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No. 366

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

B I L L .

An Act to provide for the better administration of Justice in the unorganized tracts of country within the limits of this Province.

Received and read first time, Monday, 18th
May, 1857.

Second reading, Tuesday, 19th May, 1857.

Mr. Atty. Genl. MACDONALD.

S. Derbshire & G. Desjarats, Queen's Printer.

An Act to provide for the better administration of Justice in the unorganized tracts of Country within the limits of this Province.

WHEREAS it is desirable to provide for the better administration of Justice in the unorganized tracts of Country within the limits of this Province : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

I. It shall be lawful for the Governor, by proclamation under the great Seal of this Province, to declare that from and after a certain day to be named in such proclamation, certain parts of the unorganized tracts of Country bordering on and adjacent to Lakes Superior and Huron, including the Islands in those Lakes which belong to this Province, and also all other parts of Canada not included within the settle limits of any County or District shall form a temporary Judicial District or temporary Judicial Districts, and to define the limits of such temporary Judicial District or Districts and to name the same respectively ; and such temporary Judicial District or temporary Judicial Districts shall thereupon be formed accordingly, and shall thereafter be known by the names so given to them respectively ; and it shall be lawful for the Governor to divide each temporary Judicial District so declared and defined into two or more Divisions, and to define the limits and extent of every such Division, and to number such Divisions beginning at number one ; and the Governor shall have power from time to time to alter the limits and extent of such temporary Judicial Districts and the Divisions thereof respectively.

Preamble.
Governor may erect certain unorganized tracts into temporary Judicial Districts.

Division of Districts.

II. A portion or portions of any County or District in Upper Canada not included in any Township may, for all purposes connected with the administration of Justice under this Act, be included within the limits of any such temporary Judicial District as aforesaid, and may again be separated therefrom by the Governor.

Tracts not included in Townships may be annexed to such Districts.

III. It shall be lawful for the Governor from time to time to appoint in and for every temporary Judicial District so to be declared and formed as aforesaid, a fit and proper person to be the Stipendiary Magistrate thereof, and to exercise therein the Magisterial, Judicial and other functions hereinafter expressed ; and such Stipendiary Magistrate shall hold office during pleasure, and shall reside in such place within the temporary Judicial District for which he is appointed as the Governor shall direct.

Stipendiary Magistrate in each such District.

Salary of such
Magistrate.

IV. Every such Stipendiary Magistrate shall be paid, out of the Consolidated Revenue Fund of this Province, the yearly sum of

which shall be paid half yearly on the thirtieth day of December and the thirtieth day of June in each year, by equal 5 portions, and may moreover have and take to his own use the fees authorized to be taken by Justices of the Peace or by their Clerks in Upper Canada, in cases of summary conviction.

Such Magis-
trate to be a
Justice of the
Peace: powers
as such. &c.

V. Every such Stipendiary Magistrate so appointed as afore-
said, shall be *ex officio* a Justice of the Peace for the temporary 10
Judicial District for which he shall be appointed, and shall have,
exercise and enjoy all and every the powers, jurisdiction and
authority, and discharge and perform all the duties which a
Justice of the Peace in any County in Upper Canada now has, ex-
ercises and enjoys, and is now required to discharge and perform 15
within any such County; and all the protections and provisions
of law applicable to such Justices of the Peace shall extend and
apply to such Stipendiary Magistrate acting within the limits
of his temporary Judicial District; and such Stipendiary Ma-
gistrate may and shall act in the execution of the office of Jus- 20
tice of the Peace for such temporary Judicial District, although
he may not have such qualification by estate in lands, tene-
ments and hereditaments, as is required by the Act passed in
the eighth year of Her Majesty's Reign, intituled, *An Act for* 25
the qualification of Justices of the Peace; Provided that nothing
in this Act shall be held to affect the right of the Crown to
appoint Justices of the Peace for such temporary Judicial Dis-
tricts, or for all or any part of the unorganized tracts of Country
in this Province by commission as heretofore, or to prevent the 30
name of any Stipendiary Magistrate being inserted in any such
commission.

Proviso.

Such Magis-
trate to appoint
Constables:
their powers,
&c.

VI. It shall be lawful for every such Stipendiary Magistrate
from time to time to appoint such a sufficient number of fit and
proper persons as he may deem necessary to serve in the office 35
of Constable in his temporary Judicial District, and at his
pleasure to remove any such Constable; and every Constable
so appointed as aforesaid shall have and exercise and perform
all the duties and powers, and shall be subject to all the res-
ponsibilities that Constables appointed by the Courts of Quarter 40
Sessions in Upper Canada now have and can perform and
exercise and are now subject to; and all the privileges, pro-
tections and provisions of law applicable to such Constables,
shall extend and apply to Constables appointed by a Stipendiary
Magistrate under this Act; and the lawful fees and expenses 45
of such last named Constables, other than the fees they may be
entitled to receive from parties, shall be audited by the Stipen-
diary Magistrate, and paid out of the Consolidated Revenue
Fund of this Province in such manner as the Governor of this
Province may from time to time direct. 50

VII. If any Constable appointed under the authority of this Act shall be guilty of any disobedience of orders, neglect of duty, or of any misconduct as such Constable, and shall be convicted thereof before the Stipendiary Magistrate for the 5 temporary Judicial District, or before any Justice of the Peace acting therein, he shall forfeit any sum not exceeding *ten pounds*, and in default of immediate payment thereof, shall suffer imprisonment for any time not exceeding three months; Provided that nothing herein contained shall prevent any such person 10 from being proceeded against by way of indictment for any offence committed by him as Constable, so as that no person be proceeded against both by Indictment and also under this Act for the same offence.

Punishment of Constables misbehaving.

Proviso.

VIII. The Governor may from time to time direct that one or 15 more suitable erections shall be provided by the Commissioner of Public Works in each temporary Judicial District for the safe custody of prisoners charged with crime or convicted of any offence, and every erection so provided shall be deemed to be a Common Gaol, and the Common Gaol of such temporary 20 Judicial District respectively; Provided always that criminal offenders fully committed for trial, upon indictment to be preferred, shall as heretofore be committed to the Common Gaol of the proper County in this Province, to be dealt with according to law, and shall not be detained in the Common Gaol of any 25 temporary Judicial District an unreasonable time, regard being had to the season of the year and the possibility of travelling at the time of his commitment as aforesaid; and until such erections shall be provided it shall be lawful to commit offenders to any suitable place within the temporary Judicial District.

Temporary Gaols.

Proviso: against unnecessary detention therein.

IX. A keeper shall from time to time be appointed by the Stipendiary Magistrate to every County Gaol in his temporary Judicial District, and such Gaol-keeper shall perform all such duties, and be under and subject to all the liabilities that the Gaoler of the Common Gaols in the several Counties in Upper 30 Canada now perform and are subject to, and shall give such security for the due performance of the duties of his office as the Governor shall from time to time prescribe; and every such Gaol-keeper shall be paid out of the Consolidated Revenue Fund of this Province such sums of money annually as the 40 Governor may think reasonable for the services performed.

Keeper of the Gaol.

His remuneration.

X. All moneys arising from penalties, forfeitures and fines imposed by any such Stipendiary Magistrate, or by any Justice of the Peace acting within his temporary Judicial District when paid and levied, shall (if not directed by law to be otherwise 45 appropriated) from time to time be paid to such Stipendiary Magistrate who shall account for the same, and pay over or disburse the moneys arising therefrom at such times in such manner and to such person or persons as the Governor may from time to time direct.

Application of fines and forfeitures

Magistrate to
keep Minutes,
Accounts, &c.

XI. Every Stipendiary Magistrate appointed under this Act shall keep minutes of every proceeding had by and before him, and shall keep such accounts, make such returns and collect such information with respect to the temporary Judicial District for which he is appointed, and the state and condition thereof as the Governor may from time to time prescribe and require. 5

Civil Court to
be held in each
Division.

XII. In order to the administration of Justice between party and party, Courts of Civil Jurisdiction shall be holden in every temporary Judicial District, and a Court shall be holden under this Act in every Division declared and appointed as a Division under the first section of this Act, at such periods as the Governor may from time to time order; And the Court to be held in each Division shall be known by the name and style of "The (*first or other, as the case may be*) Division Court for the temporary Judicial District of " 15

Magistrate to
hold such
Court: pow-
ers.

