That the Treasurer of every County shall give security for such sum, and with so many sureties and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of his office, and for the due payment of all moneys received by him under any provision of this Act, [and that every Clerk and Bailiff whose duty it shall be to receive moneys or who shall be appointed under this act, shall give security for such sum and with so many sureties as the Judge for the Division Court for which they act shall see reason to direct, by entering into a covenant under their hand and seal, joint and several, according to the form given in the Schedule to this Act annexed, marked C, or in words to the same effect, which covenant shall be available to, and may be sued upon by any person suffering damages by the default, breach of duty or misconduct of such Clerks and Bailiffs respectively, in any Court of competent jurisdiction in Upper Canada: Provided always, that such covenants shall not be accepted until the sureties therein mentioned shall have been approved of under the hand of such Judge and declared responsible for the sums for which they shall have respectively become bound in such covenants, and which said covenants, together with such approval, shall, before any such Clerk or Bailiff shall enter upon the duties of his office under this Act, be fyled in the office of the Clerk of the Peace in the County in which the Division Court in respect of which such covenants were given is situate, for which fyling and granting a certificate thereof the said Clerk of the Peace shall be entitled to demand and receive from such Clerk or Bailiff the sum of five shillings and no more, and if any person who shall have become surety in any such covenant shall die, become resident out of Upper Canada or insolvent, such Clerk and Bailiff shall within one month after being notified by such Judge (whose duty it shall be to notify the same) of such death, departure or insolvency, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his said office of Clerk or Bailiff under this Act: Provided always, that nothing herein contained shall extend or be construed to extend to discharge or exonerate, all or any of the parties to such former covenants from their liability on account of any matter or thing which shall have been done or omitted before the renewal of the covenant as herein directed: And provided also,

Proviso.

Proviso.

that a copy of such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without any proof whatever.]

5 **XXIII.** And be it enacted, That the Judge of every such Division Court shall have power, jurisdiction and authority to hold plea of all [claims and demands whatsoever for or against any person or persons, bodies corporate or otherwise, of debt, account or money demand,
10 whether payable in money or otherwise, to and including the sum of twenty-five pounds, and in all torts to personal chattels, to and including the amount of ten pounds, and in all torts to real property where the title does not come in question to and including the amount of ten pounds, and the
15 Judge of the said Court shall hear and] determine the same in a summary way; and every such Judge shall have power to make such orders, judgments and decrees thereupon as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the
20 payment of a sum certain in labour or in any kind of goods or commodities, or in any manner otherwise than in money, it shall be lawful for the Judge, after the day has passed on which the goods or commodities shall have been delivered or the labour or other things performed,
25 to give judgment for the amount in money as if the contract had been so originally expressed: *Provided always,* that no action shall be brought or tried in any such Division Court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or ale-house, nor for
30 any cause involving the right or title to real estate or involving any right to any custom or toll: *Provided also,* that nothing contained in this Act shall be construed to constitute and create the said Division Courts, Courts of Record.

35 **XXIV.** And be it enacted, That the plaintiff in any suit brought in any Division Court, shall enter a copy of his account or demand in writing, which shall be numbered according to the order in which it shall be entered, and thereupon a summons bearing the number of the ac-
40 count or demand on the margin thereof, shall be issued, which shall be in substance in the form of the Schedule to this Act annexed, marked B, according to the nature of the demand or claim for tort or trespass; and a copy of such summons, to which shall be attached a copy and
45 the notices in the said Schedule of such demand or account or claim for each tort or trespass, shall be served on the Defendant ten days at least before the day on which the Division Court shall be holden at which the cause shall be tried; and delivery of such copies of summons
50 and account or demand to the Defendant, or delivery thereof to his wife or servant or any grown person being an inmate of his dwelling-house or usual place of abode,

Proviso. trading or dealing, shall be deemed a good service of such summons: Provided always, that personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceeds the sum of forty shillings. 5

At what Division Court any suit may be brought. XXV. And be it enacted, That all suits brought under this Act shall be tried at the Court holden for the Division wherein the Defendant, or where there shall be more than one Defendant, wherein any one of the Defendants shall dwell or carry on his business at the time of entering the account or demand, or at the Court holden for the Division within which the debt was contracted [for the tort or trespass committed, unless otherwise specially ordered by the Judge.] 10

Plaintiff may not divide his claim, but may abandon the excess above a certain amount. XXVI. And be it enacted, That it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of any Division Court, but any plaintiff having a cause of action above the value of twenty-five pounds, in which a suit might be brought under this Act, if the same were not above the value of twenty-five pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty-five pounds, and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly. 15 20 25

Minors may sue for wages. XXVII. And be it enacted, That it shall be lawful for any one under the age of twenty-one years to prosecute any suit in any Division Court under this Act, for any sum of money not exceeding twenty-five pounds which may be due to him or her for wages, in the same manner as if he or she were of full age. 30

No person exempt by privilege. XXVIII. And be it enacted, That no privilege [of any description whatsoever] shall be allowed to any person to exempt him from [suing and being sued in the said Division Courts upon any cause of action within] the jurisdiction of the said Courts. 35

Debts due by more than one person jointly, may be recovered from one, saving his recourse. XXIX. And be it enacted, That where any plaintiff shall have any debt or demand recoverable under this Act, against two or more persons, partners in trade, or otherwise jointly answerable, but residing in different Divisions, it shall be sufficient if one of such persons be served with the process as hereinbefore directed, and the judgment may be obtained, and execution issued against such person, notwithstanding others jointly liable may not have been served or sued, reserving always to the person against whom execution may issue, any right which he may have to demand contribution from any other person jointly liable with him. 40 45 50

XXX. And be it enacted, That the Judge of the District Court or his Deputy as aforesaid, shall be the sole Judge to determine all actions brought in the said Division Courts, in the summary manner authorized by this 5 Act, and all matters and questions of fact relating thereto, except the amount claimed shall [in cases of tort or trespass] exceed *two pounds ten shillings*, [and in other cases where the same shall exceed *five pounds*,] and where either of the parties shall require a jury to be summoned 10 as hereafter mentioned.

Judge to decide alone when matter does not exceed £2 10s. in tort, &c.

XXXI. And be it enacted, That in all actions of tort or trespass where the sum of money sought to be recovered shall exceed *two pounds ten shillings*, [and in all other cases where such sum shall exceed *five pounds*] it shall be 15 lawful for the Plaintiff or Defendant to require a jury to be summoned to try the said action, and in any such case a jury shall be summoned according to the provisions hereinafter contained to try such action: Provided always, that if the Plaintiff require a jury to be summoned, 20 he shall give notice in writing to the Clerk of the Court at the time when he shall enter his account or demand, and if the Defendant shall require a jury to be summoned, he shall give to the said Clerk or leave at the office of the said Clerk the like notice in writing within five days 25 after the service of the summons on the said Defendant.

