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**STATUTES**  
REGULATING THE  
**JUDICATURE**  
OF  
**LOWER CANADA,**

CAPS. 16, 17, 18, 19 & 20,

PASSED 3<sup>d</sup> SESSION, 1<sup>ST</sup> PARLIAMENT OF CANADA,

**7<sup>o</sup> VICTORIÆ, 1843.**



Kingston :  
PRINTED BY S. DERBISHIRE & G. DESBARATS,  
Printer to the Queen's Most Excellent Majesty.

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1843.

1843

(2)



ANNO SEPTIMO

VICTORIÆ REGINÆ.

C A P. XVI.

An Act to repeal certain Acts and Ordinances therein mentioned, and to make better provision for the Administration of Justice in Lower Canada.

[9th December, 1843.]

**W**HEREAS experience hath shewn the necessity of making certain changes in the constitution and jurisdiction of the Courts of Law in Lower Canada, in order to render the Administration of Justice more easy and less expensive; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that a certain Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's reign, and intituled, *An Act to provide for the more easy and expeditious administration of justice in civil causes and matters involving small pecuniary value, in that part of this Province*

Preamble.

Act of Canada, 4 & 5 Vic. c. 20, repealed.

*heretofore Lower Canada*, shall be and the same is hereby repealed, and the District Courts and Division Courts thereby established, shall be and the same are hereby abolished: Provided nevertheless, that all acts, ordinances and provisions of law repealed by the said Act shall remain repealed, and all Courts and Jurisdictions thereby abolished shall remain abolished.

Proviso.

Courts of King's Bench in L. C. to be called Courts of Queen's Bench in certain cases.

II. And be it enacted, that the several Courts in Lower Canada, heretofore called and known as Courts of King's Bench, shall hereafter be called and known as Courts of Queen's Bench, whenever the Sovereign on the Throne of the United Kingdom of Great Britain and Ireland is a Queen, and as Courts of King's Bench, whenever the Sovereign is a King; and the words "Court (or Courts) of Queen's Bench," when used in this Act shall be understood and applied accordingly; but this shall not be construed to make the said Courts new Courts, or in any way to affect their powers, or to make any new commission or letters patent necessary for any Justice or Officer thereof.

Powers of the Chief Justice and Puisné Justices, members of the same Court, to be equal.

III. And whereas it is inconvenient that there should be any difference in the powers and duties of the Chief Justices and Justices of the several Courts in Lower Canada; Be it therefore enacted, that the powers, duties and authority of any Chief Justice and of the Puisné Justices, members of the same Court of Queen's Bench, shall be equal and similar to all intents and purposes whatsoever, whether the same be to be exercised or performed in such Court or in any other, within or without the District for which such Court is constituted, in Court or out of Court, in term, or out of term, or in vacation, so that whatever power or duty might heretofore be exercised by any Chief Justice, shall and may hereafter be performed and exercised by any Puisné Justice, and whatever power or duty might heretofore be exercised by any Puisné

Justice, shall and may hereafter be exercised or performed by any Chief Justice ; and the words " Justice " or " Justices " wherever they occur in this Act, shall be understood to mean and include the Chief Justice, who shall be a member of any Court of Queen's Bench, as well as a Puisné Justice or the Puisné Justices of such Court, unless such meaning be inconsistent with the context ; and the Provincial Judge for the district of St. Francis, shall be to all intents and purposes whatever, one of the Justices of the Court of Queen's Bench for the said District, and as such, shall, within the said District, have the same powers and authority as the other Justices of the said Court, and all writs and process issuing therefrom, shall be tested in his name ; and the said Provincial Judge shall also have the same powers, authority and duty in and with regard to the Court of Queen's Bench, for the District of Three Rivers, as any Chief Justice or Puisné Justice of the Court of Queen's Bench for the District of Quebec, or for the District of Montreal : Provided always, that nothing herein contained shall affect the salary of the said Provincial Judge ; any thing in any Act or law to the contrary notwithstanding : And provided also, that in order to ensure the performance of the duties of the resident Judge of the District of Three Rivers, and of the said Provincial Judge in certain cases, the Commissioner of Bankrupts in the District of Three Rivers shall, during each Superior Term of the Court of Queen's Bench at Sherbrooke, and during the three days next before, and the three days next after such term, have within the District of Three Rivers the same powers as if he were appointed an Assistant Judge of the Court of Queen's Bench for the said District, and the Commissioner of Bankrupts in the District of St. Francis shall, during each Superior Term of the Court of Queen's Bench, at Three Rivers, and during the three days next before and three days next after such term, have within the District of St.

Provincial  
Judge of St.  
Francis.

His powers  
in future.

Francis the same powers as if he were appointed an Assissant Judge of the said District : Provided always, that the powers hereby given to any such Commissioner of Bankrupts, shall not be exercised by him, except during the absence of the said Resident Judge or Provincial Judge from his District : Provided also, that such Commissioners of Bankrupts shall be advocates of at least five years' standing at the Bar of Lower Canada.

Proviso.

Proviso.

Provision as to the office of Chief Justice of Lower Canada.

IV. And be it enacted, that when and so often as a vacancy shall occur in the office of Chief Justice of Lower Canada, the person to be appointed to fill that office may be appointed, as heretofore, to be a member of the Court of Queen's Bench for the District of Quebec, and to preside therein, or he may, at Her Majesty's pleasure, be appointed to be a member of the Court of Queen's Bench for the District of Montreal, and to preside therein, in which latter case a Chief Justice shall be appointed for the District of Quebec, to be a member of the Court of Queen's Bench for that District, and to preside therein ; any law to the contrary notwithstanding.

Who may be appointed a Justice of Q.B.

Or a Circuit Judge.

Judges disqualified as members of Legislative Assembly, &c.

V. And be it enacted, that no person shall be appointed to be a Justice of any of the Courts of Queen's Bench in Lower Canada, unless such person be, at the time of his appointment as aforesaid, an Advocate of ten years' standing at the Bar of Lower Canada ; nor shall any person be appointed to be one of the Circuit Judges hereinafter mentioned, unless such person be, at the time of his appointment as aforesaid, an Advocate of five years' standing at the said Bar ; and that no such Justice or Circuit Judge shall sit or vote in the Executive Council, or in the Legislative Council, or in the Legislative Assembly of this Province, or shall hold any other place of profit under the Crown in this Province, so long as he shall hold the said office of Justice

of any of the said Courts of Queen's Bench, or of Circuit Judge.

VI. And be it enacted, that it shall be lawful for the Governor of this Province, from time to time, and whenever by reason of illness or necessary absence, with permission of the Governor of this Province, or of suspension from office, any Justice of the said Courts of Queen's Bench for the Districts of Quebec or Montreal, or the resident Judge for the District of Three Rivers, or the Provincial Judge for the District of St. Francis, cannot sit in Court or perform his functions as a Judge, to supply his place, and by an instrument under the Great Seal of this Province, to nominate, constitute and appoint some Advocate, of at least five years' standing at the Bar of Lower Canada, an Assistant Judge to sit and act in the place and stead of such Justice or Judge, as the case may be, during such illness, necessary absence or suspension from office; and the Assistant Judge to be so appointed shall have the same jurisdiction, power and authority, as well in Court, as out of Court, in term, as out of term, and in vacation, in any Court, District or place whatsoever, as the Justice or Judge, in whose place or stead he shall have been appointed, would himself have had if sitting or acting as such: Provided always, that nothing herein contained shall be construed to give precedence to any such Assistant Judge over any Puisne Justice of the Court.

Assistant Judges may be appointed in certain cases.

Powers of an Assistant Judge.

Proviso.

VII. And be it enacted, that each final judgment, and each interlocutory judgment from which an appeal may lie, rendered by any Court of Queen's Bench in any Superior Term thereof, as well in any suit or action by default or *ex-parte* which shall be dismissed, as in any suit or action where issue shall have been joined, shall contain a summary statement of the points of fact and law, and the reasons upon which such

Judgments from which an appeal may lie to be *motives*, on pain of nullity.



judgment shall be founded, and the names of the Justices who shall have concurred therein or entered their dissent therefrom.

Court of Queen's Bench for the District of St. Francis to have cognizance of crimes and offences committed in that District.

VIII. And be it enacted, that the Court of Queen's Bench for the District of St. Francis shall have cognizance of all crimes and criminal offences committed within the said District, in like manner as the Court of Queen's Bench for the District of Three Rivers hath cognizance of crimes and criminal offences, committed within the same, and with like powers to the Judges and Officers of the Court in all matters incidental to or consequent upon the cognizance thereof: and the said District of St. Francis shall be separate and distinct from those of Montreal and Three Rivers respectively, as well for criminal as for civil matters: Provided always, that in all cases where the offender shall have been indicted or committed for trial in either of the said Districts of Montreal or Three Rivers, before this Act shall be in force, the Court of Queen's Bench for the District in which he shall have been so indicted, or in which he shall have been imprisoned, shall proceed to the trial of such offender, and with regard to all matters incident to or consequent upon such trial, as if this Act had not been passed.

Proviso as to past offences.

Part of the Act of L. C. 34 Geo. 3, c. 6, repealed.

IX. And be it enacted, that so much of a certain Act of the Legislature of the late Province of Lower Canada, passed in the thirty-fourth year of the reign of His late Majesty King George the Third, and intituled, *An Act for the division of the Province of Lower Canada, for amending the Judicature thereof, and for repealing certain laws therein mentioned*, or of any other Act or Law as relates to the times for holding the several Terms or Sessions of the said Courts of Queen's Bench, shall be and is hereby repealed; and Terms or Sessions of the said Courts, respectively, shall be holden at the times hereinafter appointed, in every year, that

Terms of Courts of Q. B. when to be holden.

is to say : In the District of Quebec, for the cognizance of all crimes and criminal offences, from the first to the tenth day of each of the months of February and August, both days inclusive : In the said District, for the cognizance of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in Superior Term, from the fifteenth to the twenty-ninth of each of the months of January and July—from the seventeenth to the thirty-first day of each of the months of March and May—and from the sixteenth to the thirtieth day of each of the months of September and November, both days in every case inclusive : In the District of Montreal, for the cognizance of all crimes and criminal offences, from the first to the fifteenth day of each of the months of February and August, both days inclusive : In the said District, for the cognizance of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in Superior Term, from the fifteenth to the twenty-ninth day of each of the months of January and July—from the seventeenth to the thirty-first day of each of the months of March and May—and from the sixteenth to the thirtieth day of each of the months of September and November, both days in every case inclusive : In the District of Three Rivers, for the cognizance of all crimes and criminal offences, and of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in the Superior Terms or Sessions thereof, from the twelfth to the twenty-sixth day of the month of February, and from the fourteenth to the twenty-eighth day of October, both days in each case inclusive ; and for the cognizance of such suits or actions as aforesaid, but not for the cognizance of crimes and criminal offences, from the nineteenth to the twenty-eighth day of June, both days inclusive : In the District of St. Francis, for the cognizance of all crimes and criminal offences, and of all suits or actions of a civil nature, or

Quebec.

Montreal.

Three Rivers.

St. Francis.

where the Crown may be a party, cognizable by the said Courts in Superior Term, from the seventh to the eighteenth day of January, and from the nineteenth to the thirty-first day of August, both days inclusive ; And the said Courts shall sit for the purposes aforesaid on each and every day during the said Terms or Sessions, Sundays and Holidays excepted ; and every juridical day during the same shall be a Return day.

Days of sitting and return days.

Return of process issued before this Act shall be in force.

X. And be it enacted, that every writ or process issued before this Act shall be in force, which shall have been made returnable into any Court of Queen's Bench, in the exercise of its criminal or of its civil Jurisdiction on any day subsequent to the commencement of this Act, shall be returned into such Court of Queen's Bench on that juridical day of any Term of such Court held for the cognizance of matters of the nature of that in which such writ or process shall have issued, which shall be next after the day on which such writ or process shall have been made returnable.

Jurisdiction of Courts of Q. B. in superior term.

XI. And be it enacted, that the said Courts of Queen's Bench shall, in the Superior Terms thereof aforesaid, take cognizance of all suits or actions (those purely of Admiralty jurisdiction excepted) which shall not be cognizable by the said Courts in the Inferior Terms thereof hereinafter mentioned, or in the Circuit Courts hereinafter established, or which shall be evoked or otherwise removed from the said Inferior Terms, or from the said Circuit Courts, or from any other Court or Jurisdiction, into the said Superior Terms, and of such suits or actions only, unless in any case it be otherwise provided by this Act, and excepting always such suits, actions or proceedings, as shall be pending in any such Court of Queen's Bench immediately before the time when this Act shall come into force.

XII. And be it enacted, that the *Enquêtes* in causes *Enquêtes* in superior term. cognizable in the Superior Terms of the said Courts of Queen's Bench shall be taken before a single Justice, or before more than one Justice of the said Courts respectively, as well in Term as in Vacation; and that for that purpose it shall be lawful for the Justices of the Court to assign one room, or more than one room, in the Court-House in which the Court is held, for the taking of such *Enquêtes* therein, and to fix the number of clerks or writers whom the Clerk or Prothonotary of the Court shall employ for taking such *Enquêtes*, accordingly as the case shall require.

XIII. And be it enacted, that the Justices of each of the said Courts of Queen's Bench, or any one of them, Trials by jury in vacation. shall and they are hereby authorized, in all cases of trial by jury in civil matters, to try the issue of fact and to receive the verdicts of juries in Vacation between the Superior Terms of the said Courts, on such days as during the said Terms they shall have appointed for that purpose: any law to the contrary notwithstanding.

XIV. And be it enacted, that whenever any one or more of the said Justices of any one of the said Court of Queen's Bench shall be lawfully recused or disqualified, or rendered incompetent, either by interest or otherwise, to sit in such Court in the Superior Term thereof, in any cause cognizable therein, so as to leave the said Court without a quorum to take cognizance of such cause, it shall be the duty of the Clerk or Prothonotary of the said Court, when thereunto duly required in writing by any of the parties, to report the fact, under his hand and the seal of the Court, to the Governor of this Province; and it shall then be lawful for the Governor of this Province, by an instrument under his hand and seal, to appoint and empower, *ad hoc*, any one or more of the Justices of any other of the said Courts of Queen's Bench to sit in the place and Case of the recusation or incompetency of any Justice of Q. B. provided for.

stead of the said Justice or Justices, so recused or disqualified, or rendered incompetent, for the purpose of hearing and determining such cause; and the said Justice or Justices so appointed, *ad hoc*, when acting as such, shall have, during the continuance of such appointment, the same powers and authority, in and with respect to the said cause, as the said Justice or Justices so recused, disqualified or rendered incompetent, would otherwise have had.

When the Court of Q. B. in Quebec or Montreal is equally divided, a report thereof to be made to the Governor, who may appoint a Judge, *ad hoc*.