XIII. The Stipendiary Magistrate for each temporary Judicial District shall preside over the several Division Courts therein, and shall be the sole Judge of all actions brought in the said Division Courts, and shall determine all questions as well of fact as of law in relation thereto in the summary manner authorized by this Act; Provided that if he shall think fit to have any fact or facts controverted in a cause tried by a Jury, a Jury of five persons present shall be returned instantly by the Clerk of the Court to try such fact or facts as seem doubtful to such Stipendiary Magistrate, and he may proceed to give judgment on the verdict of the Jury; And provided further that every such Stipendiary Magistrate before he shall be qualified to preside over the said Division Courts shall, in addition to his oath of office as a Justice of the Peace, take the following oath before some person authorized to administer to same, that is to say: 20 25 30

Proviso: Jury
Trial.

Proviso.

Oath of office
of Magistrate.

"I do swear that I will truly and faithfully execute the several powers, duties and trusts committed to me by the Temporary Judicial Districts Act, without fear, without favor and without malice. So help me God." 35

Clerk and
Bailliff of Di-
vision Courts.

XIV. For every Division Court holden under the authority of this Act there shall be a Clerk and one or more Bailiffs, and the Stipendiary Magistrate shall from time to time appoint and at his pleasure remove the Clerks and Bailiffs of the Courts holden by him, and every Clerk shall have an office at such place within the Division for which he is appointed as the said Stipendiary Magistrate may direct; and in any case when the Stipendiary Magistrate shall remove any such Clerk or Bailiff and appoint another in his place, the said Stipendiary Magistrate shall and may direct that the books, papers and all documents relating to the business or matters of the Division Court, be delivered over to the newly appointed Clerk or Bailiff, and 40 45

Proceedings if
Clerk or
Bailliff be re-
moved, to
compel de-
livery of pa-
pers, &c., to
his Successor.

if any person or persons in whose custody such books, papers or documents may be, shall refuse to obey such order, it shall and may be lawful for Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, or for any Judge thereof in vacation, upon
 5 proof of service of the order of the Judge of the District Court upon such person or persons as shall have the custody or possession of such books, papers or documents, to make a rule or summons to show cause why such books, papers or documents should not be delivered in conformity with the order of the said
 10 Stipendiary Magistrate; and upon proper proof of the service of such rule or summons, or on hearing the parties, it shall and may be lawful for the said Court of Queen's Bench or Judge thereof, to order the issue of an attachment against such person or persons, and in default of the delivering up of the said books,
 15 papers or documents, to make such order for the imprisonment or such other punishment of the parties, respectively, as the justice of the case to the said Court or Judge shall seem to require; and any other person now fully holding or getting possession of such books, papers or documents, or any of them,
 20 shall be guilty of a misdemeanor.

XV. Every Clerk and Bailiff appointed under the provisions of this Act shall give security by entering into a bond to Her Majesty in such sums, with so many sureties, and in such form as the Governor shall see fit to direct for the due accounting for all fines and moneys received by them respectively, by virtue of their respective offices, and also for the due and faithful performance of the duties of their several offices, and every such Clerk and Bailiff shall also give security for such sum and with so many sureties as the Stipendiary Magistrate for the
 25 temporary Judicial District 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 or in
 30 words to the same effect, which covenant shall be available to, and may be sued upon by any person suffering damages by the
 35 default, breach of duty or misconduct of any such Clerk or Bailiff, respectively, in any Court of competent Jurisdiction in Upper Canada; and such covenants shall not be accepted until the sureties therein mentioned shall have been approved of under the hand of such Stipendiary Magistrate, and declared
 40 sufficient for the sums for which they have respectively become bound; and such covenants shall be executed in duplicate, one of such duplicate originals shall be filed in the office of the Inspector General of this Province, and the other with such Stipendiary Magistrate, and a copy of every such covenant
 45 certified by the Inspector General, or by said Stipendiary Magistrate, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without any proof whatever.

Clerks and Bailiff to give security for good behaviour, &c.

Form.

Sureties to be subject to approval.

Proof of bond.

XVI. The Stipendiary Magistrate shall fix and appoint the
 50 days and places within every Division when and at which every

Sittings of the Court, how notified, &c.

such Division Court shall be holden, and shall give due notice thereof, and whenever from illness of the Stipendiary Magistrate 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 holden under this Act on the day appointed for that purpose, it shall and may be 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 earlier hour on the following day not being Sunday or a legal holiday to be by him named, and so from day to day adjourning over any Sunday or holiday, until the Stipendiary Magistrate shall arrive to open the same, or until he shall receive other direction from such Stipendiary Magistrate.

Clerk may adjourn the Court in certain cases.

Jurisdiction of the Court.

Mode of proceeding.

Proviso : certain causes of action not cognizable.

Proviso : not to be Courts of Record,

Cause of action not to be divided in order to give jurisdiction : but excess may be abandoned.

XVII. Every Division Court holden under the authority of this Act, shall have jurisdiction, power and authority to hold plea of all personal actions (save as hereinafter excepted) for or against any person, body corporate or otherwise, where the debt or damages claimed is not more than Twenty-five pounds, and the Stipendiary Magistrate presiding over the same shall have power and authority to hear, and shall hear and determine such actions and matters in relation thereto in a summary way, and to make such orders, judgments and decrees as shall appear to him to be just and agreeable to equity and good conscience ; Provided always that the said Division Courts shall not have cognizance of any action for any gambling debt, nor for any spirituous or malt liquors or other like liquors, or for any action whether brought by the payee or any other person on a note of hand, the consideration or any part of the consideration of which was for any such gambling debt or such liquors, nor of any action of ejectment or in which the title to any corporeal or incorporeal hereditaments, or to any toll custom or franchise shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or of any action for malicious prosecution, or for libel or slander, or for criminal conversation or seduction or breach of promise of marriage ; Provided that nothing in this Act contained shall be construed to constitute the said Division Courts, Courts of Record.

XVIII. 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 a Division Court holden under the authority of this Act, but any plaintiff, having a cause of action above the value of Twenty-five pounds, for which a suit might be brought under this Act, if the same were not above that sum, may abandon the excess in the first instance on the face of the claim sued on, and upon proving his case may recover to an amount not exceeding 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; Provided that no unsettled account to a greater amount than Fifty pounds shall be sued for in any of the said Courts. Proviso.

XIX. It shall be lawful for any executor or administrator to sue and be sued in any Division Court 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; and any one under the age of twenty-one years may prosecute any suit under this Act, for any sum of money not exceeding Twenty-five pounds, which may be due to him or her for wages or piece work or for work as a servant, in the same manner as if he were of full age. Executor, &c
may sue and
be sued.

Minors for
wages.

XX. No privilege shall be allowed to any person to exempt him from the jurisdiction of the Division Courts created by this Act. No privilege
allowed.

XXI. When 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 or one or more of whom cannot be found, it shall be sufficient if one or more of such persons be served with the process as hereinafter 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. Actions a-
gainst persons
jointly liable
in different
divisions, &c.

XXII. All suits cognizable in a Division Court under this Act may be entered and tried in the Court holden for the Division in which the cause of action arose, or the Court holden for the Division in which the defendant or where there shall be more than one defendant wherein one of the defendants shall dwell or carry on business at the time when action brought, and in actions against Clerks in the next adjoining Division within the temporary Judicial District; Provided always that with consent of both parties to a suit, the Stipendiary Magistrate shall have power to try such suits in any Division Court within the local limits of his jurisdiction. In what divi-
sion any suit
shall com-
mence.

Proviso.

XXIII. 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 Each Courts
to have a Seal.

Punishment
for forging
Seal.

shall act or profess to act under any false color or pretence of the process of the said Court, shall be guilty of felony.