Jury allowed in cases of tort or trespass over £2 10s., or over £5 in other cases.

Proviso: Notice to be given.

XXXII. And be it enacted, That every party requiring any jury to be summoned shall at the time of giving the notice hereby required, and before he shall be entitled to have such jury summoned, pay to the Clerk of the 30 said Court such sum of money as is set down in the Schedule of fees for the time being, for or towards the payment of the expenses of the said jury.

A sum to be paid on demanding a jury.

XXXIII. And be it enacted, That the causes which are to be heard by the Judge alone, shall be set down for 35 hearing in a separate list from the list of causes which are to be tried by a jury, which two lists shall be severally called, "The Judge's List" and "The Jury List," and the causes shall be set down in such lists in the order in which they were entered in the first instance with the 40 Clerk of the Division Court; and "The Jury List" shall be first disposed of, and then "The Judge's List."

"Judge's List" and "Jury's List" to be kept.

XXXIV. And be it enacted, That the Clerk of the Peace in every County shall deliver or cause to be delivered to the Clerk of each Division Court within his 45 County (at the same times and in like manner as Clerks of the Peace are now required by law to deliver lists of Jurors to the several Sheriffs) a true and complete list of the Jurors residing within every such Division respectively, and the Clerk of each Division Court shall cause 50 not less than fifteen of the persons named in such list to

Clerk to be furnished with list of jurors.

be summoned in rotation to attend the Court at the time and place to be mentioned in the summons: Provided always, that either of the parties to any such cause shall be entitled to his lawful challenge against any of the said Jury, in like manner as he would in any Superior Court: 5

Proviso. Provided also, that if any Jury shall be required to be summoned before the Clerk of the Peace shall have delivered the list of Jurors as aforesaid to the Clerks of the several Division Courts in his County, the Clerks of such Division Courts shall cause to be summoned not less than 10 fifteen resident inhabitant householders who are rated and assessed upon any Township Assessment Roll within his Division; [and any Juryman who after being duly summoned for that purpose as aforesaid shall wilfully neglect or refuse to attend the Court in obedience to such 15 summons, shall be liable to a fine not exceeding *twenty shillings* to be set on him by the Judge, which fine shall be levied and collected with costs, as other fines are hereinafter directed to be levied and collected, and shall form part of the general Fee Fund; and such fine may 20 be levied by the same process as any debt recovered in the said Court.]

Penalty on Jurors refusing to attend Court.

Payment of jurors. XXXV. And be it enacted, That each Juror shall receive from the Clerk of the Division Court out of the moneys to be deposited with him for that purpose; the 25 sum of pence, for every cause in which such Juror shall be sworn.

Five jurors to be sworn, and they must be unanimous. XXXVI. And be it enacted, That from time to time, as occasion shall require, five Jurors shall be empannelled and sworn to do justice between the parties whose 30 cause they shall be required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and each cause shall be decided by the unanimous verdict of any such Jury, [and no other finding shall be received.] 35

Case where the jury cannot agree, provided for. XXXVII. And be it enacted, That whenever the Judge holding any Division Court shall be satisfied that a Jury sworn in any cause before him cannot agree upon their verdict after having been out a reasonable time, he may discharge them, and shall then order the Clerk to summon 40 a new Jury for the next sitting of the Court to be held in that Division, unless the parties shall have consented that the Judge may render judgment on the evidence already taken before him, in which case he is hereby authorized to give judgment accordingly. 45

How judgment shall be pronounced. XXXVIII. And be it enacted, That every decision of the Judge, in any case heard before him, shall be openly pronounced in Court as soon as may be after the hearing thereof.

XXXIX. And be it enacted, That every summons and writ of execution issued by a Clerk of any Division Court shall be entirely filled up, and shall have no blank either in the date or otherwise at the time of its delivery to a Bailiff or any other person, to be executed; and every such summons or execution which shall be issued and delivered to any person to be executed, contrary to the foregoing provision, shall be void.

No writ of summons or execution to have any blank.

XL. And be it enacted, That on the day named in the summons, the plaintiff shall appear in the Division Court in person, or by some person in his or her behalf, and thereupon the defendant shall be required by himself or herself or by some person on his or her behalf, to answer; and on answer being made in Court, the Judge shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue.

Proceedings on day of appearance.

XLI. And be it enacted, That no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid, of any cause of action except such as shall be stated and contained in the demand or account entered as hereinbefore directed.

Cause of action proved to be that stated in the demand.

XLII. And be it enacted, That all defendants shall be allowed to set off [against any claim or demand of the plaintiff for any cause of action within the jurisdiction of the Division Court] any debt or demand to the extent of claimed to be due to them from the plaintiff, or to set up by way of defence [on the hearing or trial] and to claim and have the benefit of any Statute of Limitations, or of any other relief or discharge under any statute now or hereafter to be in force in Upper Canada: Provided always, that if the defendant's demand, as proved, exceed that proved by the plaintiff, the Court may give judgment in favour of the defendant for such balance as may appear due from the plaintiff, with costs of suit: Provided also, that no such defence shall be admitted on the hearing or trial of any cause under this Act, unless notice thereof in writing [and a copy of such debt or demand by way of set off,] shall have been delivered to the Clerk of the said Court at least six days before the trial or hearing.

Defendant may plead set-off.

Proviso.

Proviso.

XLIII. And be it enacted, That when a defendant hath any claim or demand against a plaintiff exceeding the sum of twenty-five pounds, he may abandon the excess, and on proving such demand he shall be entitled to set off the same in like manner as he is entitled to do in cases where the demand of such defendant does not exceed the sum of twenty-five pounds; and the judgment of the Court on such set off shall be a full discharge as well of the amount allowed to be set off, as the amount by which such claim of the defendant exceeded twenty-five pounds and such judgment shall be so entered accordingly.

Defendant may abandon excess in his claim.

Judgment on set-off to be a discharge.

Judge to make
rules of prac-
tice.

Proviso.

Proceedings
if defendant
shall make
default.

Proviso.

Defendant
may pay
money into
Court.

Proviso.