XV. And be it enacted, that whenever the four Justices of the Court of Queen's Bench for the District of Quebec or of Montreal shall be equally divided in any cause or matter, so that no judgment can be given therein, it shall be the duty of the Clerk or Prothonotary of the Court, when thereunto duly required in writing by any of the parties, to report the fact, under his hand and the seal of the Court, to the Governor of this Province; and it shall be lawful for the said Governor, by an instrument under his hand and seal, to appoint and empower any one of the Justices of any other of the said Court of Queen's Bench, or any Circuit Judge, to sit, *ad hoc*, with the Justices of the said Court so equally divided, for the purpose of hearing and determining the cause or matter in which they shall be so divided; and the Justice so appointed *ad hoc*, when acting as such, shall have, during the continuance of his said appointment, and with regard to such cause or matter, as aforesaid only, the same powers and authority as any other Justice of the said Court of Queen's Bench.

Default cases provided for.

XVI. And be it enacted, that if the defendant in any suit or action instituted in any Court of Queen's Bench in any Superior Term thereof, should not appear personally, or by his Attorney, on the day fixed for the return of the writ of summons, his default shall be recorded; and in such case it shall not be necessary that

the said defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear within the term of three days after the day of the return of the writ of summons, or at any other time after the said day, and have the said default taken off, unless express permission be given him by the Court, any law, usage or custom to the contrary notwithstanding; and after the said default shall have been so recorded, the Court shall proceed to hear, try and determine the said suit or action in due course of law; and every such writ of summons shall be served at least ten days (of which neither the day of service nor the day of the return shall be reckoned as one,) before the day fixed for the return thereof if there be not more than five leagues from the place of service of the writ to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues.

Delay between service and return of summons.

XVII. And be it enacted, that all writs of summons issuing from any Court of Queen's Bench, and returnable in any Superior Term thereof, except writs of *capias ad respondendum*, *saisie arrêt* before judgment, *saisie gagerie* or *saisie revendication*, shall be directed to and executed and returned by any of the Bailiffs of such Court, any law or custom to the contrary notwithstanding: save and except all cases where any such writ shall be to be executed, wholly or in part, in any District other than that for which such Court is established, in which cases the said writs of summons, as well as writs of *capias ad respondendum*, *saisie arrêt* before judgment, *saisie gagerie* or *saisie revendication*, in all cases in Superior Term, except those with regard to which other provision is hereinafter made, shall continue to be directed to and executed and returned by Sheriffs as heretofore; and when any such writ of summons shall be directed to Bailiffs as aforesaid, the

Certain writs of summons to be directed to Bailiffs.

Others to Sheriffs.

Copies, how certified in the first case.

copies of the same to be served upon parties according to law, shall be certified as true copies, either by the Clerk or Prothonotary of the said Court, or by the Attorney of the party suing out such writ.

Writs or process to be in both languages. XVIII. And be it enacted, that every writ or process issuing out of any Court of Queen's Bench, (whether in the superior or in the inferior term thereof,) or out of any of the Circuit Courts hereinafter established, shall be in both the English and the French languages, any law, usage or custom to the contrary notwithstanding

Inferior terms, when to be holden. XIX. And be it enacted, that Inferior Terms of each of the said Courts of Queen's Bench shall be held by the Chief Justice, or one of the Puisné Justices thereof, in each of the said Districts of Quebec, Montreal, Three Rivers and Saint Francis, at the times hereinafter appointed, in every year, and at the places in which the said Courts are by law directed to sit in Superior Term, that is to say : In the said Districts of Quebec and Montreal, from the seventeenth to the twenty-third day of February ; from the twenty-fourth to the thirtieth day of April ; from the twenty-first to the twenty-seventh day of each of the months of June, August and October ; and from the first to the seventh day of December, both days in every case inclusive :  
 In Quebec and Montreal. In the said District of Three Rivers, by the Resident Judge for that District, from the first to the seventh day of each of the months of February, April, June, August, October and December, both days in every case inclusive :  
 In Three Rivers. In the said District of Saint Francis, by the Provincial Judge of the said District, from the first to the seventh days of each of the said months of February, April, June, August, October and December, both days in every case inclusive.

XX. And be it enacted, that the said Courts of Queen's Bench, in the said Inferior Terms thereof, shall have cognizance of, hear, try and determine, in a summary manner, all civil suits or actions, or where the Crown may be a party, (those purely of Admiralty jurisdiction excepted,) wherein the sum of money or the value of the thing demanded shall not exceed the sum of twenty pounds currency, and wherein no writ of *capias ad respondendum* shall be sued out; and if the said sum or value shall not exceed six pounds five shillings currency, then the suit or action shall be determined according to equity and good conscience: Provided always, that if any such suit or action shall relate to any title to lands or tenements, or to any sum of money payable to Her Majesty, or to any fee of office, duty or rent, revenue, annual rents, or such like matters or things, where the rights in future may be bound, or shall be a suit or action in which a trial by jury may by law be had, it shall be lawful for the party defendant, before making his defence to the merits of any such suit or action, to evoke the same, and by such evocation to require that the said suit or action be removed and carried to hearing, trial and judgment in the same Court sitting in Superior Term, and every such evocation shall be filed and entered on record, and the said suit or action shall thereupon be removed into the Superior Term of the Court; which Court, so sitting in Superior Term, shall proceed to hear and determine, in a summary manner, whether the said evocation be well founded; and if it should maintain the said evocation, and adjudge the same to be well founded, proceedings shall thereupon be had in the said Court so sitting in Superior Term, to trial, judgment and execution, according to the rules of proceeding in such Superior Term, and as if the said suit or action had been originally instituted in the said Superior Term; and if the said evocation should be overruled, the said suit or action shall be remitted to the next Inferior Term of

Jurisdiction of the Courts of Q. B. in inferior term.

Proviso—Evocation in certain cases by defendant.

Proceedings on evocation.



the Court, there to be heard, tried and finally determined.

Evocation by plaintiff, in consequence of the nature of defendant's plea.

**XXI.** And be it enacted, that if in any suit or action which may be so evoked, as aforesaid, the defendant shall not evoke the same, but shall make any plea or defence by which the plaintiff's title to any lands or tenements shall be disputed or called in question, or by which, if maintained, his rights in future would be impaired or injuriously affected, it shall then be lawful for the plaintiff to evoke such suit or action, in the same manner and with the same effect, as the defendant might have done, and such evocation, and the suit or action so evoked, shall be subject to the provisions hereinbefore made as to suits or actions evoked by the defendant.

Jurisdiction of Q. B. in inferior term to be over the whole District.

**XXII.** And be it enacted, that each of the said Courts of Queen's Bench, in the Inferior Terms thereof, shall have concurrent jurisdiction, throughout the District for which it is established, with the Circuit Courts hereinafter mentioned, sitting within the said District: Provided always, that if any action which might have been brought at a Circuit Court, shall be brought at any such Inferior Term, no greater sum shall be recoverable by the plaintiff as costs for mileage or allowance to witnesses than would have been incurred if the action had been brought at such Circuit Court, unless the action shall have been brought at the Inferior Term with the consent of the defendant.

Proviso.

Certain cases under £20 to be cognizable in superior term.

**XXIII.** Provided always, and be it enacted, that the said Courts of Queen's Bench, sitting in Superior Term, shall have original cognizance of, hear, try and determine, in due course of law, any suit or action in which a writ of *capias ad respondendum* shall be sued out, or in which a trial by Jury may by law be had, and the plaintiff shall, in and by his declaration therein

filed, declare his choice and option to have a trial by Jury, although the sum of money, or the value of the thing demanded, in any such suit or action, shall not exceed or shall be under twenty pounds currency: Provided always, that such declaration of the choice and option of the plaintiff to have a trial by Jury shall bind all parties to proceed accordingly, whenever the suit or action shall be ready for such trial; nor shall any other mode of trial be allowed therein, except by consent of all the parties; and saving always, the discretionary power of the Court over the costs in any case it may deem to have been vexatiously or unnecessarily brought in or removed into a Superior Court, instead of being brought or left to be determined in any Inferior Court in which it would have been cognizable: Provided also, that the Court of Queen's Bench for the District of Three Rivers, in Superior Term, shall have original cognizance of any suit or action to which the Resident Judge of that District shall be a party, and the Court of Queen's Bench for the District of St. Francis, in Superior Term, shall have original cognizance of any suit or action to which the Provincial Judge of the said District shall be a party, and which would otherwise be cognizable in the said Courts, respectively, in Inferior Term, but such suit or action shall be heard, tried and determined, in a summary manner, according to the course and practice of the Inferior Term, and with like costs.

Proviso.

Proviso—Cases when the Judge holding the Court shall be a party.

XXIV. And be it enacted, that the word "Sterling," in any Act or Ordinance relative to the Administration of Justice, and in force in Lower Canada, shall, with regard to any suit or action to be commenced after this Act shall come into force, and with regard to all proceedings therein, be held to have the meaning assigned to the said word by the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's reign, and intituled, *Act*

Word "sterling" how to be understood in certain Acts, &c.

*Act to regulate the Currency of this Province*, that is to say: each pound Sterling, in any sum mentioned in such Act or Ordinance, shall be held to be equal to one pound four shillings and four pence, Currency.

Circuit Judges to be appointed in the Districts of Quebec and Montreal; their powers and duties.

How such powers may be exercised.

XXV. And be it enacted, that it shall be lawful for the Governor of this Province, by instruments under the Great Seal thereof, to appoint not more than three persons to be and to be called Circuit Judges, in and for the District of Quebec, and not more than four persons to be and to be called Circuit Judges, in and for the District of Montreal, and from time to time remove any or all of them; and the persons so appointed shall, by virtue of such appointment, be also Commissioners of Bankrupts and Justices of the Peace, and shall act as Chairmen of the Quarter Sessions, in and for the Districts for which they shall be respectively appointed; and all the powers and duties vested in or assigned to any Commissioner of Bankrupts, in the said Districts of Quebec and Montreal, by any Act, Ordinance or Law, shall be and are hereby assigned and transferred to and vested in the Circuit Judges aforesaid, and shall be exercised by no other person or officer whomsoever in the said Districts, respectively: and the said Circuit Judges shall also have such powers and duties as are hereinafter assigned to them, or as may be assigned to them by any other Act of the Legislature; and all the powers and duties so assigned to any two or more Circuit Judges, in any of their qualities aforesaid, appointed in and for the same District, may be exercised and performed by each and every of them singly, (and alternately if need shall be) in like manner as powers and duties assigned to the Justices of any Court may be exercised in matters wherein any one of such Justices is empowered to sit or act singly, and in such manner also as that any Circuit Judge may continue or complete any matter or proceeding begun or continued by any other Circuit Judge in and for the

same District, or begun or continued before this Act shall be in force by any Commissioners of Bankrupts, Chairman of the Quarter Sessions, or Justice of Peace in the same District; but nothing herein contained shall prevent any two or more of the Circuit Judges for any District from sitting or acting together, if they shall deem it expedient, in any matter with regard to which it shall not be otherwise provided by this Act: Provided always, that no such Circuit Judge shall act as Advocate, Attorney or Counsel, in any Court of Law in Lower Canada, or in or with regard to any matter pending in or to be brought before any such Court.

Proviso—No Circuit Judge to act as an Attorney &c.

XXVI. And be it enacted, that so much of the Ordinance of the Governor and Special Council aforesaid, passed in the second year of Her Majesty's Reign, and intitled, *An Ordinance concerning Bankrupts, and the administration and distribution of their estates and effects*, as may be in any wise inconsistent with the enactments and provisions of this Act, and more especially so much of the Ordinance last cited as may be construed to provide for the appointment of Commissioners of Bankrupts in the Districts of Quebec and Montreal, shall be, and so much of the said Ordinance is hereby repealed: Provided always, that nothing in this Act shall be construed to derogate from the powers or authority of any Commissioner of Bankrupts appointed or to be appointed in any of the other Districts of Lower Canada, or to prevent the Governor of this Province from appointing such number of Commissioners of Bankrupts in the said other Districts as he may deem it expedient to appoint: And provided further, that the Commissioners of Bankrupts appointed or to be appointed in such other Districts, respectively, shall be *ex officio*, Justices of the Peace, and shall be Chairmen of the Quarter Sessions in and for the Districts in which they shall be respectively resident: but nothing in this Act shall be construed to render any Court of Quarter Sessions

Ordinance 2 Vic. (1) c 2, certain parts thereof, and of 2 Vic. (3) c. 36, repealed.

Proviso.

Proviso.

incompetent by reason of the absence of any Circuit Judge or Commissioner of Bankrupts, who if present, would be the Chairman of the Court: And provided also, that the provisions of the Act passed in the sixth year of Her Majesty's Reign, and intituled, *An Act for the qualification of Justices of the Peace*, shall not extend to any Circuit Judge or Commissioner of Bankrupts, any thing in the said Act to the contrary notwithstanding.

6 Vic. c. 3.

Salary of each  
Circuit Judge.

**XXVII.** And be it enacted, that the salary of each of the said Circuit Judges shall not exceed five hundred pounds per annum, and such Salary shall be in lieu of all fees, emoluments, or allowances whatever, whether for travelling expenses or otherwise: Provided always, that the fees and emoluments heretofore payable to any Commissioner of Bankrupts in the Districts of Quebec and Montreal, shall continue to be payable and shall be paid, under the same provisions of law, to the Circuit Judges who shall become Commissioners of Bankrupts as aforesaid, but shall by them be accounted for and paid over, at such times and in such manner as the Governor of this Province shall from time to time appoint to the Receiver General of this Province, and shall form part of the Consolidated Revenue Fund thereof, and shall be accounted for to Her Majesty, in the same manner as any other moneys forming part of the said Fund.

Fee Fund.

Circuit Courts  
to be holden,  
and by whom.

**XXVIII.** And be it enacted, that Courts of Record to be called Circuit Courts, shall be holden every year in each of the said Districts of Quebec, Montreal, Three Rivers and St Francis, in the manner following, that is to say: In the District of Quebec, by the Chief Justice, or any other of the Justices of the Court of Queen's Bench for that District, or by one of the Circuit Judges for the same; and in the District of Montreal, by the Chief Justice or by any other of the

Justices of the Court of Queen's Bench for that District, or by one of the Circuit Judges for the same: Provided, that one Circuit Judge be always left in each of the Cities of Quebec and Montreal: In the District of Three Rivers, by the Resident Judge for that District; and in the District of St. Francis, by the Provincial Judge of that District: and that every such Circuit Court, within the limits of the Circuit thereof, shall have concurrent jurisdiction with the Court of Queen's Bench for the same District in Inferior Term, and shall accordingly have cognizance of suits and actions of the class and nature of those cognizable by the said Court in Inferior Term, subject to the same provisions as to the mode in which they shall be brought, heard, tried and determined, and as to the evocation thereof to the Superior Term of the said Court of Queen's Bench, and the consequences of such evocation; except only, that if such evocation be not maintained, the said Court sitting in Superior Term may in its discretion remit the cause either to the Circuit Court from which it shall have been evoked, or to the Inferior Term of the said Court of Queen's Bench, to be dealt with as if it had been originally brought in the said Inferior Term.