- Clerks to issue summonses, &c., and in what form.** XXIV. The Clerk of every Division Court holden under the authority of this Act, shall issue all summonses and furnish copies thereof, with the notices thereon, in the form given in the Schedule to this Act marked D, and particulars of the plaintiff's claim or demand and copy thereof, and of the defendant's set-off, which copy of demand, particulars or set-off are to be furnished to the Clerk by the plaintiff and defendant, respectively, and shall also issue all warrants, precepts and writs of execution, tax costs, subject to the revision of the Stipendiary Magistrate, and enter and register a note of all summonses, orders and judgments, executions and returns, and of proceedings of the Court in a Procedure Book to be kept by him, and keep an account of all fines payable into Court, and of all suitor's moneys paid into and out of Court, and enter an account of all such fines and moneys in a Cash-book to be kept by him for that purpose, and the Clerk shall sign his name on every page of the said books, respectively, and the same shall at all times be accessible to the Stipendiary Magistrate whose duty it shall be to inspect and examine the same at every sittings of the Court; and the entries for the said Procedure-book and Cash-book, respectively, or a copy thereof, signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever as evidence of such entry or entries and of the proceedings referred to by such entry or entries without any further proof; and the Clerk and bailiff of every such Division Court shall render to the said Stipendiary Magistrate such accounts and returns verified on oath as he shall from time to time require; and the bailiffs of the said Courts shall attend every sittings of the said Courts, and shall serve all summonses, and execute all orders, warrants, precepts and writs of the said Courts, and each of such bailiffs shall also exercise the power and authority of a constable and peace officer during the actual holding of the Division Court, of which he is a bailiff, with full power to prevent all breaches of the peace, riots or disturbances within the Court-room or building wherever the said Court is held, or in the public streets, squares or other places within hearing of said Court, and to arrest with or without any warrant all parties engaged therein or offending against the meaning of this clause, and to bring such offender before the nearest Justice of the Peace or any judicial officer having power to investigate the matter or adjudicate thereupon.
- Register to be kept: also accounts.**
- Effect thereof in evidence.**
- Accounts to be sworn.**
- Bailiffs' duties and powers.**
- Powers to preserve the peace, &c.**
- Fees to Clerks and bailiffs.** XXV. There shall be payable to the Clerks and bailiffs on every proceeding in the Division Courts holden in pursuance of this Act, such fees as are set down in the Schedule to this Act annexed marked C, and a table of such fees shall be hung up in some conspicuous place in the office of each Clerk, and the fees on every proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be had on, or before

such proceeding, and if so paid, the payment thereof may be enforced by order of the Stipendiary Magistrate, in the same way as any judgment of the Court can be recovered; and if any Clerk, bailiff or other officer employed in putting this Act or any
 5 of the powers thereof into execution, shall exact, take or accept any fee or reward whatsoever, other than and except such fees as aforesaid, for or on account of any thing 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,
 10 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 be also liable to damages to the party aggrieved.

Penalty for exacting undue fees.

XXVI. The plaintiff in any suit brought in the said Di-
 15 vision Courts shall enter a copy, and if necessary, copies of his demand or claim in writing, which shall be numbered according to the order in which it shall be entered, and thereupon a summons bearing the number of the demand or claim on the margin thereof, shall be issued, and it shall be in substance in
 20 the form to the Schedule to this Act annexed, marked and a copy of such summons to which shall be attached a copy of the plaintiff's account or of the particulars of his demand, as the case may be, and the notice in the said Schedule of such demand or account or claim, shall be served on the defendant
 25 ten days at least before the day on which the Division Court shall be holden at which the cause shall be tried; and the delivery of such copies of summons 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
 30 abode, trading or dealing, shall be deemed a good service of such summons, account or demand; Provided always that personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceed the sum of forty shillings.

Mode of commencing suits.

Particulars of demand.

Service of process, how made.

Proviso.

XXVII. Either of the parties to a suit may obtain from the Clerk of the Division Court wherein the same shall be brought, or from any Division Court Clerk within the temporary Judicial District a summons requiring the attendance of a witness resident within
 40 the temporary Judicial District with or without a clause requiring 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 Division Court or by any literate person shall be valid and effectual; and every person on whom any such summons shall
 45 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 have been made, on the scale of allowance given in the Schedule to this Act, and who shall refuse or neglect without sufficient cause to appear before the Court or
 50 before arbitrators appointed under this Act, or to produce any

Subpœnas for witnesses.

Service.

Penalty for disobeying subpœna.

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 affirmed (where affirmation is by law allowed) and give evidence, shall forfeit and pay such fine not exceeding five pounds as the Stipendiary Magistrate shall set on him, and shall moreover be liable to imprisonment by order of such Stipendiary Magistrate for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as upon a judgment of the Court, and the whole or any part of such fine, in the discretion of the Stipendiary Magistrate (after deducting the costs) shall be applicable towards indemnifying the party injured by such refusal or neglect; and the remainder thereof shall be paid over to the Stipendiary Magistrate, and accounted for by him as aforesaid.

How to be levied.

Clerk or bailiff may receive confessions of judgment.

XXVIII. 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 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 any thing from the plaintiff or defendant, or any other person, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered.

Set-off and statute limitations pleadable.

XXIX. Any defendant may avail himself of the law of set-off the statute of limitations, or any other relief or discharge under any statute or law of Upper Canada, and may set up the same by way of defence on the hearing or trial; and in case of set-off, if the defendant's demand exceed that of the plaintiff, the Stipendiary Magistrate may non-suit the plaintiff, or if the defendant's demand, after remitting any portion of it he may please, do not exceed twenty-five pounds, the Stipendiary Magistrate may give judgment for the defendant for the balance found to be in his favor: Provided always, that no statutory defence shall be admitted unless notice thereof in writing and a copy of such debt or demand, by way of set-off, shall have been delivered to the plaintiff or left at his usual place of abode if within the Division, or if living without the Division, to the Clerk of the said Court, at least six days before the trial or hearing: And provided also, that when any judgment shall be given in any case where a set-off is set up, the judgment of the Stipendiary Magistrate on such set-off shall be a full discharge, as well of the amount allowed to be set-off as the amount by which such claim of the defendant exceeded twenty-five pounds, and such judgment shall be so entered accordingly.

Proviso.

Proviso.

XXX. 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 Stipendiary Magistrate shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue ; and if the defendant shall not appear as aforesaid, or sufficiently excuse his or her absence, or shall neglect to answer, the Judge, on proof of due service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment 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 ; and in cases where the plaintiff shall not appear in person or by some one in his behalf, or appearing, shall not make proof of his demand to the satisfaction of the Stipendiary Magistrate, it shall be lawful for the Stipendiary Magistrate, if he shall think fit, to award the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he in his discretion may think proper, to be recovered as in other cases provided under this Act.

Appearance of parties and mode of trial.

Default of defendant.

Proviso : delay may be allowed by Court.

XXXI. On the hearing of 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 ; Provided always that no party to a suit shall be summoned or examined except at the instance of the opposite party or the Stipendiary Magistrate.

Examination of witnesses, &c.

Proviso : as to examination of parties.

XXXII. In any suit for a debt or money demand not exceeding ten pounds brought in any Division Court under this Act, the Stipendiary Magistrate, in his discretion, may receive the affidavit of any party or witness in the said suit resident without the limits of the temporary Judicial District ; Provided that the said Stipendiary Magistrate before he shall be required to pronounce judgment may, in his discretion, require any such party or witness to answer on affidavit any interrogatories that may be filed in the cause ; and in such suits the Stipendiary Magistrate may also, in his discretion, upon proof of and being satisfied with the general correctness of the party's books, receive the books of both plaintiff and defendant, and may give judgment on such evidence for any sum not exceeding ten pounds.

Affidavits may be received in certain cases.

Proviso.

Books of parties. how receivable.

Evidence limited to demand stated.

Court may adjourn the case for further evidence, &c.

XXXIII. No evidence shall be given by the plaintiff or defendant on the trial of any cause as aforesaid, or of any cause of action, claim or set-off, except such as shall be stated and contained in the demand, account or claim, entered as before directed; but the Stipendiary Magistrate shall have power, if he thinks it conducive to the ends of justice so to do, to adjourn the hearing of any cause in order to permit either party to summon or produce further testimony, or to serve or give any notice which may be necessary to enable such party to enter more fully into his case or defence, or from any other cause which said Stipendiary Magistrate may deem reasonable upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him may seem meet. 5 10

Affidavits, how sworn.

XXXIV. All affidavits to be used in the said Division Courts or before the Stipendiary Magistrate, may be sworn before any Clerks of the said Division Courts, any Commissioner for taking affidavits in either of the Superior Courts of Common Law at Toronto, or before any Justice of the Peace.

Judgments to be final; but Court may non-suit plaintiff, or allow new trial.

XXXV. Every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Stipendiary Magistrate 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 judgment of the Stipendiary Magistrate, and any plaintiff may elect, to be non-suited and insist thereon; and the Stipendiary Magistrate 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; Provided such new trial be applied for at furthest within fourteen days, and good ground be shown therefor by the party so applying, and the costs of any action or proceeding under this Act shall be paid by or apportioned between the parties in such manner as the Stipendiary Magistrate shall think fit, and if not so apportioned, the costs shall abide the event of the action or proceeding. 25 30 35

Proviso: as to new trials.