XLIV. And be it enacted, That the Judge of the County Court shall have power from time to time to make general rules for regulating the practice and proceedings of the said Division Courts, and also to frame forms for every proceeding in the said Courts for which he shall think it necessary that a form be provided, and from time to time to alter any such form, and also to alter all or any of the forms given in the Schedule of this Act: Provided always, that such rules and forms so made, framed or altered, shall not be brought into use until the same shall have been submitted to and approved by the Chief Justice and Judges of the Court of Queen's Bench [or Court of Common Pleas,] for that part of this Province called Upper Canada, or any two of them. 5

XLV. And be it enacted, That if on the day named in the summons the defendant shall not appear as afore-said, or sufficiently excuse his or her absence, or shall neglect to answer, the Judge, on proof of due service of the summons, [and copy of the Plaintiff's claims or demand,] may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon which shall be given, made or rendered after hearing the evidence to be adduced on the part of the plaintiff, shall be final and absolute, and as valid as if both parties had attended: Provided always, that the Judge may make any order for granting any time to the plaintiff or defendant to proceed in the prosecution or defence of the suit. 20

XLVI. And be it enacted, That it shall be lawful for the defendant in any action brought under the provisions of this Act, at any time [not less than six days] before the day appointed for the trial thereof, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be forthwith communicated by the Clerk of the said Court to the plaintiff by post or by sending the same to his usual place of abode or business, and the said sum of money shall be paid to the plaintiff, and all proceedings in the said action shall be stayed, unless the plaintiff shall within three days after the receipt of notice of such payment, signify to the Clerk of the said Court his intention to proceed for the remainder of the demand claimed, and in such case the action shall proceed as if it had been brought originally for such remainder only: Provided always, that if the plaintiff shall recover no further sum in the action than such sum as shall have paid into Court, under the provision hereinbefore contained, the plaintiff shall pay to the defendant all costs, charges and expenses incurred by him in the said action after such payment as aforesaid, and such costs, charges and expenses shall be settled by the 35 40 45 50

Court, and shall be recovered by the defendant by such ways and means as any sum ordered to be paid by the Court can be recovered.

XLVII. And be it enacted, That every person who in
 5 any examination, shall wilfully or corruptly give false
 evidence, or shall wilfully swear [or affirm when by law
 affirmation is allowed] falsely in any matter where an
 oath [or affirmation] is required or allowed by this Act
 shall be liable to the penalties of wilful and corrupt per-
 10 jury.

False swear-
 ing to be per-
 jury.

XLVIII. And be it enacted, That either of the parties
 to the suit may obtain from the Clerk of the Division Court
 wherein the same shall be brought, [a summons requiring
 the attendance of a witness,] with or without a clause re-
 15 quiring the production of books, papers and writings in
 their possession or control; and in any such summons
 any number of names may be inserted, and service of
 any such summons by the Bailiff of any other Division
 Court shall be as valid and effectual as if the same had
 20 been served by a Bailiff of the Court out of which the
 same issued; and every person on whom any such sum-
 mons shall have been served, either personally or at his
 or her usual place of abode, and to whom at the same
 time a tender of payment of his or her expenses shall
 25 have been made, on such scale of allowance as shall from
 time to time be settled by the Judge, and approved by a
 Judge of the Court of Queen's Bench or Court of Com-
 mon Pleas of that part of the Province called Upper Ca-
 nada, and who shall refuse or neglect without sufficient
 30 cause to appear or to produce any books, papers or
 writings required by such summons to be produced, and
 also every person in Court called upon to give evidence,
 who shall refuse to be sworn [or affirm where affirmation
 is by law allowed] and give evidence, shall forfeit and pay
 35 such fine not exceeding _____ as the Judge shall set
 on him or her, and shall moreover be liable to imprison-
 ment by order of such Judge for any time not exceeding
 ten days; and such fine shall be levied and collected with
 costs in the same maner as fines imposed on Jurymen
 40 for non-attendance,] and the whole or any part of such
 fine, in the discretion of the Judge (after deducting the
 costs) shall be applicable towards indemnifying the party
 injured by such refusal or neglect, and the remainder
 thereof shall form part of the General Fee Fund before
 45 mentioned.

Parties may
 obtain sub-
 pœnas for
 witnesses,

By whom to
 be served.

Penalty for
 refusing to
 attend, &c.

XLIX. And be it enacted, That the Clerk of each
 Division Court shall cause a note of all summonses, and
 of all orders, and of all judgments and executions and
 returns thereto, to be fairly entered from time to time in
 50 a book which shall be kept in his office; and the Clerk
 shall sign his name on every page of such book; and

Clerks to enter
 all proceed-
 ings.

such entries in the said book so signed, or a copy thereof purporting to be signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever as evidence of such entry or entries, and of the proceedings referred to by such entry or 5 entries, without any further proof.

Judge may grant delay to defendant.

L. And be it enacted, That the Judge may make orders concerning the time or times, and the proportions in which any sum and costs recovered by judgment of the said Court shall be paid, and at the request of the party entitled to the same, may order such sums to be paid into 10 Court: Provided always, that in any such order for time, reference shall be had to the day on which the summons was served on the defendant, and issuing of execution shall not be postponed without the consent of the party 15 entitled to the same for a longer period than fifty days from the service of the summons.

Proviso.

Proceedings when there are cross judgments.

LI. And be it enacted, That if there be cross-judgments between the parties, execution shall be taken out by the party only who shall have obtained judgment for the larger 20 sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments. 25

No suit to be brought on a judgment of a Division Court.

LII. And be it enacted, That no suit shall be brought in any Court for the recovery of any sum awarded by any judgment in a Division Court held under this Act.

Execution how granted and enforced.

LIII. And be it enacted, That whenever the Judge of any Division Court shall have made an order for the 30 payment of money it shall be lawful for the said Judge immediately, or in case of default or failure of payment thereof at the times and in the manner thereby directed, to award execution against the goods and chattels of the party against whom such order shall be made; and there- 35 upon the Clerk of the Court, at the request of the party prosecuting such order for the payment of money, shall issue a precept in the nature of *fieri facias* to one of the Bailiffs of the Court, who by virtue of such precept shall levy by distress and sale of the goods and chattels of such 40 party, being within the County within which the said Court was holden, such sum of money [together with interest thereon from the date of the entry of the judgment,] and costs as shall be so ordered, and shall pay the same 45 over to the said Clerk.

The Bailiff or Clerk may receive a confession of debt.

LIV. And be it enacted, That it shall and may be lawful for any Bailiff or Clerk of the said Courts to accept and take a confession or acknowledgment of debt from the defendant in any suit hereafter to be brought in any

Division Court who may be desirous of making the same, and such confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved
 5 by the oath of the said Bailiff or Clerk, judgment may be entered thereon; and such oath or affidavit shall state that the party making it has not received and is not to receive anything from the plaintiff or defendant, or any other
 10 person, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered.

LV. And be it enacted, That if any person against whom a judgment shall or may have been entered up in any Division Court in any County in Upper Canada,
 15 shall remove to another County therein without satisfying the said judgment, it shall be lawful for the Judge of the Division Court of the County to which the said party has removed to order an execution for the debt and costs, for which judgment has been rendered in another County
 20 against such party, to issue against such party, upon the production of a copy of such judgment duly certified by the Judge of the County for which the judgment has been entered.

Execution may issue in another County when the defendant has removed to such other County.

LVI. And be it enacted, That every writ of execution
 25 issued by the Clerk of any Division Court shall be dated on the day when it shall actually issue, and shall be returnable within thirty days from the date thereof.