Jurisdiction  
of Circuit  
Court.

Evocation.

XXIX. And be it enacted, that it shall be lawful for any person under the age of twenty-one years, and above the age of fourteen years, to prosecute any suit in any Inferior Term or Circuit Court held under this Act, for any sum of money not exceeding six pounds five shillings, currency, which may be due to him for wages, in the same manner as if he were of full age; any law to the contrary notwithstanding.

Minors may  
sue for wages  
in certain  
cases.

XXX. And be it enacted, that the said Circuit Courts shall be holden in every year at the times and places hereinafter appointed; and the local extent and

limits of the jurisdiction of each of the said Circuit Courts, respectively, shall be as follows, that is to say:

*In the said District of Quebec :*

Rimouski  
Circuit.

In the parish of St. Germain, in and for the Circuit to be called the Rimouski Circuit, from the first to the seventh day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Rimouski, except the Parishes of Rivière du Loup and Cacona ;

Kamouraska  
Circuit.

In the Parish of St. Louis de Kamouraska, in and for the Circuit to be called the Kamouraska Circuit, from the tenth to the sixteenth day, inclusively, of each of the months of February, June and October: and the said Circuit shall include and consist of the County of Kamouraska, and the Parishes of Rivière du Loup and Cacona ;

St. Thomas  
Circuit.

In the Parish of St. Thomas, in and for the Circuit to be called the St. Thomas Circuit, from the nineteenth to the twenty-fifth day, inclusively, of each of the months of February, June and October: and the said Circuit shall include and consist of the County of L'Islet, including so much of the Parish of St. Pierre, Rivière du Sud, as may be within the County of Bellechasse and the Parishes of Berthier, St. Vallier, St. Michel and St. François, Rivière du Sud, in the County of Bellechasse ;

Beauce Cir-  
cuit.

In the Parish of Ste. Marie, Nouvelle Beauce, in and for the Circuit to be called the Beauce Circuit, from the thirteenth to the nineteenth day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Dorchester, (except the Seigniorship of Lauzon ;)

In the Township of Leeds, in and for the Circuit to be called the Leeds Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September, and the said Circuit shall include and consist of the County of Megantic, and the Parishes of St. Sylvester and St. Giles in the County of Lotbinière ;

Leeds Circuit.

In the Parish of Ste. Croix, in and for the Circuit to be called the Lotbinière Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September ; and the said Circuit shall include and consist of the County of Lotbinière, except the Parishes of St. Sylvester and St. Giles ;

Lotbinière Circuit.

In the Parish of Cap Santé, in and for the Circuit to be called the Portneuf Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September ; and the said Circuit shall include and consist of the County of Portneuf ;

Portneuf Circuit.

In the Parish of Les Eboulemens, in and for the Circuit to be called the Saguenay Circuit, from the first to the seventh day, inclusively, of each of the months of March, July and November ; and the said Circuit shall include and consist of the County of Saguenay ;

Saguenay Circuit.

*In the said District of Montreal :*

In the Parish of Berthier, in and for the Circuit to be called the Berthier Circuit, from the first to the seventh day, inclusively, of each of the months of March, July and November ; and the said Circuit shall include and consist of the County of Berthier, and all the Islands in the River St. Lawrence, which lie within the County of Richelieu, except those on the south side of the main or ship Channel ;

Berthier Circuit.



- Assomption Circuit.** In the Parish of St. Pierre de l'Assomption, in and for the Circuit to be called the Assomption Circuit, from the ninth to the fifteenth day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Leinster, except the Parishes of Lachenaye, St. Henri de Mascouche and St. Lin;
- Terrebonne Circuit.** In the Parish of St. Louis de Terrebonne, in and for the Circuit to be called the Terrebonne Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Terrebonne, and the said Parishes of Lachenaye, St. Henri de Mascouche and St. Lin, in the County of Leinster;
- Two Mountains Circuit.** In the Parish of St. Benoit, in and for the Circuit to be called the Two Mountains Circuit, from the seventh to the twenty-third day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Two Mountains; except Isle Bizarre;
- Ottawa Circuit.** At the village of Aylmer, in and for the Circuit to be called the Ottawa Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Ottawa;
- Vaudreuil Circuit.** In the Parish of St. Michel de Vaudreuil, in and for the Circuit to be called the Vaudreuil Circuit, from the tenth to the sixteenth day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Vaudreuil;
- Beauharnois Circuit.** In the Parish of St. Clément de Beauharnois, in and

for the Circuit to be called the Beauharnois Circuit, from the seventeenth to the twenty-third day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Beauharnois, except the Township of Hemmingford;

In the Parish of St. John the Evangelist, in and for the Circuit to be called the St. John's Circuit, from the first to the seventh day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the Seigniories of Lacolle and De Léry, and the Islands in the River Richelieu lying wholly or partly opposite the same, and the Township of Sherrington, all in the County of Huntingdon,—the Township of Hemmingford, in the County of Beauharnois,—the Parishes of St. John the Evangelist and St. Luc, in the County of Chambly,—and the Parish of Ste. Marguerite de Blairfindie, lying partly in the County of Chambly and partly in that of Huntingdon,—the County of Missisquoi, except the Townships of Dunham and Sutton,—and the County of Rouville, except the Parishes of St. Mathias, St. Hilaire and St. Jean Baptiste de Rouville;

At or near the West Church, in the Township of Shefford, in and for the Circuit to be called the Shefford Circuit, from the ninth to the fifteenth day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Shefford, (except the Township of Milton,) of so much of the County of Stanstead as does not lie in the District of St. Francis, and of the Townships of Dunham and Sutton, in the County of Missisquoi;

At the Village of St. Hyacinthe, in and for the Circuit to be called the St. Hyacinthe Circuit, from the tenth to the sixteenth day, inclusively, of each of the

months of February, June and October ; and the said Circuit shall include and consist of the County of St. Hyacinthe, the Township of Milton, in the County of Shefford, the Parishes of St Charles and St. Barnabé, in the County of Richelieu, and the Parishes of St. Hilaire and St. Jean Baptiste de Rouville, in the County of Rouville ;

Richelieu Circuit.

In the Parish of St. Ours, in and for the Circuit to be called the Richelieu Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September ; and the said Circuit shall include and consist of the County of Richelieu, (except the Parishes of St. Charles and St. Barnabé, and the Islands in the said County which lie in the River St. Lawrence, on the north side of the Main or Ship Channel,) and of the Parishes of Contrecœur and St. Antoine, in the County of Verchères ;

Yamaska Circuit.

In the Parish of St. Antoine de la Baie du Febvre, in and for the Circuit to be called the Yamaska Circuit, from the twenty-third to the twenty-ninth day, inclusively, of each of the months of January, May and September ; and the said Circuit shall include and consist of the County of Yamaska and the Seigniory of Nicolet, and its augmentation, in the County of Nicolet, and so much of the County of Drummond as lies within the District of Three Rivers, except the Townships of Aston, Bulstrode, Stanfold and Arthabaska ;

Gentilly Circuit.

In the Parish of Gentilly, in and for the Circuit to be called the Gentilly Circuit, from the fifteenth to the twenty-first day, inclusively, of each of the months of March and July, and from the twenty-third to the twenty-ninth day of the month of November ; and the said Circuit shall include and consist of all that part of the District of Three Rivers, lying on the south side of the River St. Lawrence, which is not included in the Yamaska Circuit ;

*In the said District of St. Francis:*

At the Village of Richmond, in the Township of Shipton, in and for the Circuit to be called the Richmond Circuit, from the twenty-third to the twenty-ninth day, inclusively, of each of the months of January and July; and the said Circuit shall include and consist of the Townships of Durham, Kingsey, Tingwick and Chester, in the County of Drummond, and the Townships of Shipton, Melbourne, Brompton and Windsor, in the County of Sherbrooke;

At Eaton Corner, in the Township of Eaton, in and for the Circuit to be called the Eaton Circuit, from the sixteenth to the twenty-second day, inclusively, of each of the months of March and September; and the said Circuit shall include and consist of the Townships of Eaton, Newport, Clifton, Hereford, Hampden, Chesham, Emberton, Bury, Lingwick, Stratford, Marston, Ditton, Clinton, Auckland, and Whitton, all in the County of Sherbrooke;

At Stanstead Plain, in the Township of Stanstead, in and for the Circuit to be called the Stanstead Circuit, from the sixteenth to the twenty-second day, inclusively, of each of the months of May and December; and the said Circuit shall include and consist of the Townships of Stanstead, Barnston, Barford, and Hatley, and so much of the Township of Bolton as lies within the District of Saint Francis;

Provided always, that the three first Juridical days only of each Term shall be Return days; and at the close of the third Juridical day, or at any time thereafter, the Judge may, if there be then no business before the Court, close the sitting thereof until the then next term: Provided also, that if by illness, accident or any other cause, the Judge by whom any Circuit Court

ought to be holden shall not be present on the first or any other Juridical day, being a Return day in any Term, it shall be lawful for the Clerk of such Circuit Court to receive all returns to be made on such day, and cause to any defendant, or party summoned, to appear on such day to be called, and to enter his appearance or record his default, notwithstanding the absence of the Judge.

Mode of commencing suits in inferior term or Circuit Courts.

**XXXI.** And be it enacted, that in any suit or action to be brought either in any Circuit Court or in any Inferior Term of the said Courts of Queen's Bench, the first process to be issued for bringing the defendant before the said Courts respectively, to answer the *demande* made in such suit or action, shall be a writ of summons, in which the plaintiff's cause of action shall be briefly stated, unless there shall be attached to such writ of summons a declaration setting forth the cause of action, in which case it shall be sufficient that in the writ of summons reference be made to the declaration for the cause of action; and such writ of summons may be in the form contained in the Schedule (A.) to this Act subjoined; and shall be served at least six days before the day fixed for the return thereof, if there be not more than five leagues from the place of service to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues; and such writ of summons shall be directed to and executed by any Bailiff of the Court of Queen's Bench in and for the District in which the same shall have been issued, any law or custom to the contrary notwithstanding; and the copies of the writ of summons, and of the declaration, if any there be, to be served upon parties according to law, shall be certified as true copies, either by the Clerk or Prothonotary of the Court, or by the Attorney of the plaintiff: Provided always, that in all cases cognizable by

Delay between service and return of summons, and by whom to be served.

Proviso.

the Courts of Queen's Bench in Inferior Term, or by any Circuit Court, where such writ of summons may by law be executed in any District other than the District in which the same shall have issued, such writ of summons shall be directly addressed to the Sheriff of such other District, and being endorsed by any Justice of the Court of Queen's Bench for such District, or by any Circuit Judge for the same, shall be executed and returned by such Sheriff to the Court from which it shall have issued, according to the exigency of such writ and to law.

XXXII. And be it enacted, that if there be two or more defendants in any suit or action instituted in any Circuit Court, it shall be sufficient to give jurisdiction over all the said defendants to the Circuit Court in which such action may be brought, that any one of the said defendants be domiciliated, or have been legally served with process within the limits of the Circuit for which such Court shall be held, and that all the said defendants be legally served with such process, within the limits of the District in which the Circuit shall lie: Provided always, that the process may in such cases be served out of the limits of the Circuit, by any Bailiff of the Court of Queen's Bench in and for the District in which such process shall have issued.

Jurisdiction of Circuit Courts where there shall be more than one defendant.

Proviso

XXXIII. And be it enacted, that in any suit or action instituted in any Circuit Court, or in any Court of Queen's Bench in Inferior Term, it shall be lawful for the said Courts, respectively, in their discretion, to require the plaintiff to file a new declaration, setting forth in a more special manner the cause of action, or to require that any pleading be in writing, if they shall deem it more conducive to the ends of justice.

Circuit Court may require that a new and more special declaration be filed, &c.

XXXIV. And be it enacted, that if the defendant in any suit or action instituted either in any Court of

Proceedings on the return of the summons.

Defaults.

Queen's Bench in Inferior Term, or in any Circuit Court, shall not appear personally or by his Attorney, on the day fixed for the return of the writ of summons, his default shall be recorded; and in any such case it shall not be necessary that the defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear within the term of three days after the return of the writ of summons, or at any other time, and have the said default taken off, (as heretofore allowed by law in certain cases,) unless express permission be given him by the Court, any law, usage or custom to the contrary notwithstanding; and after the default shall have been so recorded, it shall be lawful for the said Courts, respectively, after due proof of the service of the writ of summons, in a summary manner to receive evidence and hear the plaintiff in support of his *demande* in such suit or action, and thereupon to make and render such judgment as law and justice may require; and if the said defendant should appear on the said day, either personally or by his Attorney, and the plaintiff should not appear personally or by his attorney, or appearing should not prosecute his suit or action, the same shall be dismissed, with costs to the defendant against the plaintiff; and if the plaintiff in any such suit or action should establish his demand, he shall be entitled to recover the sum of money or thing by him demanded, and costs against the defendant.

Other cases.

Witnesses to  
be examined  
*vivâ voce*.

XXXV. And be it enacted, that in any suit or action before any Court of Queen's Bench, in Inferior Term, or in any of the said Circuit Courts, it shall not be necessary to reduce to writing the depositions of the witnesses, but such witnesses shall be examined *vivâ voce*, in open Court, any law, custom or usage to the contrary notwithstanding: Provided always, that if any such suit or action be of the class of those suits or actions in which, by this Act, an appeal may lie to the

Proviso—  
Notes of evi-  
dence to be  
taken by the

Superior Term of the Court of Queen's Bench, it shall be the duty of the Justice or Circuit Judge hearing the cause, to take notes in writing of the material parts of the said depositions; which notes, being signed by him, shall be filed, and remain of record in the cause, and shall have, to all intents and purposes, the same legal force and effect as the said depositions would have had if they had been reduced to writing, according to the law heretofore in force in that behalf.

Judge in certain cases.

XXXVI. And be it enacted, that the Justice or Circuit Judge, holding any Circuit Court, shall have power, when he shall deem it conducive to the ends of justice, to order that the record and proceedings in any suit or action before such Circuit Court be removed to the Inferior Term of the Court of Queen's Bench, in and for the District in which such Circuit Court shall sit, there to be heard and determined: of which order the Clerk or Prothonotary of such Circuit Court shall make an entry in the Register thereof: and thereupon it shall be his duty forthwith to certify, under his signature and the seal of the Court, and to cause to be transmitted to the office of the Clerk or Prothonotary of the said Court of Queen's Bench, the said record and proceedings, which shall then be filed by the last mentioned officer among the records of the Inferior Term of the said Court of Queen's Bench, and there shall continue to remain even after judgment, as if the said suit or action had been originally instituted in the said Inferior Term: Provided always, that the said Justice or Circuit Judge shall be bound to order such removal of any suit or action from the Circuit Court to the Inferior Term of the Court of Queen's Bench, in the manner aforesaid, whenever any of the parties shall require such removal, with the consent of the other parties.