Decision to be pronounced in open Court; but Court may take time to consider it.

XXXVI. Every decision of the Stipendiary Magistrate shall be openly pronounced in Court as soon as may be after the hearing thereof, save and except that in any case where the Stipendiary Magistrate is not prepared to pronounce a decision instant, he may postpone judgment and name a subsequent day and hour for the delivery thereof at the Clerk's office in writing, and at such day and hour it shall be lawful for the Clerk to read the judgment to the parties or their agents if present, and if not, then to enter the said judgment in their absence, and such judgment shall be as effectual as if rendered in Court at the trial; Provided that the issuing of execution shall not be postponed without the consent of the party entitled, to the same for a longer period than fifty days after the day of trial or hearing. 40 45

Proviso: as to execution.

XXXVII. Whenever any judgment shall be given or order made in the said Courts by the Stipendiary Magistrate for the payment of money, it shall be lawful for the party in whose favor such judgment shall be given or such order made in case of default or failure in payment thereof, to sue out execution against the goods and chattels of the party against whom such order shall be made, and thereupon the Clerk of the Court, at the request of the party prosecuting such order or judgment, shall issue under the seal of the Court a Precept in the nature of a *feri facias*, which shall be dated on the day it actually issues, and shall be returnable into the Court from which it issues within thirty days from the date thereof, which Precept shall be directed to the bailiff of the Court, who by virtue thereof, shall levy by distress and sale of the goods and chattels of the party within the temporary Judicial District, such sum of money and costs (together with interest thereon from the date of entry of judgment) as shall be so ordered and past due, and shall pay the same over to the Clerk forthwith; and the bailiff to whom such execution is directed, may by virtue thereof seize and take any of the goods and chattels of such person (except 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 seizure,) and also any money or bank-notes belonging to such person, against whom such execution shall have issued as aforesaid.

Execution of judgments.

Precept to Bailiff.

Seizure by Bailiff.

Exemptions.

XXXVIII. The bailiff upon taking goods and chattels into his custody by virtue of a writ of execution, shall endorse thereon the date of seizure, and shall immediately give public notice by advertisement, signed by him, describing the goods and chattels taken, and stating the time and place within the Division when and where such goods will be exposed for sale, which notice shall be put up in three of the most suitable places within the Division, at least eight days before the time appointed for the sale; and no bailiff or other officer of any of the said Division Courts shall directly or indirectly purchase any goods or chattels sold under execution, and every purchase made in contravention of this enactment shall be absolutely void.

Bailiff to give notice of sale.

Bailiff not to purchase.

XXXIX. 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 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.

Execution in case of cross-judgments.

XL. If any person in any temporary Judicial District being indebted in any sum not exceeding twenty-five pounds and not less than twenty shillings, for any debt or money demand arising upon any contract express or implied, or upon any

Proceedings in suits against absconding debtors.

judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt, in such temporary Judicial District, or shall attempt to remove his personal property out of such temporary Judicial District, or shall keep concealed therein to avoid service of process, with intent 5 and design to defraud his creditor or creditors, it shall and may be lawful for any creditor of such person, his servant or agent, to make application to the Clerk of any Division Court of the temporary Judicial District wherein the debtor was last domiciled, or where the debt was contracted, or to the Stipendiary Magistrate 10 therein, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed marked D, and upon then and there filing the said affidavit or affirmation with such Clerk or Stipendiary Magistrate, it shall be lawful 15 for such Clerk or Stipendiary Magistrate forthwith to issue a warrant under his hand and seal, directed to the bailiff of the Division Court, within which the same is issued, or to any constable, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of 20 what nature and kind soever, liable to seizure under execution for debt within such temporary Judicial District, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued, 25 upon receipt of which warrant the bailiff or constable to whom the same may be directed, shall forthwith execute the same, and make a just and true inventory of all 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 30 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 D: Provided always, that proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this Section, in the Division 35 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 under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which 40 such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment or the proceeds thereof in case such property shall have been sold as perishable, shall be applied in satisfaction of such judg- 45 ment; Provided further, 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 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 50 issued under this section, if the same were not above the value of twenty-five pounds, may abandon the excess, and upon

Warrant of Attachment to issue on proper affidavit.

Inventory to be made.

Proviso: as to division in which the proceedings may be had, &c.

Proviso: plaintiff not to divide his claim; but may abandon excess.

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 therein shall be made accordingly.

5 XLI. Whenever several attachments shall be issued against any party, the proceeds of the goods and chattels attached shall not be paid over to such attaching creditors according to priority, but shall be rateably distributed amongst such attaching creditors as shall obtain judgment against the debtor in proportion to the amount of the sums really due upon such judgments, and no distribution shall take place until a reasonable time in the opinion of the Judge, has been allowed to the several creditors to obtain judgment; and if such goods and chattels shall not be sufficient to satisfy the claims of all the attaching creditors, none shall be allowed to share unless he shall have sued his attachment within one month from the issuing of the first attachment, and the costs of the first attaching creditor shall be paid in full.

In case of several Attachments, proceeds to be distributed rateably, and among whom.

20 XLII. All property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same.

Custody of property attached.

30 XLIII. If any person against whose estate or effects such warrant or warrants as aforesaid may have been issued, or any person on his 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 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 Clerk of the Division Court, binding the obligors jointly and severally in double the amount of the sum claimed, with condition that the debtor or debtors (*naming him, her or them*) shall, in the event of the claim being proved and judgment being recovered thereon, as in other cases where proceedings have been commenced against the person, pay the 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 be restored.

Attachment dischargeable by giving security.

45 XLIV. 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

Sale of property attached if security be not given.

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 of this Act, as perishable property.

Service of process in cases of Attachment as aforesaid.

Proviso.

XLV. In order to proceed in the recovery of any debt due by the person against whose property a warrant shall have been 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 said Division Courts ; Provided always, that if it shall appear to the satisfaction of the Stipendiary Magistrate 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 proceeding, then it shall be the duty of such Stipendiary Magistrate 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.

Sale of perishable articles.

Proviso.

XLVI. In case any horses, cattle, sheep or other perishable goods or chattels shall be taken upon any warrant to be issued under this Act, 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 indifferent persons, 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 Court, and at two other public places within such Division, of the time and place of such sale, if the articles seized will admit of that notice, otherwise to sell the same at his discretion ; Provided always, that it shall not be compulsory upon 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 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 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 sued in any Division Court of the temporary Judicial District wherein the

Proviso.

same shall have been executed, and proceedings may be thereupon carried on to judgment and execution in such Court notwithstanding the penalty contained in such bond may exceed the sum of twenty-five pounds ; And provided 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 such Court, to be enforced or cancelled, as the case may require. Proviso.

XLVII. Any residue which may remain after satisfying such judgment, with the costs thereupon, shall be delivered to the defendant, or to the agent of the defendant, or to the person or persons in whose custody the same were found, whereupon the responsibility of the Clerk as respects such property shall cease. Residue of proceeds, how dealt with.

XLVIII. The Stipendiary Magistrate holding any Division Court as aforesaid, may, in any case, with the consent in writing of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court as to subject matter, but irrespective of amount if not exceeding two hundred pounds, in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner and on such terms as he shall think reasonable and just ; and such reference shall not be revocable by either party, except by consent of the Stipendiary Magistrate ; and the award of the arbitrator or arbitrators, or umpire, shall be entered in the cause as a judgment of the Court, and shall be as binding and effectual, to all intents and purposes, as if given by the Stipendiary Magistrate in a cause within its jurisdiction ; Provided that, if he shall think fit, the Stipendiary Magistrate may, on application to him within fourteen days after the entry of such award, set aside such award so given as aforesaid, or may, with the consent of both parties as aforesaid, revoke the said reference and order another reference to be made in the manner aforesaid ; and when any reference shall have been made by any such order as aforesaid, either of the parties to the suit may obtain from the Clerk of any Division Court, a summons requiring the attendance before the said arbitrator or arbitrators of any witness resident within the County, or served with subpoena therein, in like manner as before the Stipendiary Magistrate at any sittings of the said Division Courts. Matters in dispute not over. £200 may be referred to arbitration.
Award to be entered as a judgment.
Proviso : Award may be set aside.
Subpœnas to witness before Arbitrators.