Execution to be dated, and returnable within thirty days.

LVII. [And whereas it is expedient that execution should issue in certain cases against lands in judgments
 30 originally obtained in the said Division Court, Be it enacted, That whenever judgment is rendered in favour of any plaintiff in any Division Court under this Act, and any execution therein issued shall be returned *nulla bona*, it shall be lawful for such plaintiff to obtain a transcript
 35 of such judgment from the Clerk of such Court under his hand and sealed with the seal of the said Court, which transcript shall set forth the proceedings in the cause, the date of issuing execution against the defendant's goods and chattels, and the Bailiff's return of *nulla bona* thereon,
 40 and upon fying such transcript in the Office of the Clerk of the County Court in the County where such judgment shall have been obtained or in the County where the Defendant's lands are situate against which execution shall issue, the same shall become and is hereby de-
 45 clared to be a judgment of the said County Court, and thereupon the plaintiff shall be entitled to have and obtain a similar certificate of such judgment for the purpose of registration in the County Registry as if the said judgment had been obtained in the County Court, and shall
 50 pay the same fees, and the said Clerk of the County Court is hereby required to fyle the same on the day

Execution against lands on return of *nulla bona*.

of the month on which he receives the same, and to enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain the names of the plaintiff and defendant, the amount of the judgment, the amount remaining unsatisfied thereon, and the date of fying, for which services the said Clerk of the County Court shall be entitled to demand and receive from the person fying the same the sum of *two shillings and six pence*, and no more, and such book shall at all reasonable hours be accessible to any person desirous of examining the same upon the payment to the said Clerk of *six pence*, and upon such fying and entry as aforesaid, the plaintiff shall at any time within one year thereafter be entitled to issue execution out of the said County Court against the lands and tenements of the defendant in the same manner as he would have been had the judgment been originally obtained in the said County Court, and such land may be sold in the same manner as lands are now or hereafter may be sold under executions against lands issuing out of the said County Courts on judgments obtained therein: Provided always, that no person shall be entitled to such execution against lands unless the sum remaining unsatisfied on the said Division Court judgment shall exceed the sum of

Proviso.

Proviso.

And provided also, that if the certificate of such judgment is registered in the County Registry, then the judgment shall have the same effect in binding lands in the like manner and to the same extent as if the judgment had originally been obtained in the County Court.]

Penalty on Bailiff neglecting to make a return or wilfully making a false return.

LVIII. And be it enacted, That if any Bailiff shall neglect to return any writ of execution within three days after the return day thereof, or shall make a false return thereto, the party having sued out such writ may maintain an action [on the covenant against such Bailiff and his sureties in any Court having competent jurisdiction in Upper Canada aforesaid,] and shall recover therein the amount for which the execution issued, with interest from the date of the judgment upon which such execution was issued, [or such less sum as in the discretion of the Judge or Jury the plaintiff under the circumstances may be justly entitled to recover;] and if a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon; anything in this Act or in any other Act or law to the contrary notwithstanding.

At what time goods shall be sold after seizure in execution, &c.

LIX. And be it enacted, That no sale of any goods which shall be taken in execution shall be had until after the end of eight days at least, next following the day on which such goods shall have been so taken, unless upon the request in writing, under the hand of the party whose goods shall have been taken; and the Bailiff, after taking goods and chattels into his custody by virtue of a writ of

execution, shall indorse thereon the date of the seizure; and shall immediately give public notice by advertisement, signed by himself, and put up at three of the most public places in the Division, where such goods and chattels shall be taken, of the time and place within such Division when and where they will be exposed to sale; which notice shall describe the goods and chattels taken, and shall be so put up at least eight days before the time appointed for the sale.

Notice of sale.

10 LX. And be it enacted, That every such seizure and sale shall be taken to be within all the provisions of an Act of the Parliament of Upper Canada, passed in the first year of Her Majesty's Reign, intituled, "*An Act to regulate the costs of levying distresses for small rents and*
15 "*penalties.*"

Such seizure and sale to be within Act of U. C. 1 Vict. c. 16.

LXI. And be it enacted, That no Bailiff or other officer of any Division Court, shall, directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every purchase made in contravention of
20 this enactment shall be absolutely void.

No Bailiff, &c. to purchase at such sale.

LXII. And be it enacted, That when any Clerk or Bailiff of any Division Court, either by himself or jointly with any other person or persons, is liable to be sued, or may sue any other person or persons, for a debt or
25 demand, within the jurisdiction of the Division Court of which he shall be Clerk or Bailiff, then and in every such case such Clerk or Bailiff may sue, and shall be liable to be sued for any debt due to or by him, separately or jointly, with any other person or persons, in the next
30 adjoining Division Court for the same County, [that is, the Court in the Division where the place of holding the Court is nearest to the place of holding the Court in the Division of which the Clerk or Bailiff is suing or being sued ;] in the same manner, to all intents and purposes, as
35 if the cause of action for which any such suit shall be brought, had arisen within such next adjoining Division, or the defendant or defendants were resident therein.

In what Court a Clerk or Bailiff may sue and be sued.

LXIII. And be it enacted, That it shall and may be lawful for the Judge of the said Court, at any time after
40 the giving and recording of any judgment, upon application being made to him by the party in whose favour such judgment shall be given, upon oath or other sufficient testimony to the satisfaction of the said Judge, that the party will be in danger of losing the amount of such judgment, if he be compelled to wait till the day of payment
45 thereof before any execution can issue thereon, to order the issue of an execution at such time as he shall think fit.

In certain cases the Judge may order immediate execution.

LXIV. [And be it enacted, That if any person or persons in any County of Upper Canada, being indebted in

Proceedings in case of

absconding
debtors, &c.

any sum not exceeding *twenty-five pounds*, nor less than *twenty shillings*, for any debt or damages arising upon any contract express or implied, or upon any judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt, in any County in Upper Canada, shall attempt to remove his, her or their personal property of the description above mentioned, either out of Upper Canada or from one County to another therein, or from Upper to Lower Canada, or shall keep concealed in any County of Upper Canada to avoid service of process, with intent and design to defraud his or her creditor or creditors, it shall and may be lawful for any creditor or creditors of such person or persons, his, her or their servant or agent, to make application to the Clerk of any Division Court of the County wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or to the Judge of the County Court therein, or to any Justice of the Peace in any County of Upper Canada, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed, marked D, (which affidavit or affirmation the said Clerks, Judges, and Justices of the Peace, are respectively hereby authorised to administer,) and upon then and there filing the said affidavit or affirmation with such Clerk, Judge, or if taken before a Justice of the Peace, with such Justice of the Peace (whose duty it shall be to transmit the same forthwith to the Clerk of the Division Court, within whose Division the same was so made or taken, to be filed and kept among the papers in the cause,) it shall be lawful for such Clerk, Judge or Justice of the Peace forthwith to issue a warrant under his hand and seal, directed to the Bailiff of the Division Court, within which the same was issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt within such County, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued, upon receipt of which warrant the Bailiff or Constable to whom the same may be directed, shall forthwith execute the same, and with the assistance of two freeholders make a just and true inventory of all such personal estate and effects, as he shall seize and take by virtue thereof, and shall forthwith return the same to the Clerk of the Division Court of the Division within which such warrant was issued, and which warrant may be in the form of that in the Schedule to this Act annexed, marked E.: Provided always, that the said freeholders and appraisers shall be entitled to receive for each day they may be employed in carrying its enact-