Circuit Judge may order a cause to be removed to the Inferior Term.

And must do so if all the parties require it.

XXXVII. And be it enacted, that the said Courts of Queen's Bench in Inferior Term, and the said Cir-

What writs may be issued



from Circuit  
Courts.

cuit Courts, respectively, shall have power and authority, in causes and matters cognizable therein, to issue Writs of *Saisie Arrêt* before or after Judgment, *Saisie Gagerie*, *Saisie Revendication*, to be made returnable in the said Courts respectively, in the same and in like cases and circumstances in which such writs might immediately before the period hereinafter appointed for the commencement of this Act, lawfully be issued from and be made returnable in other Her Majesty's Courts of Civil Jurisdiction in Lower Canada, and under and subject to the rules of law in such cases provided; and that in all cases where such Writs shall be issued from any Court of Queen's Bench, in Inferior Term, or from any of the said Circuit Courts, as well as in all cases where such Writs, and Writs of *Capias ad respondendum* and of Attachment before Judgment, against the body, or the estate, debts and effects of any debtor, shall be issued from any Court of Queen's Bench, in the Superior Term thereof, it shall and may be lawful for the Clerks or Prothonotaries of the said Courts, respectively, to take and receive the necessary oath, affidavit, or proof, in such cases by law required, and thereupon to issue, without the *fiat* of a Judge, any of the above mentioned Writs, in like manner as if the same had been granted or awarded by a Judge: Provided always, that nothing herein contained shall prevent any Justice of any Court of Queen's Bench, or Circuit Judge, from granting or awarding any such Writ aforesaid, in cases where he could otherwise do so according to law: And provided always, that in all cases in which a Writ of *Capias ad respondendum*, or a Writ of *Saisie Arrêt* before Judgment in an action cognizable by the said Court of Queen's Bench in Superior Term; may by law be issued, the Clerk or Prothonotary of any Circuit Court, shall have the same power and authority as are vested in the Clerks or Prothonotaries of the said Courts of Queen's Bench to receive the requisite affidavit, and to

Prothonotaries or Clerks may receive the affidavit for writs of *capias*, &c.

Proviso.

Proviso : Clerk of Circuit may issue certain writs, and make them returnable in Superior Term of Q. B.

issue such last mentioned Writ of *Capias ad Respondendum*, or of *Saisie Arrêt* before Judgment, and to make the same returnable in the Superior Term of the said Court of Queen's Bench in and for the District in which the same shall have issued; and the writs last mentioned shall, in any such case be addressed directly either to the Sheriff of the said District, or to any Bailiff of the Court of Queen's Bench in and for the same, and by them respectively executed and returned; and when such writ shall be so addressed to any such Bailiff, such Bailiff shall without delay proceed to execute the same, without any previous warrant from the Sheriff, and shall deliver the writ, with a report of his proceedings thereon to the Sheriff, to whom he shall also deliver the body or the goods attached, (as the case may be,) to be dealt with according to law, and by whom the writ and the proceedings thereon shall then be returned to the Court of Queen's Bench, in Superior Term: Provided always, that in such case, the Sheriff shall not be responsible for any act done by the Bailiff, until the Officer last named shall have complied with the foregoing requirements; and in every such case service of the declaration in the cause may be made in the same manner, and within the same delay as if the writ had been issued by the Prothonotary of the Court of Queen's Bench, and addressed to and executed by the Sheriff: Provided always, that in all cases where any such writ of attachment against the body or goods shall be issued by the Clerk or Prothonotary of any Circuit Court, and made returnable in the Superior Term of any Court of Queen's Bench, the defendant shall be entitled to the same relief on giving security or otherwise to the Sheriff, and in default shall be committed to the Common Gaol of the District, in like manner as if such writ had been issued by the Clerk or Prothonotary of such Court of Queen's Bench.

Such writs  
to whom to be  
addressed.

Proviso.

Proviso.

Certain powers of Q. B. and of the Justices thereof, vested in Circuit Courts and Judges, in cases cognizable by them.

**XXXVIII.** And be it enacted, that all powers vested in any Court of Queen's Bench in Lower Canada, or in the Justices or Officers of such Court, respectively, in any suit or action pending in the Superior Term thereof, with regard to the summoning of Defendants *en garantie*,—the admission of parties to intervene,—the summoning of witnesses and the adduction of evidence,—the production of papers or other things in the possession of any witness or party,—the examination of any witness or party, and the oaths to be deferred, referred or required of them,—the issuing of any *Commission Rogatoire*, or Commission in the nature of a *Commission Rogatoire*, the examination of any witness sick or about to leave Lower Canada,—the enforcing of the attendance of witnesses duly summoned, and the punishment of such as shall disobey any writ of *Subpœna*,—the imprisonment (*contrainte par corps*,) of any Defendant or party resisting or fraudulently endeavouring to evade the execution of any writ against his goods or chattels, or with regard to other matters relative to or connected with the conduct of such suit or action and the proceedings therein, shall be and all such powers are hereby vested in the said Courts of Queen's Bench in Inferior Term, and in the said Circuit Courts and the Justices or Circuit Judges by whom the same are to be held, and in the Officers of the said Courts, respectively, and may be exercised by them (in so far as such powers and the provisions of law thereunto relating shall not be repugnant to or inconsistent with the provisions of this Act,) as fully and effectually, and under the same conditions and provisions of law as if the several Acts, Ordinances and Laws conferring the said powers were herein recited and re-enacted, and in such manner as shall be most conformable to and consistent with the other enactments of this Act.

Distance from which witness-

**XXXIX.** Provided always, and be it enacted, that no person shall be bound to attend any such Circuit

Court as a witness in any Suit or Action pending therein, unless he be a resident within the Circuit, or within ten leagues of the place at which such Circuit Court is held: And provided also, that nothing herein contained shall authorize any Circuit Court to appoint Commissioners for receiving affidavits to be used therein (save by *Commission Rogatoire* as aforesaid,) but all Commissioners appointed to receive affidavits to be used in any Court of Queen's Bench shall, by virtue of such appointment, become and be empowered to receive affidavits to be used in the Circuit Courts in the same District.

secs may be summoned.

Proviso as to affidavits to be used in Circuit Courts.

**XL.** And be it enacted, that the said several Courts of Queen's Bench, shall and may at any Superior Term thereof, make such rules of practice and other regulations touching the forms of proceeding in Inferior Term, and in the Circuit Courts to be holden in the District, as they shall deem best adapted to ensure the due administration of Justice therein, and to give effect to the provisions of this Act according to the true intent or object thereof, and from time to time to alter and amend the same; and such rules of practice and regulations, not being contrary to any enactment of this Act, or to any other Act, Ordinance or Law, in force in Lower Canada, shall be obeyed accordingly.

Q. B. in superior term to make rules of practice, &c. for inferior term and Circuit Courts.

**XLI.** And be it enacted, that all writs of process issued out of the Inferior Term of any Court of Queen's Bench, or out of any Circuit Court, shall run in the name of Her Majesty, Her Heirs or Successors, and shall be tested in the name of the Chief Justice, (or if that office be vacant, then in the name of the senior Puisné Justice,) entitled to sit in such Inferior Term or Circuit Court, and shall be sealed with the seal of the Court, and signed by the Clerk or Prothonotary, whose duty it shall be to prepare the same.

Style of Writs, &c issuing from inferior term of Circuit Courts.

Case of the  
recusation, &c.  
of a Judge sit-  
ting in inferior  
term, or in a  
Circuit Court,  
provided for.

**XLII.** And be it enacted, that whenever any Justice or Circuit Judge, sitting in Inferior Term or in any Circuit Court, shall be lawfully recused in any suit or action, or shall be disqualified or rendered incompetent either by reason of interest, relationship or otherwise, from taking cognizance of the same, such Justice or Circuit Judge shall nevertheless receive the return of the writ of summons therein, but shall immediately cause an entry to be made on the record of such recusation, or of the reasons of such disqualification or incompetence, and shall thereupon order that the record and proceedings in such suit or action be removed to the Superior Term of the Court of Queen's Bench, in and for the District in which the said suit or action shall have been brought, there to be in a summary manner heard, tried and finally determined, in the case of such disqualification or incompetence as above mentioned; but, in the case of a recusation, the Court of Queen's Bench, so sitting in Superior Term, shall first proceed in a summary manner to determine whether such recusation be well founded, and if it should maintain the said recusation and adjudge the same to be well founded, proceedings shall thereupon be had in a summary manner to trial, judgment and execution; and if it should dismiss the said recusation, the said suit or action shall be remitted to the next Inferior Term of the said Court, if it shall have been brought originally in Inferior Term, or if not, either to the said next Inferior Term of the said Court, or to the next Term of the Circuit Court in which it shall have been so originally brought; and when, in any case of recusation, disqualification or incompetence, as aforesaid, an order shall have been made for the removal of the suit or action, as above required, the Clerk or Prothonotary of the Court shall make an entry of such order in the register thereof, and thereupon it shall be his duty forthwith to certify under his hand and the seal of the Court to the Justices of the Court of Queen's Bench sitting in Su-

perior Term, and to cause to be transmitted to the said Justices the record and proceedings in the cause, which shall then be filed among the records of the Superior Term of the said Court of Queen's Bench, and there shall continue to remain, even after judgment, as if the suit or action had been originally instituted in the said Superior Term—except only in cases where a recusation shall have been made and dismissed as aforesaid, in which case the said record and proceedings shall be remitted as hereinbefore directed.

**XLIII.** And be it enacted, that from any judgment rendered by a Circuit Court, or by any Court of Queen's Bench sitting in Inferior Term, in any suit or action, in which the sum of money or the value of the thing demanded shall exceed ten pounds currency, or which shall relate to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent, revenue, annual rents, or such like matters or things, where the rights in future may be bound, an appeal shall lie to the Court of Queen's Bench, sitting in Superior Term in and for the District within which the suit or action shall have been originally instituted; which said Court so sitting in Superior Term, shall proceed to hear and adjudge on such appeal, as to law may appertain, and in the manner hereinafter provided.

Appeals from C. Courts to Q. B. in superior term allowed in certain cases.

**XLIV.** And be it enacted, that the party appealing from any judgment rendered as aforesaid by a Circuit Court, or by any Court of Queen's Bench in Inferior Term, shall, within fifteen days after the rendering of the judgment to be appealed from, (but without being bound to give previous notice thereof to the adverse party) give good and sufficient security, by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the said appeal

Mode of bringing such appeal.

Security.

and answer the condemnation, and also pay such costs and damages as shall be awarded by the Court appealed to, if the judgment appealed from should be affirmed; which said security shall be given either before any of the Justices of the Court appealed to, or the Clerk or Prothonotary thereof, and the bond shall then be deposited and remain of record in the office of the latter; or it shall be given before any Justice or Circuit Judge, when holding the Circuit Court in which the said judgment appealed from shall have been rendered, or before the Clerk or Prothonotary of such Circuit Court, and the bond shall then be deposited and remain of record in the office of the latter; and any one surety, being a proprietor of landed property of the value of fifty pounds, currency, over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Justices, and Clerks or Prothonotaries, are hereby respectively authorized to administer all oaths required by law in such cases from the persons so becoming sureties: Provided always, that if the party appealing shall, within the same delay of fifteen days after the rendering of the judgment, agree and declare in writing at the office of the Clerk or Prothonotary of the Court appealed to, or at the office of the Clerk or Prothonotary of the said Court appealed from, that he does not object to the judgment being carried into effect according to law, or shall pay into the hands of either of the said Clerks or Prothonotaries, the amount, in capital, interest and costs, of the said judgment, and shall at the same time declare in writing his intention to appeal, (which amount, when so paid, the respondent shall be entitled to have and receive from the said Clerk or Prothonotary,) then and in that case, the party so appealing, in lieu of the security above required, shall give security only for such costs and damages as shall be awarded by the Court appealed to, in case the appeal be dismissed: And provided also, that when only such

Who shall  
be a sufficient  
surety.

Proviso, as  
to party agree-  
ing that the  
judgment be  
executed.

Proviso in  
such case, as to  
what shall be  
returned by re-  
spondent, if the  
judgment be  
reversed.

last mentioned security shall have been given, the respondent, if the judgment appealed from be reversed, shall not be bound to return to the appellant more than the amount of money so paid by the latter into the hands of the said Clerk or Prothonotary, with the legal interest thereon from the day of the payment of the same to the said Clerk or Prothonotary, or more than the sum levied under the execution sued out upon such judgment, with the legal interest upon such sum from the day of its being so levied, or more than the restitution of the real property whereof the respondent shall have been put in possession by virtue of the said judgment, and the net value of the produce and revenues thereof, to be computed from the day the respondent shall have been put in possession of such real property, until perfect restitution is made with the cost of such appellant as well in the Court appealed to, as in the Court below, but without any damages, in any of the said cases, against the respondent by reason of the said judgment or of the said execution; any law, custom or usage to the contrary notwithstanding.

**XLV.** And for the purpose of obviating delay and expense in the prosecution of appeals from judgments rendered by the Circuit Courts, or by the Courts of Queen's Bench in Inferior Term, be it enacted, that such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Court to which such appeal shall be as aforesaid, setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as by the Court below ought to have been rendered; a copy of which petition, with a notice of the time at which it is to be presented to the Court of Queen's Bench sitting in Superior Term, shall be served on the adverse party personally or at domicile, or on his Attorney, *ad litem*, within twenty days from the render-

Such appeals to be heard and determined in a summary manner;—mode of proceeding.



ing of the judgment appealed from ; and such petition shall be so presented on any of the first ten days of the Superior Term of the Court appealed to, next succeeding the rendering of the judgment, if there shall be an interval of twenty-five days between the rendering of such judgment and the last of the said ten first days of the said Term, and if there shall not be such an interval, then on the first juridical day of the second Superior Term of the Court appealed to, next succeeding the rendering of such judgment : Provided always, that neither the day of the rendering of the judgment appealed from, nor the day of the presenting of the said petition to the Court appealed to, shall be considered as forming part of the said interval of twenty-five days ; And provided also, that a true copy of the appeal bond given by the party appealing, certified as such by the Clerk or Prothonotary in whose office it shall have been deposited, shall be annexed to the original of the petition presented to the Court appealed to, and that a copy or copies of the same, certified as such by the party appealing, or his Attorney, shall be served, with the petition and notice hereinbefore mentioned, upon the party respondent.

Proviso.

Proviso.

Other proceedings on such appeals.