XLIX. If parties between whom differences have arisen shall agree by a memorandum signed by them to refer their causes of action, claims and demands to the Stipendiary Magistrate of a temporary Judicial District, and such Stipendiary Magistrate shall try and determine the same, the said Stipendiary Magistrate shall have power and jurisdiction so to do ; Provided the subject, matter or difference shall be upon a cause or upon causes of action not exceeding two hundred pounds in amount, and shall not be within the subjects excepted from the jurisdiction of the said Division Courts, and shall be so stated in the said memorandum ; and such memorandum

Proceedings in
such case.

shall be executed in duplicate, and when filed with the said Stipendiary Magistrate and with the Clerk of some one of the said Division Courts, shall confer on the said Court jurisdiction, power and authority to hear and determine matters so referred; and upon such memorandum being filed the plaintiff may enter his claim for suit in such said Division Court, and sue out a summons thereupon as in ordinary cases, and the proceedings in the said suit may be conducted and continued to judgment and execution (irrespective of the amount recovered, so that it do not exceed two hundred pounds) in the same manner as other suits in the said Court may be conducted and continued under the provisions of this Act, and the judgment in any such suit shall have the same effect as any other judgment of the Court.

Punishment of
persons insult-
ing the Magis-
trate, or any
Officer, &c.

L. If any person shall wilfully insult the Stipendiary Magistrate or any officer of any Division Court, during his sitting or attendance in Court, or shall 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 Stipendiary Magistrate, to take such offender into custody, and the Stipendiary Magistrate may impose upon any such offender a fine not exceeding the sum of five pounds, and in default of immediate payment thereof, it shall be lawful for the said Stipendiary Magistrate, 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, or to commit the offender to the Gaol of the Temporary Judicial District for any period not exceeding one calendar month.

Punishment
for assaulting
any Officer,
resisting pro-
cess, &c.

LI. 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 Stipendiary Magistrate; 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 Stipendiary Magistrate accordingly.

Punishment of
Bailiff for ne-
glect, conni-
vance, &c.

LII. 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 Stipendiary Magistrate 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 execution 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.

LIII. If any bailiff or officer of any Division Court, acting under color 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 Stipendiary Magistrate, 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 said Stipendiary Magistrate shall think just; and in default of payment of any money so ordered to be paid by such bailiff or officer within the time specified for the payment thereof in such order, it shall be lawful for the Stipendiary Magistrate, 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 temporary Judicial District for any period not exceeding three calendar months.

Punishment of Bailiff or Officer guilty of extortion.

LIV. 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; any thing in this Act or in any other Act or law to the contrary notwithstanding.

Punishment of Bailiff neglecting to return Writ, or making false return.

LV. The forms contained in the Schedule to this Act annexed marked D, are given as examples of the forms for proceedings in the said Division Courts, and may be used with such modifications as may be necessary in all actions and proceedings in the said Division Courts, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms so long as the substance is expressed; and with reference to forms not contained in the said Schedule, the

Forms in the Schedule or to like effect to be valid.

forms contained in the said Schedule shall be used as guides in framing the same.

Provision for protection of persons levying by distress.

LVI. 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. 5 10

Want of form not to vacate.

LVII. No order, verdict or judgment, or other proceeding made concerning any of the matters aforesaid, shall be quashed or vacated for any matter of form. 15

Provision for protection of persons acting in pursuance of this Act.

LVIII. For the protection of persons acting in the execution of this Act, it is enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, 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; and it shall be lawful in any such action for the defendant to plead the general issue, and to give any special matter arising under this Act in evidence under such plea; and if any person shall bring any suit in any of Her Majesty's Courts of Record in respect of any grievance committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of ten pounds, no costs whatever shall be awarded to the such action. 20 25 30 35

Wilfully false swearing, &c., to be perjury.

LIX. Every person who, in 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 perjury. 40

Act not to supersede c. 176.

LX. Nothing herein contained shall be taken or construed to repeal or supersede any thing contained in an Act passed in the sixteenth year of Her Majesty's Reign, intituled, *An Act to* 45

provide for the administration of Justice in the unorganized tracts of Country in Upper Canada.

LXI. So soon as Provisional Judicial Districts have been founded under the said last mentioned Act, which shall include 5 the temporary Judicial Districts formed under this Act, the provisions of this Act shall cease to have any force except so far as may be necessary for supporting any process and proceedings issued, had or taken before or at the time when such Provisional Districts may be formed. Act not to apply to Provisional Districts under 16 V. c. 176.

10 LII. In citing this Act in any instrument or proceeding, it shall be sufficient to use the expression "The Temporary Judicial Districts Act, 1857." Short Title.

SCHEDULE A.

COVENANT BY THE CLERK OR BAILIFF.

Know all men by those presents that we J. B., Clerk, (or *Bailiff*, as the case may be) of the Division Court number _____ in the Temporary Judicial District of _____ S. S. of _____ in the _____, and P. M. of _____ in the _____

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

- Against the said J. B. in the whole,
- Against the said J. S. “
- Against the said P. M. “

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

Signed sealed and delivered }
in the presence of }

L. S.
L. S.
L. S.

SCHEDULE B.

TARIFF OF FEES AND ALLOWANCES TO BE RECEIVED BY CLERKS AND BAILIFFS.

| CLERKS' FEES. | Not exceeding £5. | | | Exceeding £5 and not exceeding £15. | | | Exceeding £15 and not exceeding £20. | | | Exceeding £20. | | |
|--|-------------------|----|----|-------------------------------------|----|----|--------------------------------------|----|----|----------------|----|----|
| | £ | s. | d. | £ | s. | d. | £ | s. | d. | £ | s. | d. |
| Entering every Account and issuing Summons..... | 0 | 1 | 0 | 0 | 1 | 6 | 0 | 2 | 0 | 0 | 2 | 6 |
| Copy of Summons, Particulars of Demand or Set Off, each..... | 0 | 0 | 6 | 0 | 0 | 9 | 0 | 1 | 0 | 0 | 1 | 3 |
| Every Summons to Witnesses with any number of names..... | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 |
| Entering Bailiff's returns to Summons to Delendant..... | 0 | 0 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 0 | 0 | 3 |
| Every copy of Subpœna when made by the Clerk..... | 0 | 0 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 0 | 0 | 3 |
| Entering Set Off or other Defence requiring notice to Plaintiff..... | 0 | 0 | 9 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 3 |
| Adjournment of any cause..... | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Entering every Judgment or order made at hearing..... | 0 | 0 | 9 | 0 | 1 | 0 | 0 | 1 | 3 | 0 | 1 | 6 |
| Taking confession of Judgment..... | 0 | 0 | 9 | 0 | 0 | 9 | 0 | 0 | 9 | 0 | 0 | 9 |
| Every Warrant, Attachment or Execution..... | 0 | 1 | 3 | 0 | 1 | 6 | 0 | 2 | 0 | 0 | 2 | 6 |
| Drawing every bond including Affidavit of Justification..... | 0 | 3 | 9 | 0 | 3 | 9 | 0 | 3 | 9 | 0 | 3 | 9 |
| For every Affidavit taken, and drawing the same, if not over 3 folios if over that number, 3d. per folio.. | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Every search on behalf of a person not a party to a Suit, to be paid by the Applicant..... | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 |
| Every search for a party to a Suit when the proceedings are over a year old..... | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 0 | 6 |
| BAILIFFS' FEES. | | | | | | | | | | | | |
| Service of Summons or other Process, except Subpœna, on each person.. | 0 | 0 | 6 | 0 | 0 | 9 | 0 | 1 | 0 | 0 | 1 | 3 |
| Service of each Subpœna..... | 0 | 0 | 4 | 0 | 0 | 4 | 0 | 0 | 4 | 0 | 0 | 4 |
| Taking confession of Judgment..... | 0 | 0 | 9 | 0 | 0 | 9 | 0 | 0 | 9 | 0 | 0 | 9 |
| Enforcing every Warrant, Execution or Attachment against the body or the goods..... | 0 | 1 | 6 | 0 | 2 | 0 | 0 | 3 | 0 | 0 | 4 | 0 |
| Drawing every bond authorized to be taken by him..... | 0 | 2 | 6 | 0 | 2 | 6 | 0 | 2 | 6 | 0 | 2 | 6 |
| Every Schedule of property seized... For necessary notices of sale under execution..... | 0 | 1 | 3 | 0 | 1 | 3 | 0 | 1 | 3 | 0 | 1 | 3 |

For necessary travel to serve Summons and other process, or to execute Warrant or Attachment, a sum in the discretion of the Stipendiary Magistrate, not exceeding 8d. per mile travel from Clerk's office.