Proviso.

ments into effect the sum of *two shillings and sixpence* each, to be paid in the first instance by the plaintiff or plaintiffs and allowed in the costs of the cause : Provido. Provided always, that proceedings may be conducted to judgment
 5 and execution in any case commenced by attachment under the provisions of this Act, in the Division Court of the Division within which the warrant of attachment shall issue ; and that when proceedings shall be commenced in any case before the issuing of an attachment
 10 under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings may have been commenced ; and the property seized upon any such attachment shall be liable to seizure and sale under the
 15 execution to be issued upon such judgment or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment : Provido. Provided, further, that it shall not be lawful for any plaintiff to divide any cause of action into two or
 20 more suits for the purpose of bringing the same within the provision of this section, but any plaintiff having a cause of action above the value of *twenty-five pounds*, for which an attachment might be issued under this section, if the same were not above the value of *twenty-five*
 25 *pounds*, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding *twenty-five pounds*, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment
 30 therein shall be made accordingly.]

LXV. [And be it enacted, That all property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within
 35 which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same.] Property seized under preceding section to be placed in custody of Clerk of Division Court.

LXVI. [And be it enacted, That if any person or persons against whose estate or effects such warrant or
 40 warrants as aforesaid, may have been issued, or any person or persons, on his, her or their behalf, shall, at any time, prior to the recovery of judgment in the cause, execute, and tender to the creditor or creditors, who sued out such warrant or warrants as aforesaid, and shall file
 45 in the Division Court to which the warrant or warrants of attachment shall have been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk of the Division Court, binding the obligors, jointly and severally in double the amount of the sum
 50 claimed, with condition that the debtor or debtors, (*naming him, her or them*) shall, in the event of the claim being proved and judgment being recovered thereon as in other As to persons against whose estates, &c. a warrant is issued, tendering a bond to their creditors, with sureties, prior to judgment.

cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or shall produce such property whenever thereunto required to satisfy such judgment, it shall and may be lawful for such Clerk to supersede such warrant, and all and singular the property which may have been attached, shall then be restored.] 5

As to party not appearing within one month after warrant issued against him.

LXVII. [And be it enacted, That if after the period of one month from the seizure aforesaid, the party against whom the warrant issued, or some one on his behalf, do not appear and give such bond with sureties conditioned as above mentioned, whenever and as soon as judgment shall have been obtained upon such claim or claims, execution thereupon may immediately issue and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same shall have been previously sold under the provisions hereinafter made, as perishable property.] 10 15 20

Service of process.

LXVIII. [And be it enacted, That in order to proceed in the recovery of any debt due by the person or persons against whose property a warrant shall have issued under this Act, where process shall not have been previously served, the same may be served either personally or by leaving a copy at the last place of abode of the defendant, with any person or persons there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings shall and may be conducted according to the usual course of practice and proceedings in the Division Court aforesaid: Provided always, that if it shall appear to the satisfaction of the Judge in the trial of any cause, upon affidavit or other sufficient proof, that the creditor or creditors suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceedings, then it shall be the duty of the Judge to order that no costs whatever shall be allowed to such creditor or creditors, plaintiff or plaintiffs therein, and no costs in such case shall be recovered in the cause.] 25 30 35 40

Proviso.

As to perishable articles taken upon warrant.

LXIX. [And be it enacted, That in case any horses' cattle, sheep or other perishable goods or chattels shall be taken upon any warrant to be issued as aforesaid, it shall be lawful for the Clerk of the Court in whose custody or keeping the same shall be, to have the same valued by two freeholders, and at the request of the plaintiff suing out the warrant, to expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice, at the office of the Clerk of the said Division 45

Court, and at two other public places, within such Division, of the time and place of such sale, if the articles seized will admit, otherwise to sell the same at his discretion : Provided always, that it shall not be compulsory upon Proviso.
 5 the Bailiff or Constable to seize, or upon the Clerk to sell such perishable articles, until the party suing out the warrant shall have given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be
 10 ascertained as aforesaid) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such seizure and sale, in case judgment be not obtained for such party suing out such
 15 attachment, which bond shall also be filed with the papers in the cause : Provided always, that any bond given in the course of any proceeding under this Act, may be Proviso.
 20 thereupon carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of *twenty-five* pounds : And provided Proviso.
 25 further, that every such bond shall and may be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled, as the case may require.]

LXX. And whereas under the former Act relative to Recital.
 the Court of Requests, various Clerks were appointed for Townships and other localities under the Commissioners ; and whereas when the Division Court Act was
 30 passed, no provisions were therein contained for the delivery up of the books, papers, and documents connected with the business and with the claims of suitors ; and whereas it has been found inconvenient that such books,
 35 papers, and documents should remain elsewhere than with the Clerks of the different Division Courts ; Be it therefore enacted, That it shall and may be lawful for the Judge of the County Court, by writing under his hand, to require any person, or persons, in whose possession or
 40 custody any such books, papers or documents shall or may be, to deliver the same or all, or any, or either thereof, as he shall see fit, over to such Division Court Clerk as he shall name, and in the event of the same not being delivered in compliance with such order or requi-
 45 sition, it shall and may be lawful for Her said Majesty's Court of Queen's Bench, or Court of Common Pleas or for any Judge thereof in vacation, to proceed against such person or persons in the like manner as provided for in the section of this Act.

Like provision as to papers in the hands of former Clerks of the Court of Requests.

50 LXXI. And be it enacted, That if any person shall wilfully insult the Judge or any Officer of any Division Court, during his sitting or attendance in Court, or shall Punishment of persons wilfully insulting any Judge.

wilfully interrupt the proceedings of such Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by order of the Judge, to take such offender into custody, and the Judge may impose upon any such offender a fine not exceeding the sum of and in default of payment thereof, it shall be lawful for the said Judge, by warrant under his hand and seal, to cause such fine to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress, to commit the offender to the Common Gaol of the County for any period not exceeding one calendar month. 5 10

Punishment of any Bailiff or Officer guilty of extortion.