**XLVI.** And be it enacted, that within the same delay of twenty days after the rendering of the judgment appealed from as aforesaid, the party appealing shall also cause a copy of the said petition and notice only, to be served upon the Clerk or Prothonotary in the office and custody of whom the record of the suit or action appealed from shall be, with a certificate from the Clerk or Prothonotary of the Court appealed to, that security in appeal has been given, if the appeal bond shall not be deposited in the office of the Court appealed from ; and thereupon it shall be the duty of the said Clerk or Prothonotary, of the last mentioned Court without waiting for the presenting of the said petition to the Court appealed to, forthwith to certify under his hand

and the seal of the Court, to the Court to which such appeal may lie, and to cause to be transmitted to the Justices of the said Court, (to be filed among the records of the Superior Term thereof,) the judgment, record, notes of evidence, and proceedings to which such appeal shall relate; and after the transmission of the said judgment, record, notes of evidence, and proceedings, and the filing of the said petition of appeal by and on the part of the appellant as aforesaid, the appeal shall, without any further formality, be summarily heard, and judgment thereon rendered by the said Court of Queen's Bench, sitting in Superior Term, as to law and justice may appertain: Provided always, that the Justice by whom the judgment appealed from may have been rendered, shall not sit on the hearing and judgment of the cause upon such appeal; and if the Court be equally divided on the question whether the judgment appealed ought or ought not to be affirmed, it shall stand and be affirmed: And provided also, that any appellant who shall neglect to cause a copy of such petition and notice of appeal to be served as aforesaid, or who, after having caused the same to be served, shall neglect to prosecute effectually the said appeal in the manner hereinbefore prescribed, shall be considered to have abandoned the said appeal, and upon the application of the respondent the Court appealed to shall declare all right and claim founded on such appeal to be forfeited, and shall grant costs to the respondent, and order the record (if transmitted) to be remitted to the Court below.

Hearing on the appeal.

Proviso—what Judges may sit on the appeal; case of equal division of the Court provided for.

Proviso, as to appeals not duly prosecuted.

**XLVII.** And be it enacted, that in every case where judgment shall be rendered in any Court of Queen's Bench in Inferior Term, or in any Circuit Court, awarding or adjudging the payment of any sum of money, it shall and may be lawful for the Clerk or Prothonotary of the Court, at the expiration of fifteen days after the

Execution of judgments of Circuit Courts.

Writ of Fieri  
Facias against  
goods

By whom exe-  
cuted.

Bailiff not to  
have a percent-  
age.

Return.

Proviso—in  
what cases Fie-  
ri Facias may  
issue against  
lands.

Hypothecary  
actions.

rendering of the judgment, to issue under the seal of the Court, a writ of *fieri facias* against goods and chattels; which writ shall be signed by him, and made returnable to the Court, and shall be directed to any of the Bailiffs of the Court of Queen's Bench in and for the District in which the judgment shall have been rendered, who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution, upon and from the goods and chattels of the party against whom such judgment shall have been rendered which shall be found within the District, in the same manner, and according to the same rules and regulations of law, by and under which any Sheriff may levy money by virtue of a writ of *fieri facias* issuing out of any of Her Majesty's Courts of civil jurisdiction in Lower Canada; but the said Bailiff shall not be entitled, out of the monies so levied by him, to the commission of two and a half per cent. in such case allowed by law to Sheriffs, or to any commission whatever; and the said writ, on or before the day fixed for the return thereof, shall be by the said Bailiff returned into the Court from which it shall have issued, with his proceedings thereon: Provided always, that for the satisfaction of any such judgment, execution shall (except in hypothecary actions) go only against the moveable property of the party condemned, in cases where the sum of money awarded by the judgment shall not exceed ten pounds, currency; and that in cases where the said sum of money so awarded shall exceed ten pounds currency, execution shall go not only against the moveable but also against the immoveable property of the party condemned; as it shall also in all hypothecary actions against the immoveable property declared by the judgment to be hypothecated for the payment of the sum for which such judgment shall have been rendered, whatever be the amount demanded or recovered in the suit: and when execution upon any such judgment shall be sued out against the immovea-

ble property, a writ of *feri facias de terris* shall be issued from the Court in which the judgment shall have been rendered, under the seal of the said Court, and signed by the Clerk or Prothonotary thereof, and such writ shall be made returnable to the Court of Queen's Bench in and for the District in which the judgment shall have been rendered, at a Superior Term thereof, and shall be directed to the Sheriff of the said District who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution, upon and from the immoveable property of the party against whom such judgment shall have been rendered, or upon and from the immoveable property declared by the judgment to be so hypothecated as aforesaid, (as the case may be,) in the manner and according to the rules and regulations of law, by and under which any Sheriff may levy money by virtue of a writ of *feri facias de terris* issuing out of any of Her Majesty's Courts of civil jurisdiction in Lower Canada; and the said writ, on or before the day fixed for the return thereof, shall be by the said Sheriff returned into the Court of Queen's Bench in Superior Term, with his proceedings thereupon, in the same manner as if such writ had issued from such Superior Term of the said Court; and all ulterior proceedings of what kind soever, consequent upon the issuing of such writ, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties, who, according to law, may have intervened in the cause by opposition or otherwise, shall be had in said Court of Queen's Bench in Superior Term, as effectually and in the same manner as if the cause in which such writ shall have issued had been originally brought and determined in the said Court in Superior Term.

Writs to whom directed, and how executed and returned.

Ulterior proceedings consequent on such writ.

**XLVIII.** And be it enacted, that when the party against whom judgment shall have been rendered, either in any Circuit Court, or in the Inferior Term of

*Alias Writs in certain cases against goods, &c. or lands in other Districts.*

any Court of Queen's Bench, shall not have, within the District in which such judgment shall have been rendered, sufficient goods, chattels, lands or tenements, to satisfy the said judgment in capital, interest and costs, but shall have goods, chattels, lands or tenements within any other District in Lower Canada, an *alias* writ *de bonis* or *de terris*, as the case may be, shall issue from the Court in which the judgment shall have been rendered, under the seal of the said Court, and signed by the Clerk or Prothonotary thereof; which *alias* writ shall be made returnable to the Court out of which it shall issue, if it be a writ *de bonis*, and to the Court of Queen's Bench, in and for the District in which the judgment shall have been rendered, at a Superior Term thereof, if it be a writ *de terris*, and shall be directed to the Sheriff of such other District; which said *alias* writ, after having been endorsed by one of the Justices of the Court of Queen's Bench in and for such other District, shall be executed in the latter District by the Sheriff thereof, as if it were a writ of execution issued from the Superior Term of the said Court of Queen's Bench in and for his own District, and in the same manner and according to the same rules and regulations of law; and the said writ shall be, by the said last mentioned Sheriff, with his proceedings thereon, duly returned into the Court from which it shall have been issued, if it be a writ *de bonis*, or into the Superior Term of the said Court of Queen's Bench in and for the District in which the said judgment shall have been rendered, if it be a writ *de terris*; and in the latter case, all ulterior proceedings of what kind soever, consequent upon the issuing of such writ *de terris*, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, may have intervened in the cause by opposition or otherwise, shall be had in the Court last above mentioned, in Superior Term, as effectually and in the same manner as if the cause in

How to be  
executed in  
such other Dis-  
trict.

And returned.

Ultrior pro-  
ceedings.

which such writ shall have issued had been originally brought and determined in such last mentioned Court, in Superior Term: Provided always, that in all cases where execution may issue in any hypothecary action against any immoveable property declared by the judgment to be hypothecated for the payment of the money to be levied under such execution and *délaissé* under such judgment, and situate in a District other than that in which the writ shall issue, such writ shall be issued, executed and returned, and the subsequent proceedings relative to the same shall be had as herein provided with regard to *alias* writs *de terris*, without its being necessary that any other writ should previously issue.

Proviso as to  
Hypothecary  
actions.

XLIX. And be it enacted, that when any such writ *de terris*, issuing from any Circuit Court, or from the Inferior Term of any Court of Queen's Bench, shall have been, in the manner hereinbefore provided, returned into the said last named Court in Superior Term, it shall be lawful for the said last named Court, in its discretion, to direct the record of the cause in which such writ of execution shall have issued, to be removed into the said Superior Term, and such removal shall be made (on an order made by the said Court, and addressed to the Clerk or Prothonotary of the Court from which the record is to be removed,) in the same manner and according to the same regulations as are hereinbefore provided for the removal, on the order of a Justice or Circuit Judge, of suits or actions instituted before any Circuit Court, or Court of Queen's Bench in Inferior Term, into the said Court in Superior Term.

Where Writs  
*de terris* issue,  
the Court into  
which they are  
returned may  
order the Re-  
cord to be re-  
moved to it.

L. And be it enacted, that the Courts of Queen's Bench in Inferior Term, and the said Circuit Courts, may respectively, if they think proper, order the debt to be levied by instalments: Provided the delay allowed for the payment of the last instalment shall not exceed the space of three months from the day of the

Q. B. in infe-  
rior term and  
Circuit Courts  
may order the  
debt to be le-  
vied by instal-  
ments.

Judgment: And provided also, that in default of payment of any one such instalment, at the time it shall become due, execution may issue in satisfaction of the Judgment, as if such delay had not been granted.

Prothonotary's  
taxation of  
costs in supe-  
rior term of  
C. Courts to  
be sufficient.

LI. And be it enacted, that the certificate of the Clerk or Prothonotary of any Court of Queen's Bench or Circuit Court, that the costs in any suit or action or proceeding in the Inferior Term of such Court of Queen's Bench, or in such Circuit Court, amount to a sum named in such certificate (the sums allowed to witnesses having been previously approved by a Justice or Circuit Judge, as the case may be,) shall be sufficient proof of the amount of such costs, provided, a detailed bill or account of the same, signed by the said Clerk or Prothonotary, be annexed to such certificate, and execution may issue accordingly for such costs, without any other or further taxation thereof, nor shall it be necessary that any writ of execution issuing out of any such Inferior Term or Circuit Court be signed or indorsed by any Justice or Circuit Judge; any law, usage or custom to the contrary notwithstanding.

Opposition on  
Writs *de bonis*  
how to be dealt  
with.

LII. And be it enacted, that if any opposition be made to the execution of any writ *de bonis* issued from any Circuit Court, such opposition shall be made returnable either to the same Circuit Court at the then next term thereof, or to the Court of Queen's Bench for the District at the Inferior Term thereof, next after the day on which the opposition shall have been allowed, if such Inferior Term be nearer to the said day, there to be heard and determined; and when such opposition shall have been made returnable into the said Court of Queen's Bench in Inferior Term, the said Court shall have power, if it deem it necessary, to order the removal of the record in the original suit or action from the Circuit Court, into the Court of Queen's Bench, and such removal shall be made in the manner

hereinbefore provided for the removal of records in similar cases; and the Bailiff charged with the execution of the writ shall, immediately after he shall have been served with a true copy of the said opposition, return the same and the writ with his proceedings thereon, to the Court to which the opposition shall have been so made returnable; and when final Judgment shall have been given on any such opposition in the Inferior Term of the Court of Queen's Bench, the writ of execution and all proceedings thereon, with a true copy of the said Judgment, (and the record in the original suit or action, if it shall have been removed) shall be remitted to the Circuit Court, in which further proceedings shall thereupon be had, as to law may appertain: Provided always, that the *fiat* or order to stay proceedings upon such writ *de bonis* in consequence of any such opposition, and to make such opposition returnable as aforesaid, may be made by any Justice of the Court of Queen's Bench, or Circuit Judge in and for the District, although he be not then within the limits of the Circuit, or by the Clerk or Prothonotary of the Circuit Court, and to that effect, such Justice, Circuit Judge, Clerk or Prothonotary, is hereby authorized to administer all oaths in such cases required by law.

Bailiff's duty on receiving such opposition.

Proviso—by whom the fiat to stay proceedings on the opposition may be granted.

LIII. And be it enacted, that the said Circuit Courts, respectively, and the Chief Justice, Justice or Circuit Judge holding the same, as well in Court as out of Court, in Term or out of Term, or in Vacation, shall have and may exercise within the said Circuits, respectively, the same powers and authority as are vested in any Court of Queen's Bench, and the Justices thereof, in what respects the election and appointment of Tutors and Curators, and the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken, the closing of inventories, attestation of accounts, *insinuations*, affixing and taking off seals of safe custody, and other acts of the

Circuit Courts and Judges holding them to have certain powers in matters requiring despatch.



Circuit Judges to have concurrent powers with the Justices of Q. B. in such matters, in Quebec and Montreal.

same nature requiring despatch ; and the proceedings in all such cases shall form part of the records of the Circuit Court for the Circuit in which they shall be had ; and the Circuit Judges in and for the Districts of Quebec and Montreal, shall have and may exercise in and for the said Districts, respectively, the same powers and authority with regard to the said matters as are vested in the Justices of the Court of Queen's Bench for the same District, and may exercise the same concurrently with such Justices, at the places where the said last named Courts are respectively held, but the proceedings shall then form part of the Records of the Court of Queen's Bench for the District in which they shall be had : Provided always, that the appointments and orders made by any such Chief Justice, Justice, or Circuit Judge, under the authority of this section, shall be liable to be set aside by the Court of Queen's Bench for the District, in the manner and under the provisions of law, in and under which appointments and orders of like nature made by a single Judge might be set aside, immediately before the time when this Act shall come into force.

Proviso.

Proceedings in certain suits where the defendant cannot be found in the District or Circuit.

LIV. And be it enacted, that in any suit or action to be brought against any person who shall have left his domicile in Lower Canada, or against any person who shall have had no domicile in Lower Canada, but shall have personal or real estate in the same, it shall be lawful for the plaintiff, if no curator be appointed in the ordinary course of law to represent such person, to summon and implead such person, by a writ issued, in the usual way, out of the Court of Queen's Bench, or out of any of the Circuit Courts in and for the District or Circuit wherein such person may have had his domicile, or where such property may be situate ; and that upon the return of the Sheriff or of the Bailiff to the writ, that the defendant cannot be found in the said District or Circuit, it shall be lawful for the Court to

order that the defendant shall, by an advertisement, to be twice inserted in the English language in any Newspaper published in that language, and twice in the French language in any Newspaper published in that language, in Lower Canada, be notified to appear and answer such suit or action, within two months after the last insertion of such advertisement; and that upon the neglect of the defendant, to appear and answer to such suit or action within the period aforesaid, it shall be lawful for the plaintiff to proceed to trial and judgment as in a case by default.