Upon the sale of any property under any Execution, the sum of two and a half per cent on the amount realized, and not to apply to any overplus on the Execution.

SCHEDULE C.

ALLOWANCE TO WITNESSES.

Attendance per day in Court..... £0 3 9
 Travelling expenses, a reasonable sum in the discretion of the Stipendiary Magistrate, not exceeding 1s. per mile, one way.....

And where a witness attends in two or more causes, his expenses may be apportioned between or amongst such causes if the Stipendiary Magistrate shall think fit.

SCHEDULE D.

PROCEDURE BOOK.

Division Court, for the
 Ensuing Sittings, 26th February, 18

No. 1 A. D. 18

JOHN DOE vs. THOMAS ROE.
 of | of

1851.

| | |
|-----------|--|
| 1st Jan. | Received particulars of plaintiff's demand (on contract) for £ and plaintiff paid 1s. 8d. towards costs. |
| 11th " | Issued summons to Bailiff, costs 1s. 8d., and mileage. |
| 24th " | Summons returned served the day of |
| 28th " | Defendant paid £ demand and costs |
| 10th Feb. | Paid plaintiff £ demand and costs, deposited. |

No. 2. A. D. 18

JOHN DEN vs. THOMAS FEN.
 of | of

| | |
|-------------|--|
| 10th Jan. | Received particulars of plaintiff's demand (for Tort) for £5 plaintiff paid on account of costs and directed two subpoenas, and gave notice to try by Jury. |
| 12th " | Issued summons to Bailiff, costs and mileage. |
| 20th " | Summons returned served the day of |
| 8th Feb. | Issued Jury summonses and subpoenas to Bailiff. |
| 13th " | Jury summonses returned served, 10 miles travel, subpoenas served also. |
| 20th " | Both parties appeared, cause tried, judgment for plaintiff on verdict for pounds, shillings and pence damages, and pounds shillings and pence costs, to be paid in days. |
| 20th March. | Defendant paid pounds in full of judgment and costs. |

No. 3. A. D. 18

JAMES JONES vs. THOMAS THOMPSON.
 of | of

| | |
|-------------|---|
| 11th Jan. | Received particulars of plaintiff's demand (on contract) for £ and on account of costs. |
| 12th " | Issued summons to G. G. Bailiff; costs and mileage. |
| 1st Feb. | Summons returned, served the day of 9 miles travel. |
| 3rd " | Defendant executed Cognovit for £25. |
| 20th " | Judgment for plaintiff—twenty-five pounds, debt, and pounds costs, to be paid in days. |
| 10th March. | Defendant paid £ debt and costs. |

N. B.—The proceedings in a suit may be continued from page to page, giving a reference from one to another; and the sums of money may be in decimal currency, pursuant to 16 Vic. cap. 158, if so ordered.

CASH BOOK.

| CASH BOOK—RECEIPTS. | | | | CASH BOOK—PAYMENTS. | | | | | |
|--|--|------------------|---------------------|--|-----|--------------------------|-------------------|----------------|-------------------|
| Account of Suitors' money paid into the the commencing the 1st of January, 1851. | | | | Account of Suitors' money paid out of the the commencing the 1st of January, 1851. | | | | | |
| No. | Style of Cause. | When Received. | From whom Received. | Amount. | No. | Style of Cause. | When Paid. | To whom Paid. | Amount. |
| 36 | Doe vs. Roe | 24th Jan., 1851. | Defendant | £ s. d. 10 0 0 | 100 | Doe vs. Fen et al. | 1st Feb., 1851. | Plaintiff | £ s. d. 5 10 0 |
| 100 | Doe vs. Fen et al. | 27th " " | Bailiff | 5 10 0 | 153 | Thomas vs. Roe, et al. | 29th April, " | Plaintiff | 20 11 8 |
| 250 | James vs. Jones | 28th Feb., " | Plaintiff | 0 18 4 | 250 | James vs. Jones. | 29th " " | Defendant | 0 18 4 |
| 153 | Thomas vs. Roe et al. | 10th April, " | Wm. Roe | 30 11 8 | | | | | |
| | Receipts up to 30th April. | | | 37 0 0 | | | | | |
| | Paid to Suitors as per payment account. | | | 37 0 0 | | | | | |
| | Balance in Court, 30th April, carried to next Quarter. ... | | | 10 0 0 | | | | | |
| | To Cash Balance remaining in Court 30th April. | | | £ 10 0 0 | | | | | |
| 357 | Johnston vs. Wilson, &c. | 3rd Sept., 1851. | From Plaintiff, &c. | 2 7 6 | 357 | Johnston vs. Wilson, &c. | 20th Sept., 1851. | Defendant, &c. | 2 7 6 |
| | | | | | | | | | |
| | | | | | | | | | |

N. B.—Or the amount may be in decimal currency, pursuant to 16th Vict., ch. 158, if so ordered.

PARTICULARS IN CASES OF CONTRACT.

A. B., of _____, claims of C. D., of _____ the sum of _____ [the amount of the following account or the amount of the note (a copy of which is under written) together with interest thereon :] or for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed :—or, for that the said C. D. by deed under his seal dated _____, covenanted to, &c., and that the said C. D. hath broken said covenant,—whereby the said A. B. hath sustained damages to the amount aforesaid.]

A. B.

PARTICULARS IN CASES OF TORT.

A. B., of _____, states, that C. D., of _____, did, on or about the _____ day of _____, A. D. 18 _____, at the _____, unlawfully [take and convert one cow and one calf, the property of the said A. B. : or break and injure a wagon of the said A. B. : or keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., or kill or injure two sheep, the property of the said A. B. : or assault and beat the said A. B., (*or as the case may be stating the Tort sued for in concise language*);] The said A. B. hath sustained thereby damages to the amount of _____, and claims the same of the said C. D.

A. B.

PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF, AND HIS SURETIES.

A. B., of _____, claims of C. D., Clerk (or Bailiff) of the _____ Division Court for the _____, and E. F., of _____, and G. H., of _____, (sureties for and parties with the said C. D. to a covenant for the due performance of the duties of his said office) the sum of _____ for moneys had received by the said C. D. as such Clerk (or Bailiff) as aforesaid in a certain cause in the said _____ Division Court, wherein the said A. B. was plaintiff, and one H. H. was defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also (*stating in like manner any other similar claim*)—[or, the sum of _____ for damages sustained by the said A. B. through the misconduct (or neglect) of the said C. D. in the performance of the duties of his said office : For that on the _____ day of _____, at _____, (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned.*)]

A. B.

SUMMONS TO APPEAR.

In the Division Court for the Temporary Judicial
District of

No. , A. D., 18

Between A. B., plaintiff;
and
C. D., defendant.

To C. D., the above-named defendant.

You are hereby [as before (*or* as often before) you were] summoned to be and appear, at the sittings of this Court to be holden at , in , in the said Temporary Judicial District of , on the day of , A. D. 18 , at the hour of in the forenoon, to answer the above-named plaintiff, for the causes set-forth in the plaintiff's statement of claim hereunto annexed; and, in the event of your not so appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated the day of , A. D. 18

By the Court.

, Clerk.

Claim
Costs, exclusive of mileage

NOTICE.

Take notice, that if the defendant desires *to set-off any demand against the plaintiff, (if the action be for Tort omit the words in Italics)* at the trial or hearing of this cause, (or) to take the benefit of any Statute of Limitations, or other Statute, notice thereof in writing, *and if a set-off containing the particulars of such set-off (omit the words last in Italics, if the action be for Tort)* must be given to the plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said said Court, if the plaintiff reside without the Division, at least six days before the said trial or hearing.

AFFIDAVIT OF SERVICE OF SUMMONS.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff;
and
C. D., defendant.

E. F., Bailiff of the Division Court of the said
(*or* of the said Court) maketh Oath and saith, that he did on the
day of , 18 , duly serve the said C. D.,
with a true copy of the annexed summons and statement of claim,

by delivering the same personally to the said C. D., (*or if the service were not personal, state how and on whom served*) and that he necessarily travelled _____ miles to make such service.

E. F.

Sworn before me at
 this _____ day of _____ 18 _____ }
 Clerk _____ Division Court. }
 Or,

This Form may be used, when the affidavit is endorsed on the summons :

I swear, that this summons and claim annexed thereto were served by me on the _____ day of _____ by delivering a true copy of both, personally, to the defendant, (*or to the wife or servant of the defendant, or to a grown up person being an inmate of, and at the defendant's dwelling*) and that I necessarily travelled _____ miles to do so.