LXXII. And be it enacted, That if any Bailiff or Officer of any Division Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him under the authority of this Act, it shall be lawful for the Judge, at any sitting of the Court, if the party aggrieved shall think fit to complain to him, to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of any such damages and costs to the parties aggrieved, as the Judge shall think just; and in default of payment of any money so ordered to be paid by such Bailiff within the time specified for the payment thereof in such order, it shall be lawful for the Judge, by warrant under his hand and seal, to cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress to commit the offender to the Common Gaol of the County for any period not exceeding three calendar months. 15 20 25 30 35

Punishment of Clerks, Bailiffs, &c. taking more than their proper fees, &c.

LXXIII. And be it enacted, That if any Clerk, Bailiff or other Officer employed in putting this Act or any of the powers thereof into execution, shall exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid for or on account of anything done or to be done by virtue of this Act, or any account whatsoever relative to putting this Act into execution, every such person so offending, shall, upon proof thereof before the said Court, be for ever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall also be liable in damages to the party aggrieved. 40 45 50

LXXIV. And be it enacted, That in case any action shall be prosecuted after the commencement of this Act, in any Superior Court of Record, for any cause which might have been entered in a Division Court under this Act, and the plaintiff shall obtain a sum not exceeding [the respective sums to which the jurisdiction of such Division Court is by this Act limited,] such plaintiff shall have judgment to recover such sum only, and no costs, and shall have execution only against the goods and chattels of the defendant, and shall not at any time be allowed to maintain any action on such judgment in any Court, and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between Attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the plaintiff had a probable cause of action for the debt or damages sought to be recovered in such action, to an amount exceeding [the said sums to which the jurisdiction of such Division Court is limited as aforesaid.]

Case where a Plaintiff shall bring in a Superior Court an action which ought to have been brought into a Division Court, provided for.

LXXV. And be it enacted, That when any levy or distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto; nor shall the party or parties distraining, be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall afterwards be committed by the party or parties so distraining, but that the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage.

Certain informalities in cases of levy, not to make the party a trespasser from the beginning.

LXXVI. And be it enacted, That it shall and may be lawful for any executor or administrator to sue and be sued in any Courts holden under the authority of this Act in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like cases would be given or issued in any Superior Court.

Executors and administrators may sue in Division Courts.

LXXVII. And be it enacted, That on the hearing or trial of any action, or in any other proceeding in the said Division Courts holden under this Act, the parties thereto, and all other persons may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath (or solemn affirmation, in those cases in which persons are allowed to make affirmation instead of taking an oath,) to be administered by the proper officer of the Court.

All persons may be examined as witnesses in Division Courts.

LXXVIII. And be it enacted, That payment of any fine imposed by any Court under the authority of this Act, may be enforced upon the order of the Judge, in like

How fines imposed by this Act may be enforced.

manner as judgment for any sum adjudged in the said Court, and shall be accounted for as herein provided.

Costs to be apportioned in such manner as the Judges shall think fit.

LXXIX. And be it enacted, That all the costs of any action or proceeding in any Division Court not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, [and in cases where the plaintiff shall not appear in person or by some person on his behalf, or appearing shall not make proof of his demand to the satisfaction of the Judge, it shall be lawful for the judge if he shall think fit, to award to the defendant such costs and such further sum of money by way of satisfaction for his trouble and attendance as he in his discretion may think proper to be recovered as provided for in other cases under this Act,] and in default of any special direction the costs shall abide the event of the action, and execution may issue for the recovery of such costs in like manner as for any debt adjudged in the said Court.

Judgments in Division Courts to be final.

LXXX. And be it enacted, That every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall have power to non-suit the plaintiff in any case in which satisfactory proof shall not be given to him entitling either the plaintiff or the defendant to the judgment of the Court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

In certain cases, suits may be removed by *certiorari*.

LXXXI. And be it enacted, That any suit brought in any Division Court holden under this Act may be removed or removable from the said Court into Her Majesty's Court of Queen's Bench, or Court of Common Pleas, in Upper Canada, by any writ of *certiorari*, provided the debt or damage claimed shall amount to *ten pounds* and upwards, and provided leave be obtained of one of the Judges of the said Court of Queen's Bench, or Court of Common Pleas, in cases which shall appear to the said Judge fit to be tried in either of the said Superior Courts and not otherwise, and upon such terms as to payment of costs or such other terms as he shall think fit.

Each Court to have a seal.

LXXXII. And be it enacted, That for every Court holden under the authority of this Act there shall be made a seal of the Court, and all summonses and other process issuing out of the said Court shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of

any summons or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said Court shall be guilty of felony.

5 LXXXIII. And be it enacted, That any summons or other process which under this Act shall be required to be served out of the Division of the Court from which the same shall have issued, may be served by the Bailiff of any Division Court in Upper Canada holden under this
10 Act where the same is required to be served, and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which the summons or process shall have been issued, within the jurisdiction of the Court for which he acts.

Mode of serving process out of the Division.

15 LXXXIV. And be it enacted, That service of any summons or other process of any Division Court which shall require to be served out of the Division of the said Court may be proved by affidavit purporting to be sworn before any Judge of a Division Court, or before any person au-
20 thorised by Law to take affidavits in the [Superior Courts of Common Law] in Upper Canada; and the fee for taking such affidavit shall not be more than *one shilling* and shall be costs in the cause; and in every case of the unavoidable absence of the Bailiff by whom any summons
25 or other process of a Court holden under this Act shall have been served, the service of such summons or other process may be proved, if the Judge shall think fit, in the same manner as a summons served out of the Division of the Court but without additional charge to either of the
30 parties to the suit.

Mode of proving such service.

LXXXV. And be it enacted, That every Bailiff or Officer executing any process of execution issued out of any Division Court in Upper Canada, against the goods and chattels of any person, may by virtue thereof seize
35 and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of *five pounds*, which shall to that extent be protected from such seizure,) and may also
40 seize and take any mony or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any such execution shall have issued as aforesaid.

What goods may be taken in execution.

LXXXVI. And be it enacted, That the Bailiff of every
45 such Division Court shall hold any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution or so
50 much thereof as shall not have been otherwise levied or

How money and securities for money shall be dealt with.

raised for the benefit of the plaintiff, and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof shall have arrived; [And it shall not be competent for the defendant in the original cause to discharge such suit in any way without the consent of the plaintiff or of the Judge.] 5

A defendant against whom there shall be an unsatisfied judgment, may be summoned and examined as to his means of satisfying the same.

LXXXVII. And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Division Court, for the payment of any debt or damages or costs, to obtain a summons from any Division Court, within the limits of which the Defendant in any such suit shall then dwell or carry on his business, such summons to be in such form as the Judge of such Court shall from time to time direct, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed in such summons, to answer such things as are named in such summons, and if he shall appear in pursuance of such summons, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property, and the person obtaining such summons as aforesaid, and all other witnesses whom the Judge shall think requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid; and the costs of such summonses and of all proceedings thereon, shall be deemed costs in the cause, [unless the Judge shall otherwise order and direct.] 35

Proceedings if a defendant shall refuse to attend or to be examined, or shall have contracted the debt without reasonable expectation of being able to satisfy it, or be guilty of any fraud, &c.