LV. And be it enacted, that in all cases of the taking of goods and chattels in execution, by virtue of a writ issuing out of any Court of Queen's Bench or Circuit Court, wherein a Lessor may claim a privilege or lien for rent, it shall not be lawful for such Lessor to prevent the sale of such goods and chattels by opposition, but it shall be lawful for him to deliver to or lodge with the Sheriff or the Bailiff who shall have seized such goods and chattels, his opposition *afin de conserver*, either before or after the sale, and if the same be so delivered or lodged before the sale, the Sheriff or Bailiff shall nevertheless proceed to the sale of the goods and chattels by him seized, and make his return thereof; and upon such return, the Lessor shall have his privilege or lien upon the proceeds of the sale of such goods and chattels and be collocated accordingly; any law, usage or custom to the contrary notwithstanding: Manner in which a Lessor's privilege is to be exercised on property seized in execution. Provided always, that when any such opposition, or any other opposition *afin de conserver* upon monies levied by virtue of a writ *de bonis*, issued from the Inferior Term of any Court of Queen's Bench, or from any Circuit Court, shall be delivered to and lodged with the Bailiff, before he shall have paid the proceeds of the sale to the party suing out such writ, it shall be the duty of the Bailiff forthwith to make his return of the said writ according to law, and to pay over into the

hands of the Clerk or Prothonotary of the Court from which the writ shall have issued the proceeds of the sale, to abide the judgment of the Court.

**Trials by Jury in cases before Q. B. in superior term may hereafter in certain cases be ordered by Courts of Q. B. to be taken before Circuit Courts.**

**LVI.** And be it enacted, that it shall be lawful for any Chief Justice or Justice of any Court of Queen's Bench, holding any Circuit Court, when and so soon as lists of Jurors shall have been legally made out for that purpose, and the requisite provisions of law in that behalf enacted, to preside during the holding of any such Circuit Court, at the trial of the issue in any suit or action brought before such Court of Queen's Bench, in Superior Term, and by the same ordered, according to law, to be tried before a Jury, and to receive the verdict of such Jury, and to return the same into such Court of Queen's Bench, to be by the said Court proceeded upon according to law.

**Fees in inferior term and in Circuit Courts to be as per Schedule.**

**LVII.** And be it enacted, that in all actions and proceedings in the said Circuit Courts, and in the Courts of Queen's Bench, in Inferior Term, respectively, the fees specified in the Schedule (B) to this Act subjoined, shall be deemed and taken to be the lawful fees for the discharge of the several duties therein mentioned; and no other fees or emoluments shall be received or taken upon any pretence whatever, for any act done or service performed under the authority of this Act; and if any officer or person shall receive any other or greater fee, or emolument than is specified in the said Schedule for any of the duties aforesaid, or for any act done or service performed as aforesaid, he shall forfeit the sum of twenty pounds Currency, for each such offence, which penalty shall and may be recovered by civil action, in any Circuit Court, or in any Court of Queen's Bench in Inferior Term; and one half of such penalty shall belong to Her Majesty, Her Heirs and Successors, and the other half thereof to the person who shall sue for the same.

**Penalty for taking higher fees.**

**LVIII.** And be it enacted, that the Clerk or Prothonotary of any Court of Queen's Bench, or of any Circuit Court, shall cause to be continually and openly posted as well in his office, as in some conspicuous place in the hall or apartment in which such Circuit Court, or the Inferior Term of such Court of Queen's Bench shall be held, a fair and legible copy of the Schedule of fees herein-before mentioned, and a notice of the penalty to which any person will become liable for receiving any other or greater fee than is set forth in the said Schedule; and in default of so doing, shall be deemed and held to be guilty of a misdemeanor, and be liable to be punished accordingly.

A copy of the Schedule to be posted where the Court is held, &c.

**LIX.** And be it enacted, that it shall be lawful for the Governor of this Province, to appoint from time to time a Clerk or Prothonotary for each of the said Circuit Courts; and every such Clerk or Prothonotary as well as the Clerk or Prothonotary of any Court of Queen's Bench, appointed or to be hereafter appointed, shall have power, by an instrument under his hand and seal, to appoint a Deputy who shall act as such only in case of the absence or sickness of such Clerk or Prothonotary; and such instrument shall be entered at full length in the Register of the Court; Provided always, that it shall be lawful for the Clerk or Prothonotary, at all times, to remove such Deputy, and to appoint another in his place.

Governor to appoint Clerks of Circuit Courts.

Deputy.

**LX.** And be it enacted, that no Clerk or Prothonotary of any Court, shall during his continuance in office, nor his Deputy while performing the duties of the office, practice as an Advocate, Proctor, Solicitor or Attorney, or as Counsel in any Court of Law in Lower Canada.

Clerk or his Deputy not to practice as Attorney, &c.

**LXI.** And be it enacted, that each Clerk or Prothonotary of any Court or Queen's Bench or Circuit Court shall, within three months after his appointment, if he be appointed after this Act shall be in force, and within

Prothonotaries of Q. B. and Clerks of Circuit Courts to give security.

three months after this Act shall come into force, if he shall have been appointed before it shall be in force, give security for the due performance of the duties of his office, and for duly accounting for and paying all monies which shall come into his hands by virtue of his office, by a bond to be given by him jointly and severally with good and sufficient sureties, which bond shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any party by reason of the negligence or misconduct of such Clerk or Prothonotary, and the amount for which such bond shall be given, shall be as follows, that is to say:—by the Prothonotary or Clerk of the Court of Queen's Bench for the District of Quebec or of Montreal, and his sureties, for the sum of two thousand pounds currency: by the Clerk or Prothonotary of the Court of Queen's Bench for the District of Three Rivers or of St. Francis, and his sureties, for the sum of one thousand pounds currency: and by the Clerk or Prothonotary of any Circuit Court, and his sureties for the sum of two hundred and fifty pounds currency.

Amounts.

Bailiffs appointed by Q. B. in superior term—their powers.

LXII. And be it enacted, that Bailiffs appointed or to be appointed by the Court of Queen's Bench for any of the Districts before mentioned in Superior Term, shall have power to act as such within the limits of such District, for the service and execution of all writs, orders and process issuing as well from the said Court of Queen's Bench and the said Circuit Courts, as from all other Courts of Law in Lower Canada, which may be lawfully directed to a Bailiff; and such Bailiffs shall be removable by the Justices of the said Courts of Queen's Bench, either in Superior or Inferior Term, or by any Chief Justice, Justice or Circuit Judge when holding any Circuit Court: Provided always, that no Bailiff appointed before the time when this Act shall come into force, shall continue to act as such after the expiration of six months from the said time, unless re-appointed by

Proviso—not to act after six months, unless re-appointed.

the Court of Queen's Bench in Superior Term, after this Act shall be in force: And provided also, that any Bailiff who shall have made the service of the writ of summons in any Suit or Action shall not be competent to be examined as a witness in support of the plaintiff's *demande* in such Suit or Action, save and except as to what may relate to the service of the said writ of summons. Proviso.

LXIII. And be it enacted, that every person who shall be appointed a Bailiff as aforesaid, shall, before acting as such, enter into a Bond with two good and sufficient sureties, who shall justify their sufficiency to the satisfaction of the person before whom the Bond shall be given, unto Her Majesty, Her Heirs and Successors, in the penalty of one hundred pounds currency, conditional for the due performance of the duties of the said Office, and such Bond shall be taken before the Clerk or Prothonotary of the Court of Queen's Bench, in and for the District in which the Bailiff shall have been so appointed, and shall remain of record in the Office of the said Clerk or Prothonotary; and every copy of such Bond, delivered by the Officer last named under his hand and the seal of the Court, shall be deemed and considered an authentic copy to all intents and purposes; and it shall be incumbent on the said Clerk or Prothonotary to inquire and ascertain when such sureties may die, or become insolvent, or resident out of Lower Canada, (in any of which cases it shall also be the express duty of the Bailiff to give notice of the fact to the Clerk or Prothonotary) and in such case or cases to require the Bailiff to give other and further security as aforesaid; and the Bond so given shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any person or persons by reason of the culpable negligence or misconduct of the Bailiff. Bailiffs to give security—  
amount.  
  
Duty of Prothonotary as to such security.

Punishment  
of Bailiff's  
guilt of miscon-  
duct.

**LXIV.** And be it enacted, that if any Bailiff or any officer of any Circuit Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or mis-conduct, 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 any Chief Justice, Justice, or Circuit Judge, holding the said Circuit 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 such costs to the party aggrieved, as such Chief Justice, Justice or Circuit Judge, shall think just; and in default of the immediate payment of any sum of money so ordered to be paid by such Bailiff or such Officer, to commit the offender to the common gaol of the District, there to be detained until such payment be made in full.

Transmission  
of Records,  
&c. of District  
and Division  
Courts.

**LXV.** And be it enacted, that the Records, Registers, Documents and proceedings, of and in the several District Courts and Division Courts hereby abolished, shall forthwith, after the period hereinafter appointed for the commencement of this Act, be transmitted into and make part of the Records, Registers, Documents and proceedings of and in the Inferior Term of the several Courts of Queen's Bench, for the District in which such District and Division Courts shall have been respectively held.

Continuance  
of suits brought  
in such Courts,  
in those to  
which they are  
to be transmit-  
ted.

**LXVI.** And be it enacted, that no judgment, order, rule, or act, of the said District Courts and Division Courts, respectively, legally pronounced, had or done, before the commencement of this Act, shall be hereby avoided, but shall remain in full force as if this Act had

not been passed; nor shall any action, suit, cause or proceeding, depending in the said District Courts and Division Courts, respectively, be abated, discontinued or annulled, but the same shall (although the sum or value of the thing demanded should be above twenty pounds currency,) be transferred in their then present condition respectively to, and shall subsist and depend in the Inferior Term of the Courts of Queen's Bench, into which the Records, Registers, Documents and proceedings of the said District Courts and Division Courts, respectively, are to be transmitted as aforesaid; and other and further proceedings shall be thereon had in the said Courts of Queen's Bench, respectively, in Inferior Term, to judgment and execution, and as to all matters and proceedings consequent upon such judgment and execution, as might be had in the said Courts of Queen's Bench in Inferior Term, in causes and proceedings therein commenced and depending.

LXVII. And be it enacted, that every writ or process which shall have been made returnable into any of the said District Courts or Division Courts hereby abolished, on any day subsequent to the commencement of this Act, shall be returned into the Inferior Term of the Court of Queen's Bench in and for the District in which the same shall have been issued, and shall be held and considered to be returnable on the first juridical day of the Inferior Term of such Court of Queen's Bench, commencing next after the day on which such writ or process shall have been made returnable.

Process issued out of such Courts, when to be returnable after this Act is in force.

LXVIII. And be it enacted, that if any person, having been the Clerk or Prothonotary of any District or Division Court hereby abolished, shall refuse or neglect to transmit to the proper Court, and at the time and in manner hereby required, any Record, Register, or Document in his possession, as such Clerk or Prothonota-

Punishment of Courts abolished refusing to transmit the records thereof.



ry, at the time this Act shall come into force, the Court to which the same ought to be transmitted, may upon the application of the Clerk or Prothonotary of such last mentioned Court, address such order as it may deem expedient in the matter, either to the Clerk or Prothonotary in default, or to any other person having any such Record, Register, or Document in his possession, for the purpose of enforcing the transmission thereof, or of authorizing the seizure thereof by such person as the Court shall appoint; and any wilful disobedience to such order, or any resistance to the execution thereof, shall be a contempt, punishable by fine and imprisonment, in the discretion of the Court.

Certain laws  
repealed.

2 Vict. (2) c.  
13.

3 & 4 Vic. c.  
24.

LXIX. And be it enacted, that the Ordinance of the Governor and Special Council for the affairs of Lower Canada, made and passed in the second year of Her Majesty's Reign, and intituled, *An Ordinance to authorize the Governor or person administering the Government of this Province, to appoint one or more Assistant Judges for the Court of King's Bench for the Districts of Quebec and Montreal, in this Province, and an Assistant Judge for the District of Three Rivers, in the case of sickness, necessary absence, or suspension from office of any of the Justices of the said several Courts of King's Bench, or the Resident Judge for the District of Three Rivers, in the said Province,*—and the Ordinance of the said Governor and Special Council, made and passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, *An Ordinance to amend an Ordinance made and passed in the second year of Her Majesty's Reign, and intituled, An Ordinance to authorize the Governor or person administering the Government of this Province, to appoint one or more Assistant Judges for the Courts of King's Bench for the Districts of Quebec and Montreal, in this Province, and an Assistant Judge for the District of Three Rivers,*

*in the case of sickness, necessary absence, or suspension from office, of any of the Justices of the said several Courts of King's Bench, or the Resident Judge for the District of Three Rivers, in the said Province,—and the Ordinance of the said Governor and Special Council, made and passed in the fourth year of Her Majesty's Reign, and intituled, An Ordinance to amend a certain* <sup>4 Vic. c. 1.</sup> *Ordinance of the Legislature of this Province, made and passed in the fourth year of Her Majesty's Reign, and intituled, An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and to provide for the better and more efficient administration of Justice throughout this Province,—and also a certain other Ordinance of the same Legislature, made and passed in the same year, intituled, An Ordinance to provide for the more easy and expeditious administration of Justice in civil causes, and matters involving small pecuniary value and interest, throughout this Province,—and the Ordinance of the said Governor and Special Council, made and passed in the fourth* <sup>4 Vic. c. 2.</sup> *year of Her Majesty's Reign, and intituled, An Ordinance to amend a certain Ordinance therein mentioned,—and the Ordinance of the said Governor and Special Council, made and passed in the second year of Her Majesty's Reign, intituled, An Ordinance to regulate the* <sup>2 Vic. (3) c. 49.</sup> *practice of the Courts of Judicature in this Province, respecting certain proceedings,—and the Act of the Legislature of Lower Canada, passed in the first year of the Reign of His late Majesty, King William the Fourth, and intituled, An Act to facilitate the administration of Justice respecting Enquêtes in civil matters, before the Court of King's Bench for the Districts of Quebec, Mont-* <sup>1 Wm. 4. c. 2.</sup> *real, Three Rivers, and the Inferior District of St. Francis,—and the Ordinance of the said Governor and Special Council, made and passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, An Ordinance to amend and render perma-* <sup>3 & 4 Vic. c. 9.</sup> *nent the Act therein mentioned, passed to facilitate the ad-*

Other laws inconsistent with this Act.

*ministration of Justice in civil matters, in the Districts of Quebec, Montreal, Three Rivers and St. Francis,—* and so much of any other Act, Ordinance or Law, as may be repugnant to or inconsistent with the provisions of this Act, shall be and are hereby repealed.

Interpretation clause.

LXX. And be it enacted, that the words "Governor of this Province," wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor, or the person authorized to execute the commission of Governor within this Province, for the time being; and that the words "Lower Canada," wherever they occur in the said enactments, are to be understood as meaning and comprehending that part of this Province of Canada which formerly constituted the Province of Lower Canada; and any word or words importing the singular number, or the masculine gender only, shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

After what time this Act shall be in force.

LXXI. And be it enacted, that this Act shall commence and have force and effect upon, from and after, the twenty-first day of April, in the year of our Lord one thousand eight hundred and forty-four, and not before.

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### SCHEDULE A.