E. F., Bailiff.

Sworn, &c.

NOTICE OF SET-OFF.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff ;
 and
 C. D., defendant.

Take notice, that the defendant will set-off the following claim on the trial, viz :

Dated this _____ day of _____ 18 _____

C. D.

To A. B., the plaintiff.

NOTICE OF DEFENCE UNDER STATUTE.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff ;
 and
 C. D., defendant.

The plaintiff is required to take notice, that upon the hearing of this cause, the defendant intends to give in evidence, and insist upon the following ground of defence, namely, that the claim, for which he the defendant has been summoned, has been barred by the Statute of Limitations (*or as the case may be.*)

Dated this _____ day of _____ , 18 _____

C. D.

To A. B., the plaintiff.

N. B. *This notice may be embodied with notice of set-off.*

CONFESSON OF DEBT AFTER SUIT COMMENCED.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff;
and
C. D., defendant.

I acknowledge that I am indebted to the plaintiff in the sum of _____, and consent, that judgment for that amount and costs may be entered against me in this cause.

C. D.

Dated the _____ day of _____, 18

Witness _____, Clerk (or Bailiff.)

AFFIDAVIT OF EXECUTION OF CONFESSION.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff;
and
C. D., defendant.

E. F., Clerk (or Bailiff) of the said Division Court, maketh oath and saith, that he did see the above (or annexed) confession duly executed by the said defendant, and that he is a subscribing witness thereto, and that he, deponent, has not received, and is not to receive anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession, and that he has no interest in the demand sought to be recovered in this action.

E. F.

Sworn before me at _____, on
the _____ day of _____, 18 .
Clerk, &c. }

SUMMONS TO WITNESS.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff;
and
C. D., defendant.

You are hereby required to attend at the sittings of the said Court, to be holden at _____ an the _____ 18 _____, at the hour of _____ in the forenoon, to give evidence in the above cause, on behalf of the above-named _____ [and then and there to have and produce (state particular documents required) and all other papers relating to the said action, in your custody, possession, or power.]

Given under the seal of the Court this _____ day of _____, 18

Clerk.

To

MINUTE IN PROCEDURE BOOK OF JUDGMENT OF NONSUIT, OR DISMISSAL
FOR WANT OF PROSECUTION.

Judgment of Nonsuit (or that the cause be dismissed) or "and that plaintiff pay _____ for defendant's costs" or "for defendant's trouble, and _____ for his costs; to be paid in _____ days."

MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST DEFENDANT FOR
DEBT OR DAMAGE.

Judgment for the plaintiff for _____ debt (or damages) and _____ costs; to be paid in _____ days (when an excess has been abandoned add the words "being in full discharge of his cause of action.")

MINUTE IN PROCEDURE BOOK OF JUDGMENT FOR DEFENDANT.

Judgment for the defendant for _____ costs; or for on set-off, or for his trouble and loss of time, and also _____ for his costs; to be paid forthwith) (where an excess in the set-off has been abandoned, add the words "being in full discharge of his claim, including the excess abandoned.")

ORDER FOR NEW TRIAL.

In the _____ Division Court for the Temporary Judicial
District of _____

Between A. B., plaintiff;
and
C. D., defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings be set aside, and a new trial be had between the parties on (set out the terms or conditions, if any, on which the order is made.)

Dated _____, 18 _____ Stipendiary Magistrate, &c.

EXECUTION AGAINST THE GOODS OF DEFENDANT.

In the _____ Division Court for the Temporary Judicial
District of _____

No. _____, A. D. 18

Between A. B., plaintiff;
and
C. D., defendant.

Whereas at the sittings of the said Court holden on _____ at _____, by the judgment of the said Court, the said plaintiff recovered against the said defendant the sum of _____ for a certain debt (or for certain damages) with _____ for costs, which said debt (or damages,) and costs were ordered to be paid by the said defendant, at a day now passed; and whereas the de-

defendant has not made such payment ; These are therefore [as before, (or as often before)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found within the said Temporary Judicial District of _____ (except the wearing apparel and bedding of the said defendant, or his family, and the tools or implements of his trade, if any, to the value of £5) the said debt (or damages) and costs, amounting together to the sum of _____ and your lawful fees on the execution of this precept, so that you may have the said sum of _____, within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said plaintiff.

Given under the seal of the Court this _____ day of _____, 18____,
 _____, Clerk.

To _____
 Bailiff of the said Court.

Judgment,
 Execution,
 Paid,
 Levy,

EXECUTION AGAINST GOODS OF PLAINTIFF..

In the _____ District Court for the Temporary Judicial
 District of _____

No. _____, A. D. 18____

Between A. B., plaintiff ;
 and
 C. D., defendant.

Whereas at the sittings of this Court, holden on _____ at _____, judgment was given for the defendant, and for the sum of _____ costs (or for the sum of _____ on set-off for costs ; or judgment of dismissal was given and for the sum of _____ for defendant's trouble, and _____ for costs) to be paid at a day now past ; and whereas the plaintiff has not paid the same : These are therefore to command you, forthwith to make and levy by distress and sale of the goods and chattels of the plaintiff, wheresoever the same may be found within the said Temporary Judicial District of _____ (except the wearing apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of £5) the said sum of _____ or the said sum of _____ and _____, amounting together to the sum of _____ and your lawful fees on the execution of this precept, so that you may have the said sum of _____ within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said defendant.

Given under the seal of the Court this _____ day of _____, 18____,
 _____, Clerk.

To
 Bailiff of the said Court.
 Judgment,
 Execution,
 Paid,
 Levy,

AFFIDAVIT FOR ATTACHMENT.

If made after suit commenced, insert style of Court and Cause.

I, A. B., of _____, in the county of _____
 (or E. F., of &c., agent for A. B., of &c., do make oath (or being
 one of the people called Quakers, affirm) and say, that C. D.,
 of (or late of) _____ in the County of _____
 is justly and truly indebted to me deponent (or to the said A. B.)
 in the sum of _____ [for goods sold and delivered by this
 deponent (or by the said A. B.) to the said C. D. at his request (or
 other cause of action, stating the same in ordinary and concise lan-
 guage)] and I deponent further say, that I have good reason to
 believe, and do verily believe, that the said C. D. hath

with intent and design to defraud me deponent (or the said A. B.)
 of his said debt; and I deponent further say, that this affidavit
 is not made, nor the process thereon to be issued, from any vexatious
 or malicious motive whatever.

Sworn before me at _____ in the _____
 this _____ day of _____ 18 _____ } A. B. (or E. F.)
 Clerk, &c. }

N. B.—*If the party sue in a special character, as executor or the
 like, it should be stated in the Affidavit, in what character he claims
 the debt.*

BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the _____ Division Court for the Temporary Judicial
 District of _____
 Between A. B., plaintiff,
 and
 C. D., defendant.

Know all men by these Presents, that we A. B. of _____
 (insert place of residence and addition) the above-named plaintiff,
 E. F., of &c., and G. G. of &c., are, and each of us is, jointly and

severally held and firmly bound to _____ of &c., the above-named defendant, in the sum of _____ of lawful money of Canada, to be paid to the said defendant, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators; and each, and every of us, binds himself, his heirs, executors, and administrators firmly by these presents.

Sealed with our respective seals.

Dated this _____ day of _____ A. D., 18 _____ .

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, and hath requested that certain perishable property, to wit (*specify property*) belonging to the above-named defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said Warrant of Attachment, [*or* Whereas certain perishable property, to wit _____, belonging to the above-named defendant, hath been seized under and by virtue of a Warrant of Attachment, issued out of the above-named Court in the above-named cause, and hath been duly appraised and valued at the sum of _____ and is now in the hands of the Clerk of the said Court; and whereas the said above-named plaintiff hath requested the said Clerk to expose and sell the said goods and chattels as perishable property] according to the form of the Statute in that behalf.

Now the condition of this obligation is such, that if the said above-named plaintiff, his heirs, executors or administrators, do repay to the said above-named defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages, that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff according to the true intent of the forty-sixth section of "The Temporary Judicial Districts Act, 1857:." Then this obligation to be void—else to remain in full force and virtue.

| | | |
|--|---|---------------|
| Signed, Sealed and delivered in presence of | } | A. B. [L. S.] |
| | | E. F. [L. S.] |
| | | G. G. [L. S.] |

BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff,
and
C. D., defendant.