LXXXVIII. And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient reason for not attending, or shall, if attending, refuse to be sworn or to declare any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge either by the examination of the party or by any other evidence, that such party in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have removed or concealed the same with intent to defraud 50

his creditors or any of them, or if it shall appear to the satisfaction of the Judge of the said Court that the said party so summoned has then or has since the judgment obtained against him, sufficient means and ability to pay
 5 the debt or damages or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall
 10 be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge if he shall think fit, to order that any such party may be committed to the Common Gaol of the County in which the party summoned is
 15 resident, for any period not exceeding forty days.

15 LXXXIX. And be it enacted, That it shall be lawful for the Judge of any Division Court before whom such summons shall be heard, if he shall think fit, whether or
 20 not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or
 25 by any instalments, or in any other manner, as such Judge may think reasonable and just.

Order allowing payment by instalments may be rescinded.

XC. And be it enacted, That in every case where the defendant in any suit brought in any Division Court shall have been personally served with the sum-
 30 mons to appear or shall personally appear at the trial of the same, the Judge at the hearing of the cause or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other
 35 parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose, after the judg-
 40 ment obtained as hereinbefore mentioned.

Defendant personally appearing in any case may be examined.

And the Plaintiff.

XCI. And be it enacted, That whenever any order of commitment shall have been made as aforesaid, the Clerk of the said Court shall issue under the seal of the Court, a warrant of commitment directed to the Bailiff
 45 of any Division Court within the County, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all Constables and other Peace Officers within their several jurisdictions shall aid in the execution of every such
 50 warrant, and the gaoler or keeper of the Gaol of the County in which such warrant shall issue, shall be bound

Proceedings in case of committal.

No protection
available.

to receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law; and no protection, order or certificate granted by any Court of Bankruptcy or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last mentioned order. 5

Imprisonment
not to act as
an extinguish-
ment of the
debt, &c.

XCVII. And be it enacted, That no imprisonment under this Act shall in any wise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place. 10 15

Mode of
executing
warrant of
execution or
commitment
out of the
County in
which it is
obtained.

XCVIII. And be it enacted, That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party or his goods and chattels shall be out of the jurisdiction of the Court, it shall be lawful for the Bailiff of the Court to send such warrant of execution or of commitment to the Clerk of any other Division Court constituted under this Act, within the jurisdiction of which such party or his goods and chattels shall then be or be believed to be, with a warrant thereto annexed under the hand of a Bailiff of the Court and seal of the Court from which the original warrant issued, requiring execution of the same, and the Clerk of the Court to which the same shall be sent shall seal or stamp the same with the seal of his Court, and issue the same to a Bailiff of his Court, and thereupon such last mentioned Bailiff shall be authorized to act in all respects as if the original warrant of execution or commitment had been directed to him by the Court of which he is a Bailiff, and shall, within such time as this Act directs, return to the Bailiff of the Court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made, shall, within such time as this Act directs, pay over all moneys received in pursuance of the warrant to the Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed in custody of the Bailiff or officer apprehending him to the Gaol of the County in which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act, and all constables and other peace officers shall be aid- 20 25 30 35 40 45 50

Payment of
moneys.

ing and assisting within their respective Counties in the execution of such warrant.

XCIV. And be it enacted, That if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or Damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his discretion, to suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear, by the like proof as aforesaid, that such temporary cause of disability has ceased.

In case of inability of the Defendant from sickness, &c., the Judge may suspend execution, &c.

XCV. And be it enacted, That any person imprisoned under this Act, who shall have paid or satisfied the debt or demand or the instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, by leave of the Judge of the Court in which the order of imprisonment was made.

Defendant imprisoned to be discharged on payment of debt and costs.

XCVI. And be it enacted, That if any Officer or Bailiff of any Court holden under this Act, shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made, of any goods and chattels or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding *five pounds*, to be recovered by order of the Court, or before a Justice of the Peace of the County in which such Court is situate, as hereinafter provided; and it shall be lawful for the Bailiff of the Court, or any peace officer in any such case, to take the offender into custody, (with or without warrant,) and bring him before such Court or Justice accordingly.

Punishment for assaulting bailiff, or rescuing goods seized.

XCVII. And be it enacted, That in case any Bailiff of any Division Court holden under this Act, who shall be employed to levy any execution against goods and chattels, shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, if he shall think fit so to do, (and the fact alleged being proved to the satisfaction of the Court, on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execu-

Penalty on Bailiff causing loss to a Plaintiff by neglect or connivance.

tion issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing judgments recovered in the said Court. 5

How claims by third parties to or upon goods seized in execution, shall be determined.

XCVIII. And be it enacted, That if any claim shall be made to or in respect to any goods or chattels or property taken in execution under the process of any Court holden under this Act, or by any person not being the party against whom such process has issued, it shall be lawful 10 for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such 15 claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in a Local or Inferior Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on 20 proof of the issue of such summons, and that the goods and chattels or other property were so taken in execution, may order the party bringing such action to pay the cost of all proceedings had upon such action after the issue of such summons out of the Division Court, and the Judge 25 of the Division Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such 30 Court, [and such order shall be final and conclusive between the parties.]

Application of moneys levied as penalties under this Act.

XCIX. And be it enacted, That the moneys arising from any penalties, forfeitures and fines imposed by this Act, when paid and levied, shall (if not by this Act directed to 35 be otherwise applied,) from time to time be paid to the Clerk of the Court by which the same shall be imposed, and shall be paid by him into the hands of the Receiver General for the general uses of the Province.

Mode of proceeding for recovery of penalties before a Justice of the Peace.

C. And be it enacted, That in all cases in which 40 by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, it shall be lawful for such Justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to 45 convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him, and all such proceeding by summons without information in writing, shall be as valid and 50

effectual to all intents and purposes, as if an information in writing had been exhibited.

CI. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say:

Be it remembered, That on this _____ day of _____ in the year of Our Lord _____ A. B. is convicted before _____ one of Her Majesty's Justices of the Peace for the County of _____ or before a Judge acting under an Act passed, in the _____ year of the Reign of Her Majesty Queen Victoria, intituled, "*An Act, &c., (insert the title of this Act,) of having (note the offence); and I (or we)*" the said _____ do adjudge the said _____ to forfeit and pay for the same the sum of _____ or to be committed to the Common Gaol of the County of _____ for the space of _____ : Given under _____ hand and seal the _____ day and year aforesaid.

Form of conviction for offences against this Act.