Province of Canada,            }  
 District (or Circuit) of        }  
 In the Court of Queen's Bench, Inferior Term.  
 (or

In the Circuit Court.)  
day of

18

A. B. of, &c., Plaintiff.  
and

C. D. of, &c., Defendant.

The plaintiff demands of the defendant the sum of  
currency, due by him to the plaintiff  
for (state sufficiently the cause of action) which said  
sum the defendant refuses to pay. (If the action be to  
recover a thing wrongfully detained, &c. vary the state-  
ment of the cause of action accordingly.) Therefore the  
plaintiff prays judgment.

{ L. S. }

VICTORIA, by the Grace of God, of the United King-  
dom of Great Britain and Ireland, Queen, De-  
fender of the Faith, to C. D. the defendant in the  
foregoing (or annexed) declaration mentioned.

You are hereby required to satisfy the demand of  
A. B. the plaintiff, in his declaration set forth, with  
costs, or to appear in person, or by your Attorney, before  
our said Court of Queen's Bench, sitting in Inferior  
Term, (or before our said Circuit Court) at the Court  
House, at \_\_\_\_\_ in the said District (or Circuit)  
at \_\_\_\_\_ o'clock in the forenoon, on the \_\_\_\_\_ day  
of \_\_\_\_\_ instant, (or next) to answer to the said *de-*  
*mande*; otherwise judgment may be given against you  
by default.

Witness the Honorable J. S. our Chief Justice of  
Lower Canada, (or as the case may be) this  
\_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one  
thousand eight hundred and \_\_\_\_\_ and in the  
\_\_\_\_\_ year of our reign.

P. B. Prothonotary (or Clerk) of the said Court.



ADDITIONAL FEES ON CERTAIN PROCEEDINGS.

On each opposition, <i>a fin de distraire</i> , or <i>a fin d'annuler</i> , intervention or <i>requête civile</i> , not contested.....	1	0	0	0	10	0	0	5	0
On each opposition <i>a fin de conserver</i> .....	1	0	0	0	10	0	0	5	0
On a <i>saisie arrêt</i> after judgment, when there is no contestation.....	0	10	0	0	5	0	0	2	6
On suing out any writ of <i>saisie gagée</i> , <i>saisie revendication</i> , or <i>saisie arrêt</i> , before judgment, or on any special declaration required by the Court.....	0	7	6	0	5	0	0	2	6
For each copy, more than one, of any declaration, petition in intervention, or opposition.....	0	2	6	0	2	0	0	1	3
For each plea in writing ordered by the Court, including copy.....	0	0	0	0	2	6	0	0	0
On each rule to take up the <i>instance</i> or to declare a judgment executory, or for <i>contrainte par corps</i> , or other rule of a like nature when declared absolute—to the Attorney prosecuting the same.....	0	15	0	0	10	0	0	5	0
And when over-ruled to the Attorney resisting the application.....	0	10	0	0	5	0	0	2	6
On a <i>commission rogatoire</i> , and all proceedings relative thereto—to the Attorney suing out the same.....	0	10	0	0	5	0	0	2	6
And to the Attorney of the opposite party.....	0	5	0	0	2	6	0	0	0
To the Attorney employed by either party to attend to the execution of such commission.....	0	10	0	0	10	0	0	10	0
For every copy of a rule or order of Court.....	0	1	0	0	0	0	0	0	0
For suing out any writ of execution.....	0	2	6	0	0	0	0	0	0
For bill of costs and attendance at taxation.....	0	2	6	0	0	0	0	0	0

TO THE CLERK.

For every writ of summons or attachment, ( <i>saisie arrêt</i> , <i>saisie gagée</i> , <i>saisie revendication</i> , or <i>captas</i> ) filing the <i>præcipe</i> , and furnishing a copy of such writ.....	0	3	0	0	2	0	0	1	0
For every original <i>subpoena</i> .....	0	1	0	0	1	0	0	0	6
On the entry of any cause, or the filing of any intervention, <i>requête civile</i> , opposition or incidental <i>demande</i> .....	0	5	0	0	2	6	0	1	3
On the contestation of the same—to be paid by the party contesting it.....	0	5	0	0	2	6	0	1	3
For each <i>commission rogatoire</i> , and the proceedings relative thereto.....	0	2	6	0	2	6	0	1	3
For each rule for <i>faits et articles</i> , <i>serment décisoire</i> , <i>reprise d'instance</i> , or other rule of like nature.....	0	1	0	0	1	0	0	0	6

TABLE OF FEES in the Inferior Terms of the Courts of Queen's Bench, &amp;c.—Continued.

	First Class Actions, £20 or under, but above £10.		Second Class Actions, £10 or under, but above £6. 5.		Third Class Actions, £6. 5. or under.		In every case.
	£	s. d.	£	s. d.	£	s. d.	
For each copy of a <i>subpena</i> or rule, and for each copy more than one of any writ.....	0	0	0	0	0	0	3
For an office copy of any document, including the certificate, per hundred words.....	0	0	0	0	0	0	6
For each appeal bond, and on each evocation, including attendance and the making up and transmission of the record.....	0	10	0	10	0	10	0
For each writ of execution.....	0	2	0	0	0	1	0
For each bill of costs and certificate, if demanded.....	0	1	0	0	0	1	0
On the execution of a <i>commission rogatoire</i> from any other Court.....	0	3	4	0	3	4	0
On the examination and cross examination (if any) of each witness under such <i>commission rogatoire</i> .....	0	2	0	0	0	2	0
For a copy of any judgment, whether interlocutory or final, if demanded.	0	2	0	0	0	1	0
On each appointment of a Tutor or Curator ( <i>acte de tutelle ou de curatelle</i> ) or other appointment of a like nature, and one copy thereof.....	..	..	..	..	..	..	..
On the closing of an inventory, and certificate of the same.....	..	..	..	..	..	..	..
On any <i>insinuation</i> .....	..	..	..	..	..	..	..
And for each one hundred words of the document registered.....	0	10	0	0	0	7	6
Drawing report of distribution.....	0	10	0	0	0	5	0
TO THE CRIER.	0	1	6	0	1	3	0
On every action, opposition or intervention returned into Court.....	0	1	6	0	1	3	0
TO THE TIPSTAFF.	..	..	..	..	..	..	..
On every action, opposition or intervention returned into Court.....	..	..	..	..	..	..	..
TO THE SHERIFF OR BAILIFFS.	..	..	..	..	..	..	..
Mileage on the service or execution of a writ or of process of any kind, at	..	..	..	..	..	..	..
	0	0	0	0	0	0	6

*the rate of six pence per mile—without any further charge for mileage on any other process to be served on the same party then in the hands of the Sheriff or Bailiff, and which shall be or might have been served at the same time, (whether such process shall have been sued out by the same party or by any other) and without any charge for mileage in returning, but exclusive of sums paid at toll gates, ferries or bridges.*

For the service, certificate or return, of such writ or process.....

For the seizure of goods and chattels, and all incidental trouble, but exclusive of *mileage*.....

For his *recors*.....

For the sale of goods and chattels, exclusive of mileage.....

For publishing the notices of the sale.....

For the service of any notice, and the certificate and return.....

If the writ be returnable into the Queen's Bench in Superior Term, the fees to the Sheriff will be the same as if it had issued out of the said Court in Superior Term.

0	1	0	0	1	0	0	1	0
0	7	6	0	5	0	0	3	9
0	1	8	0	1	8	0	1	8
0	7	6	0	5	0	0	3	9
0	1	0	0	1	0	0	1	0
0	1	0	0	1	0	0	1	0



## CAP. XVII.

An Act to establish the District of Gaspé, and to provide for the due administration of Justice therein.

[9th December 1843.]

Preamble.

**W**HEREAS, from the increase of Population and Commerce in the Inferior District of Gaspé, it hath become necessary to make more ample provision for the due administration of Justice therein, to change the system of Judicature heretofore existing there, which has been found by experience to be inadequate to the wants of the inhabitants of that important section of the Province, and to establish therein as nearly as circumstances will allow, the same system of Judicature which is established in other portions of the Province ; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that so much of the Act of the Legislature of Lower Canada, passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, and intituled, "*An Act for the division of the Province of Lower Canada, for amending the Judicature thereof and for repealing certain Laws therein mentioned,*" as constitutes the Inferior District of Gaspé, or provides for the establishment of a Provincial Court therein, or enacts that the said Inferior District, or any part thereof, shall for any purpose whatever form part of the District of Quebec,

Certain parts of the Act of L. C. 34 Geo. 3, c. 6, repealed, and the Provincial Court and Inferior District of Gaspé abolished.

shall be and so much of the said Act is hereby repealed, and the said Provincial Court shall be and is hereby abolished.

II. And be it enacted, that all that part of this Province which heretofore constituted the Inferior District of Gaspé, shall hereafter constitute and be called the "District of Gaspé," and shall be, for all purposes of Judicature whatever, entirely separate and distinct from the District of Quebec, and the said District of Gaspé and the Courts therein to be established shall be in all things in the same relative position with regard to the other Districts of Lower Canada and to the Courts therein, in which each of the said other Districts, and the Courts therein established, is with regard to the other Districts or with regard to the Courts therein established.

District of  
Gaspé consti-  
tuted.

III. And be it enacted, that there shall be appointed, by separate Letters Patent under the Great Seal of this Province, two District Judges in and for the said District of Gaspé, one of whom shall reside at Percé, in the County of Gaspé, and the other at New Carlisle, in the County of Bonaventure, as shall be directed by the Letters Patent appointing them, respectively; and that no person shall be appointed to be such District Judge, unless he shall be at the time of his appointment as aforesaid, an Advocate of five years' standing at the Bar of Lower Canada, or shall have been a Judge of the Provincial Court hereby abolished; and that no such District Judge shall sit or vote in the Executive Council, or in the Legislative Council, or in the Legislative Assembly of this Province, or shall hold any other place of profit under the Crown in this Province, so long as he shall hold the said office of District Judge.

Two District  
Judges to be  
appointed in  
the said Dis-  
trict.

IV. And be it enacted, that in each of the said Counties of Gaspé and Bonaventure, there shall be Courts

Circuit Courts  
established in  
the said Dis-  
trict.

By whom to  
be held.

of Record of Civil Jurisdiction, to be called Circuit Courts, which shall be holden by and before one of the District Judges to be appointed as aforesaid : Provided always, that the Circuit Courts in the County of Gaspé, shall be ordinarily holden by and before the District Judge resident at Percé, and the Circuit Courts in the County of Bonaventure, shall be ordinarily holden by and before the District Judge resident at New Carlisle : but if from illness, necessary absence, interest in a suit or action, recusation, or other cause, either of the said District Judges be unable to hold any Court, hear any cause or perform any duty, required to be holden, heard or performed in the County in which he shall be resident, it shall be the duty of the other Judge, on being informed thereof, to hold such Court, hear and determine such cause, or perform such duty, if it be in his power so to do, without neglecting equally important and urgent duties in the County in which he shall be resident ; nor shall any thing in this Act be construed to prevent either of the said District Judges from exercising or performing within either of the said Counties any power or duty which he could lawfully perform or exercise in the other, and the said District Judges shall mutually assist each other to the best of their ability in the performance of their judicial duties in the said District of Gaspé.

Except as hereinafter excepted, the said Circuit Courts and the Judges and Officers to have the same powers as those in other Districts.

V. And be it enacted, that except in those cases in which it is otherwise provided by this Act, or where it shall be inconsistent with the express enactments thereof, the Circuit Court hereby established, and the Judges and Officers thereof, shall have like jurisdiction, power, authority and duties with the Circuit Courts established by the Act passed during the present Session, and intituled, "*An Act to amend the law relative to the Administration of Justice in Lower Canada,*" and the Judges and Officers thereof respectively, and shall, as shall also the Attornies practising therein, be bound

by the same Rules and Provisions of law; and in all suits and actions, to be brought therein, an appeal shall lie, or such suit or actions may be evoked or removed to or into the Court of Queen's Bench hereinafter established for the said District of Gaspé, in like cases and in the same manner, and subject to the same provisions of law, in and under which appeals lie or suits and actions may be removed from the Circuit Courts in any other District in Lower Canada to the Court of Queen's Bench in and for the same, sitting in superior Term.

VI. Provided always, that the Writs and process issuing out of any Circuit Court hereby established shall be tested in the name of the District Judge by whom such Court is to be ordinarily holden, except where such Judge shall be a party to the suit or action, in which case they shall be tested in the name of the other of the said District Judges; and that every suit or action brought in any such Court in which there shall be an appeal to the said Court of Queen's Bench, or which shall be evoked or removed to the said Court, shall be heard and determined (in appeal or otherwise, as the case may be,) at the sitting of the said Court of Queen's Bench held in the same County, unless by the consent of all the parties, with which consent it may be heard and determined in the other of the said Counties.

Writs and  
process how  
tested.

VII. Provided also, and be it enacted, that the party desirous of appealing from any Judgment of any Circuit Court established by this Act, shall have a delay of thirty days after the rendering of such Judgment, to give the security in Appeal by Law required; that the Petition and notice of Appeal shall and may be served within forty days from the rendering of the Judgment appealed from; and that the said Petition shall and may be presented on any of the first ten juridical

Certain Special  
provisions  
as to appeals  
from the said  
Courts.

days of the sitting of the said Court of Queen's Bench hereby established, at which the Appeal can be heard, next succeeding the rendering of any such Judgment, if there shall be an interval of fifty days between the rendering of such judgment and the last of the said first ten juridical days of the said sitting, and if there shall not be such an interval, then on the first juridical day of the second sitting of the said last mentioned Court of Queen's Bench next succeeding the rendering of such judgment.

Bailiffs in the said District, by whom appointed and their powers. &c.

VIII. Provided also, and be it enacted, that Bailiffs appointed by the said Circuit Courts, or by the said Court of Queen's Bench hereby established, shall have power and authority to act as such within the limits of the said District of Gaspé, for the service and execution of all writs, orders and process issuing as well from the said last mentioned Court of Queen's Bench and the said Circuit Courts, as from all other Courts of Justice in Lower Canada; and such Bailiffs shall be removable by the said last mentioned Court of Queen's Bench, or by any of the said Circuit Courts; and all Bailiffs so appointed shall give security in the manner by Law required with regard to Bailiffs in other Districts, and under like provisions, but the Bond shall be taken before the Clerk or Prothonotary of the Court in which the Bailiff shall be appointed, in whose office it shall remain, and who shall have the same duties with regard to it and to the Bailiff to whom it shall relate, as the Clerk or Prothonotary of any Court of Queen's Bench, in any other District, would by Law have in any case where a Bailiff had given security before him: Provided also, that Bailiffs who before the commencement of this Act, shall have been duly appointed to such office by the Provincial Court hereby abolished, shall have power and authority to act as such for the service and execution of all such writs, orders, and process issuing as aforesaid, during six

Proviso as to those appointed before the commencement of this Act.

months after the commencement of this Act, and no longer.