Know all men by these presents, that we C. D. of (*insert place of residence and addition*) the above-named defendant, E. F. of &c., and G. G. of &c., are, and each of us is, jointly and severally held and firmly bound to A. B. of &c., the above-named plaintiff in the sum of _____ of lawful money of Canada, to be paid to the

said plaintiff, his certain attorney, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators, firmly by these presents.

Sealed with our respective seals.

Dated the day of , 18 .

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, for the sum of and under and by virtue of the said Warrant of Attachment, certain goods and chattels of the said defendant, to wit: (*specify the property seized*) have been seized and attached; and the said defendant desires, that the said warrant be superseded, and the said property, so attached, restored to him under the provisions of the forty-third clause of "The Temporary Judicial District Act 1857."

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment: Then this obligation to be void—else to remain in full force and virtue.

| | |
|--|----------------|
| Signed, Sealed and delivered } in presence of } | C. D., [L. S.] |
| | E. F., [L. S.] |
| | G. G., [L. S.] |

ORDER OF REFERENCE.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff,
and
C. D., defendant.

By consent of the above-named plaintiff and defendant given in open Court, it is ordered, that all matters in difference in this cause (*and if consented to add* "and all other matters within the jurisdiction of this Court as to subject matter, but not exceeding in amount £200 in difference between the said parties") be referred to the award of so as said award be made in writing, ready to

be delivered to the parties entitled to the same, on or before the day of _____; and that the said award may be entered as the judgment in this cause (*add any special terms as*) "the costs of reference to be in the discretion of the arbitrator" or "the costs of the action to abide the event of the suit."

Given under the seal of the Court this _____ day of
18 _____.

_____,
Clerk.

AWARD.

The Award may, if endorsed on the order, be in the following Form.

After hearing and considering the proofs laid before me (*or us*) in the matters of the within reference, and in full determination of the matters to me (*or us*) referred, I (*or we*) do award, that the within-named A. B. is entitled to recover from the within-named C. D. the sum of _____ together with the costs of this suit, and also _____ the costs of this reference, (*or as the case may be*) and that the same shall be paid by the said C. D. within _____ days, and that judgment be entered in the within mentioned case accordingly.

_____,
Arbitrator.

Dated this _____ day of _____, 18 _____.

MINUTE IN PROCEDURE BOOK OF JUDGMENT ON AWARD.

Judgment for the plaintiff, (*or defendant*) for _____ costs
(*or for the sum of* _____ and _____ costs) pursuant to award;
to be paid in _____ days.

**MINUTE IN PROCEDURE BOOK OF ORDINARY JUDGMENT AGAINST
EXECUTOR OR ADMINISTRATOR.**

Judgment for the plaintiff for _____ and _____ costs,
to be paid in _____ days, to be levied of the goods and chattels
of the deceased; failing such goods, the costs to be levied of the
defendant's proper goods and chattels.

EXECUTION AGAINST GOODS OF TESTATOR.

In the _____ Division Court for the Temporary Judicial
District of _____.

Between A. B., plaintiff:

and
C. D., Executor (*or administrator of F,*
deceased, defendant.

Whereas at a sitting the said Court, holden on _____ at
by the judgment of the said Court, the said plaintiff recovered

against the said defendant as executor (or administrator) of E. F. deceased, the sum of _____, for a certain debt, with _____, for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and the defendant has not paid the same: These are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the defendant to be administered, wheresoever the same may be found within the said Temporary Judicial District of _____, the said debt and costs, amounting together to the sum of _____, together with the costs of this execution, or such part thereof for the satisfying of this execution, and the costs of making and executing the same, if the defendant have so much thereof in his hands to be administered; and if have not so much thereof in his hands to be administered, then that you make and levy of the proper goods, and chattels, money, of the defendant, the sum of _____, for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the Clerk of the Court, for the said plaintiff.

Given under the seal of the Court this _____ day of _____, 18 .

Clerk.

To _____,
Bailiff of the said Court.

Debt,
Costs,
Execution,
Paid,
Levy,

N. B.—Warrants of execution upon a judgment given in other cases against executors may be drawn from this Form, with the requisite alterations.

MINUTE IN PROCEDURE BOOK OF IMPOSITION OF FINE ON WITNESS.

Adjudged that H. H. was duly summoned to appear as a witness, in this action, at the sittings of this Court here this day, [and also to produce (as the case may be)] that payment (or a tender of payment) of his reasonable expenses was made to him,—and that he did not appear [or having appear, did wilfully refuse to be sworn, and give evidence in this action (or to produce such &c.)] (Or Adjudged, that H. H. being before this Court, now holden and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.) And further adjudged that the said H. H. pay a fine of _____, for such neglect, (or refusal) in days, (or forthwith); And that the sum of _____, part of the

said fine, be paid by the Clerk to the plaintiff (*or* defendant) being the party injured by such neglect or refusal.

MINUTE IN PROCEDURE BOOK OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

It is adjudged that E. F., at the sittings of this Court now holden, in open Court is guilty of a contempt of the said Court, by wilfully insulting Stipendiary Magistrate of the said Court [*or* "in view of the Court, by wilfully insulting Clerk (*or* Bailiff) of the said Court, during his attendance at such Court" (*or* "by wilfully interrupting the proceedings of the said Court")]: And it is ordered, that the said E. F. forthwith pay a fine of _____, for such offence, and, in default of payment, be committed to _____, for _____ days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

WARRANT OF COMMITMENT FOR CONTEMPT.

In the _____ Division Court for the Temporary Judicial District of _____

To _____, Bailiff of the said Court, and to all Constables and Peace Officers of the said District of _____ and to the Jailer of _____

Whereas at the sittings of this Court, holden on _____ at _____ it was adjudged, that E. F. did, then and there in open Court, wilfully insult me _____, Stipendiary Magistrate, of the said Court [*or* did, in view of the Court, wilfully insult _____, Clerk, (*or* Bailiff) of the said Court, during his attendance at such Court (*or* did unlawfully interrupt the proceedings of the said Court)] ; And it was ordered, that the said E. F. should forthwith pay a fine of _____, for such offence, and in default of payment, be committed to the _____ for _____ days ; And whereas the said E. F. did not pay the said fine, in obedience to the said order : These are therefore to require you, the said Bailiff and others, to take the said E. F., if he shall be found within the _____, and deliver him to the said jailer of _____ ; And you the said jailer are hereby required to receive the said E. F., and him safely keep in the Gaol aforesaid, for the term of _____ days from the arrest under this warrant, unless the said fine and costs, the costs amounting to _____, and also the expenses attending the commitment, amounting together to the sum of _____, be sooner paid.

Given under my hand and seal this _____ day of _____, 18 _____,

_____, [L. S.]
Judge.

Sealed with the seal of }
the Court, [L. S.] }
_____, }
Clerk. }

WARRANT TO LEVY FINE UPON WITNESS.

In the
District of

Division Court for the Temporary Judicial

Between A. B., plaintiff;
and
C. D., defendant.

Whereas at the sittings of this Court, holden on _____, at _____, it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this Court [and also to produce (*as the case may be*)]; that payment (*or* a tender of payment) of his reasonable expenses was made to him, and that he did not appear [*or* having appeared did wilfully refuse to be sworn and give evidence in this action (*or* to produce such &c.)]: (*where a witness in Court refuses to give evidence instead of the foregoing, commence* "Whereas _____, being before the Court at a sittings thereof, and called upon to give evidence, in the above cause, did wilfully refuse to be sworn and give evidence"); And thereupon it was adjudged, that the said _____ should pay a fine of _____, for such neglect, (*or* refuse) in _____ days: (*or* forthwith): And whereas the said _____ hath not made such payment: These are therefore (as before *or* as often before) to command you, forthwith to make and levy by distress and sale of the goods and chattels of the said _____, wheresoever the same may be found, within the said Temporary Judicial District of _____ (except the wearing apparel and bedding of the said _____ or his family, and the tools and implements of his trade, if any, to the value of £5) the said fine and costs amounting together to the sum of _____, and your lawful fees on the execution of this precept; so that you may have the said sum of _____ within thirty days after the date hereof, and pay the same over to the Clerk of the Court.

Given under the seal of the Court this _____ day of _____
18____

By order of the Court.

_____,
Stipendiary Magistrate.

_____,
Clerk.

To _____, Bailiff of the said Court.

Fine,
Costs,
Execution,