CH. And be it enacted, That no order, verdict or judgment, or other proceedings made concerning any of the matters aforesaid, shall be quashed or vacated for any matter of form:

For proceedings to be quashed, &c. for want of form.

25 CII. And for the protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six calendar months after the fact was committed, and not afterwards or otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought, a sufficient sum of money shall have been paid into Court with costs, by or on behalf of the defendant.

Protection of persons acting in execution of this Act.

Notice of action.

Tender of sufficient amends to bar the action.

40 CIV. And be it enacted, That if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievance committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of _____ no costs shall be awarded to the plaintiff in such action, unless the Judge shall certify in Court upon the back of the record, that the action was fit to be brought on in such Superior Court.

In certain cases the Plaintiff shall recover no costs.

Recital. CV. [And whereas the amount of business in certain Divisions is not so great as to require the holding of Courts therein once in every two months, while from the remoteness and inaccessibility of the same, the holding of the said Courts therein is, especially at certain seasons of the year, attended with great difficulty: Be it therefore enacted, That if it shall be certified to the Governor in Council, by the Magistrates of any County in Quarter Sessions assembled, that in any Division of such County, it is expedient for the above causes that such Courts should be held there less frequently than once in every two months, it shall and may be lawful for the Governor in Council to order such Courts to be held therein, at such periods as to him shall seem fit: Provided always, that such Courts shall be held in any such Division at least once in every six months, and that it shall be lawful for the Governor in Council to revoke any such order at pleasure.]

Governor may fix periods of holding Courts.

Proviso.

Interpretation of word "County."

CVI. And be it enacted, That in construing this Act, the word "County" shall include any two or more Counties united for judicial purposes.

Proceedings under repealed Acts to continue as if had under this Act.

CVII. Provided always, and be it enacted, That all proceedings in the execution of the said Acts in the preamble to this Act recited, or any of them, commenced before the passing of this Act, or before the day appointed for its going into operation, shall be as valid to all intents and purposes as if this Act had not been passed, and may be continued, executed and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

Commencement of this Act.

CVIII. And be it enacted, That this Act shall come into force on the day of next, and not before.

SCHEDULE B.

FORM OF SUMMONS.

Between { A. B., Plaintiff,
and
C. D., Defendant,

To C. D., the above named defendant.

You are hereby summoned to be and appear at the next sitting of the first (*or as the case may be*) Division Court in and for the County of (*or United Counties of*) *as the case may be* to be holden at _____ in the Town-ship of _____ on _____ the _____ day of _____ 18 _____, to answer to the above-named Plaintiff for the causes set forth in the Plaintiff's statement of claim hereunto annexed numbered _____, and that in the event of your not so appearing the Plaintiff may proceed to obtain judgment against you by default.

Dated this _____ day of _____ 18 _____
By the Court,

Clerk.

NOTICE.

Take notice that if the defendant desires to set off any demand against the Plaintiff at the trial or hearing of the cause, notice thereof containing the particulars of such demand must be left with the Clerk of the said Court, at least six days before the said trial or hearing, and that if the Plaintiff or Defendant desire to take the benefit of any Statute of Limitation or other Statute, notice thereof must be left in like manner with the said Clerk at least six days before the said trial or hearing.

Memorandum to be subscribed on the Summons.

N. B.—This Summons is to be served within _____ calendar months from the date thereof, including the day of such date, and not afterwards.

Indorsement to be made on the Summons after the service thereof.

This Summons was served by me, X. Y., on
on the _____ day of _____ 18 _____

X. Y.

SCHEDULE C.

COVENANT BY THE CLERK OR BAILIFF.

Know all men by these presents that we J. B., Clerk (*or bailiff as the case may be*) of the Division Court number _____ in the County of _____ S. S. of _____ in the said County of _____, and P. M. of _____ in the said County of _____

Do hereby jointly and severally for ourselves and for each of our heirs, executors and administrators covenant and promise that J. B., Clerk (*or bailiff*) of the said Division Court (*as the case may be*) shall duly pay over to such person or persons entitled to the same all such monies as he shall receive by virtue of the said Office of Clerk (*or bailiff, as the case may be*) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk, (*or bailiff*) by Law, and shall not misconduct himself in his said Office to the damage of any person being a party in any legal proceeding; nevertheless it is hereby declared that no greater sum shall be recovered under this covenant against the several parties thereunto than as follows that is to say :

Against the said J. B. in the whole,

Against the said J. S.....

Against the said P. M.....

In witness whereof we have to these presents set our hands and seals this _____ day of _____ in the year of Our Lord one thousand eight hundred and _____

Signed sealed and delivered }
in the presence of }

SCHEDULE D.

County of _____ A. B. of _____ in the County of (*here state the County*) the Plaintiff (*or Agent, as the case may be*) maketh oath and saith, that C. D., (*the debtor's name*) is (*or are*) justly and truly indebted to (*the creditor's name*) in the sum of _____ of lawful money of Canada, for (*here state the cause of action briefly*): and this Deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this Province with intent and design to defraud the said A. B. (*the creditor*) of the said debt, and hath left personal property liable to seizure under execution for debt within the County of _____ ; or that the said C. D., is (*or are*) about to abscond

from this Province, or to leave the District of
 with intent and design to defraud the said (the
creditor) of the said debt, taking away personal estate liable to
 seizure under execution for debt; or that the said C. D. is con-
 cealed within the District of _____ to avoid being
 served with Process, with intent and design to defraud the said
 _____ *(the creditor)* of his said debt; and this
 Deponent further saith, that this affidavit (*or* affirmation, *as the*
case may be,) is not made, nor the Process thereon to be issued,
 from any vexatious or malicious motive whatever.

A. B.

Signature of Deponent.

Sworn (*or affirmed as the case may be*) before me, the
 _____ day of _____ one thousand eight hun-
 dred and _____

—————
 SCHEDULE E.
 ———

County of _____ }
 (*here insert the County*) }

To A. B., Bailiff of the Division Court of the said County of
 _____ (*or to A. B., a Constable of the County of*
 _____ *(as the case may be).*

You are hereby commanded to attach, seize, take and safely keep
 all the personal estate and effects of C. D., (*naming the debtor*)
 an absconding removing or concealed debtor, of what nature or
 kind so ever, liable to seizure under execution for debt within the
 County of (*here name the County*) or a sufficient portion thereof
 to secure A. B. (*here name the creditor*) for the sum of (*here*
state the amount sworn to be due) together with the costs of his
 suit thereupon, and to return this warrant with what you shall have
 taken thereupon, to the Clerk of the (*here state the number of the*
Division) Division Court of the County aforesaid forthwith :—and
 herein fail not. —

Witness my hand and seal, the _____ day of

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E. F. (L. S.)

Judge, Clerk or Justice of the Peace, (*as the case may be*).