IX. Provided also, and be it enacted, that each of the Circuit Courts, and the Court of Queen's Bench hereby established, shall have the like power and authority to inquire into the conduct of any Bailiff for the said district of Gaspé, or of any other officer of such Court acting under colour or pretence of the process of such court, who 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, and to punish any misconduct of such Bailiff, or such other officer, and to grant redress to the party aggrieved thereby, as any Court of Queen's Bench has by law to inquire into the conduct of any Bailiff or such other officer of the District in which it is established, and to punish him for misconduct, and to grant redress to the party aggrieved; and if any such Bailiff or such other officer be committed to Goal in consequence of such misconduct, the committal shall be to the Common Gaol of that one of the said counties in which the Court committing him shall be held.

Powers of the Courts in Gaspé as to Bailiffs and other Officers.

X. Provided also, and be it enacted, that so far as it shall be found practicable, and a fit and competent person can be found willing to accept this office, a Bailiff or Bailiffs shall be appointed in each of the Townships or principal settlements in the said District of Gaspé, and it shall be the duty of any party suing out any process either from any Circuit Court or from the Court of Queen's Bench, or of the Sheriff, as the case may be, to cause such process to be served or executed by the Bailiff residing nearest to the place of service or execution.

Bailiffs to be appointed in each settlement, &c.

XI. And be it enacted, that the said Circuit Courts shall be holden every year at the times and places

Terms and local jurisdiction of Circuit Courts.

hereinafter appointed, and the local extent and limits of the jurisdiction of each of the said Courts shall be as follows, that is to say :—

**Percé Circuit.** In the said County of Gaspé, at Percé, in and for the Circuit to be called “ The Percé Circuit,” from the first to the tenth day of each of the months of March and November, both days inclusive ; and the said Circuit shall comprise that part of the said County which extends along the coast of the Gulf of Saint Lawrence, from Whale Head on the South side of the entrance to Gaspé Bay, to Cap D’Espoir, including the settlements of Point St. Peter, Malbay, Percé, Ance à Beaufils, and Ance du Cap :

**Basin Circuit** In the said County of Gaspé, at the Basin of Gaspé, in and for the Circuit to be called “ The Basin Circuit,” from the fifteenth to the twenty fourth day of each of the months of March and November, both days inclusive ; and the said Circuit shall comprise that part of the said County which extends along the coast of the River and Gulf of Saint Lawrence, from Cap Chat to Whale Head aforesaid, including all the settlements on Gaspé Bay and along the said coast within the limits above mentioned :

**Grande Rivière Circuit.** In the said County of Gaspé, at Grande Rivière, in and for the Circuit to be called “ The Grande Rivière Circuit,” from the first to the tenth day of each of the months of April and December, both days inclusive ; and the said Circuit shall comprise that part of the said County, which extends along the coast of the said Gulf of St. Lawrence, from Cap D’Espoir aforesaid westward, to Point Mackerel, at the entrance of the Bay of Chaleurs, including the settlements of Cap D’Espoir, Petite Rivière, Grande Rivière, Pabos and Newport :

In the said County of Gaspé, at Amherst Harbour, Magdalen Islands Circuit. on the principal island of the Magdalen Islands, in and for the Circuit to be called "The Magdalen Islands Circuit," from the first to the tenth day of July, both days inclusive; and the said Circuit shall include all the Islands called the Magdalen Islands, so long as the same shall form part of this Province :

In the said County of Bonaventure, at New Carlisle, New Carlisle Circuit. in and for the Circuit to be called "The New Carlisle Circuit," from the fifteenth to the twenty fourth day of each of the months of May and December, both days inclusive; and the said Circuit shall comprise that part of the said County, which extends along the coast of the said Bay of Chaleurs, from Point Macquerel aforesaid, westward, to the river commonly called and known as the River Capelan, near Black Cape, in New Richmond, including the settlements of Ance aux Gascons, Port Daniel, East Nouvelle Hope, Paspebiac, New Carlisle and Bonaventure :

In the said County of Bonaventure, at Carleton, Carleton Circuit. in and for the Circuit to be called "The Carleton Circuit," from the fifteenth to the twenty fourth day of each of the months of January and July, both days inclusive; and the said Circuit shall comprise that part of the said County which extends westward from the said River Capelan, to the westernmost boundary of the Seigniory of Shoolbred :

In the said County of Bonaventure, or as near as conveniently may be to the place called The Mission, Ristigouche Circuit. at Ristigouche, in and for the Circuit to be called "The Ristigouche Circuit," from the twenty seventh day of January to the fifth day of February, and from the twenty seventh day of July to the fifth day of August, both days inclusive; and the said Circuit shall comprise all the settlements on the North side of the



said River Ristigouche, from the River Escominac upwards, to the westernmost boundary of the said County.

Proviso.  
Return days.  
Persons carrying on business in more than one Circuit.

Three first days to be return days, and Court may be closed by Judge when no business before the same.

Provided always, that the said Circuit Courts shall sit every day during the said terms, Sundays and Holidays always excepted: Provided always that the three first Juridical days only of each Term shall be return days; and at the close of the third juridical day, or at any time thereafter, the Judge may, if there be then no business before the Court, close the sittings thereof, until the then next Term: And provided also, that any person carrying on business as a trader, or as a fisherman, in more than one of the said Circuits, may be sued in the Circuit in which he shall have his domicile, or in any one in which he shall be carrying on business, as aforesaid.

Transmission of Records, &c. of present Courts.

XII. And be it enacted, that the Records, Registers, Documents and Proceedings of and in the Commissioners' Court for the Magdalen Islands, and of the Provincial Court hereby abolished in matters cognizable by the Circuit Courts hereby established, shall forthwith after the commencement of this Act be transmitted to and make part of the Records, Registers, Documents and Proceedings of the Circuit Court, to be held at the place, or within the Circuit in which they shall have been lawfully kept immediately before the commencement of this Act.

Continuation of suits, &c. commenced in present Courts

XIII. And be it enacted, that no Judgment, Order, Rule, or Act of the said Commissioners' Court for the Magdalen Islands, or of the Provincial Court hereby abolished, legally pronounced, had or done in any matter cognizable by the said Circuit Courts before the commencement of this Act, shall be thereby avoided, but shall remain in full force as if this Act had not been passed; nor shall any action, suit, or cause or

proceeding, in any matter cognizable by the said Circuit Courts pending in the said Commissioners' Court for the Magdalen Islands, or in the said Provincial Court, be abated, discontinued or annulled, but the same shall be transferred in their then present condition respectively to, and shall subsist and depend in the Circuit Courts into which the Records, Registers, Documents and Proceedings of the said Commissioners' Court for the Magdalen Islands and the said Provincial Court, respectively, are to be transmitted as aforesaid, and other and further proceedings shall be thereon had in the said Circuit Courts, respectively, to judgment and execution and as to all matters and proceedings consequent upon such judgment and execution, as if such suit or action, cause or proceeding had been originally commenced or instituted in such Circuit Courts.

XIV. And be it enacted, that there shall be and is hereby established, in and for the said District of Gaspé, a Superior Court of Record of Civil and Criminal Jurisdiction, to be called the Court of Queen's Bench, (or of King's Bench, as the case may be,) for the District of Gaspé, which Court shall be held by any one or more of the Justices of the Court of Queen's Bench for the District of Quebec, or the Resident Judge of the District of Three Rivers, and the said two District Judges to be appointed under the authority of this Act for the said District of Gaspé, or by any two of them; one of whom always to be one of the Justices of the said Court of Queen's Bench for the District of Quebec, or resident Judge of the District of Three Rivers, and each of the said District Judges shall be to all intents and purposes whatever, a Justice of the said Court of Queen's Bench, saving only that he shall always yield precedence therein to any Justice of any other Court of Queen's Bench, and that he shall not be a Justice of the Court of Appeals for Lower Canada, or entitled to sit in the said Court: And provided always,

Court of Queen's Bench established in Gaspé: how constituted.

Writs and  
process, how  
tested.

that all writs and process to be issued out of the said Court of Queen's Bench for the District of Gaspé, shall be tested in the name of the Chief Justice, or in his absence from the Province, of the senior Puisné Justice of the Court of Queen's Bench for the District of Quebec, then within the Province, as one of the Justices of the said Court of Queen's Bench for the District of Gaspé.

Except as  
hereinafter ex-  
cepted, the said  
Court to have  
the same pow-  
ers as the  
Courts of  
Queen's Bench  
in other Dis-  
tricts.

XV. And be it enacted, that except in those cases in which it is otherwise provided by this Act, or where it shall be inconsistent with the express enactments thereof, the Court of Queen's Bench hereby established, and the Justices and Officers thereof, shall have like jurisdiction, powers, authority and duties with the other Courts of Queen's Bench established in Lower Canada and having jurisdiction in Criminal as well as in Civil matters, and the Justices and Officers thereof respectively, and shall, as shall also the Attornies practising therein, be bound by the same rules and provisions of Law ; and in all suits or actions to be brought in or removed into the Court of Queen's Bench for the District of Gaspé, an appeal shall lie from the judgment of the said Court to the said Court of Appeals for Lower Canada in like cases, and under and subject to the same provisions of Law, in and under which an appeal would lie from the Judgment of any other Court of Queen's Bench in Lower Canada, in suits or actions brought in or removed into such last mentioned Court : Provided always, that there shall be no Inferior Term of the said Court of Queen's Bench for the District of Gaspé.

Appcals.

Terms of the  
said Court.  
Court at such  
Terms to have  
cognizance of  
civil and cri-  
minal cases.

XVI. And be it enacted, that the said Court of Queen's Bench for the District of Gaspé shall sit in each year at the times and places hereinafter mentioned, that is to say:—at Percé aforesaid, from the twenty-first to the thirtieth day of August, both days inclusive ; and at

New Carlisle aforesaid, from the fourth to the thirteenth day of September, both days inclusive, Sundays and Holidays always excepted; and the sittings of the Court in the said two places shall be held to constitute but one Term, each and every juridical day during which shall be a Return day for all suits and process returnable into the said Court; and in the said Term the Court may take cognizance of all crimes and criminal offences, and of all suits or actions of a civil nature or where the Crown may be a party, cognizable by the Courts of Queen's Bench for Lower Canada in Superior Term, giving precedence to any cases of a criminal nature, on the days (if any) appointed as hereinafter provided for hearing, trying or disposing of such cases.

XVII. Provided always, and be it enacted, that whenever any offence shall be committed in the said District of Gaspé, the offender, if committed to Gaol before trial, may be committed to the common Gaol of the County in which the offence shall have been committed, or may in Law be deemed to have been committed, and if tried before the Court of Queen's Bench for the said District, shall be so tried at the sitting of such Court held in the County to the Gaol of which he shall have been committed, and if imprisoned in the common Gaol after trial, shall be so imprisoned in the common Gaol of the County in which he shall have been tried.

Proviso as to offences committed in either County in the said District.

XVIII. And to exempt, as far as may be consistent with the due administration of Justice and the well being of the District, the inhabitants thereof from attending, unless in cases of necessity, the Criminal Sittings of the said Court of Queen's Bench as Jurors, by which considerable loss of time and expense are incurred, frequently to the serious inconvenience of individuals, as well as to avoid the expense of summoning at the public charge Grand and Petty Jurors, when

Preamble.

Grand and  
Petty Jurors  
not to be sum-  
moned unless  
there be crimi-  
nal business  
before the  
Court.

there may be no business of urgency requiring the attendance of such at the sittings of the said Court of Queen's Bench at Percé or at New Carlisle; Be it enacted, that if during the sitting of the said Court at either of the places aforesaid, there shall be any criminal matters requiring despatch, it shall be lawful for the said Court to fix such day or days in the course of the sitting thereat as may best suit the public convenience for the hearing, trial and disposal of such criminal matters, and to issue the necessary precept addressed to the Sheriff for summoning Grand and Petty Jurors, but that without such special order of the Court, no precept shall issue for summoning Jurors to attend any criminal sitting of the said Court; and in case of the issuing of any such precept, it shall be the duty of the Sheriff of the District of Gaspé to be appointed in pursuance of this Act, to cause such precept to be executed with all possible despatch, and with as little expense as possible to the Province for mileage or other incidental charges arising therefrom.

In civil cases,  
persons not to  
be summoned  
to appear as  
witnesses out  
of the County  
in which they  
reside.

**XIX.** Provided always, and be it enacted, that in civil cases no person residing in the County of Gaspé shall be liable to be summoned thence as a witness before the said Court of Queen's Bench when sitting in the County of Bonaventure, nor *vice versa* shall any person residing in the County of Bonaventure be liable to be summoned before the said Court when sitting in the County of Gaspé: Provided always, that nothing herein contained shall exonerate any person being a non-resident in the County in which the said Court may be sitting or to sit, from appearing and giving evidence as a witness before the said Court, if duly served with a Subpœna or order of the Court to that effect, within such County, during the sitting of the Court or within three days next before such sitting.

Proviso.

Joint Clerk

**XX.** And be it enacted, that for the convenience of

the inhabitants of the District of Gaspé, it shall be lawful for the Governor of this Province to appoint, during pleasure, two fit and proper persons of competent ability and experience in the practice of the Courts of Civil and Criminal Jurisdiction in Lower Canada, to be joint Clerks of the Crown and Prothonotaries of the said Court of Queen's Bench for the District of Gaspé, one of whom shall reside at Percé aforesaid, and shall keep his office open at the Court House thereat from ten in the forenoon, until three in the afternoon, daily, throughout the year, (Sundays and Holidays always excepted,) and the other shall reside at New Carlisle, and shall in like manner keep his office open at the Court House thereat, daily, throughout the year, (with the exceptions aforesaid,) during the hours above mentioned: Proviso. Provided always, that the said Court shall have power, and the same is hereby authorized, when and so often as the Justices thereof shall see fit, to alter the said office hours and to fix in their stead such others as in their discretion they shall deem expedient, having always a due regard to the public convenience.

**XXI.** And be it enacted, that the records and papers in all suits or actions real, personal or mixed, before the said Court of Queen's Bench, in which the cause of action shall have arisen in the County of Gaspé, shall be kept in the office of the joint Prothonotary of the said Court at Percé, and the records and papers in all such suits or actions in which the cause of action shall have arisen in the County of Bonaventure, shall be kept in the office of the joint Prothonotary of the said Court at New Carlisle; and in cases where the cause of action may not have arisen within the District of Gaspé, the records and papers shall be kept in the office of the joint Prothonotary in the County (of Gaspé or Bonaventure, as the case may be,) wherein the defendant shall reside, and if he be a non-resident in the said District, then in the office from which the first writ or

and Prothonotary of the said Court to be appointed.

Proviso.

Records of the Court of Queen's Bench where to be kept.

Proviso.

process in such suit or action shall have issued: Provided always, that in all cases any records or papers or documents filed in the said Court, may be kept in or removed into either of the said offices in or into which the Justices of the said Court shall direct them to be kept or removed.

Duplicate Registers and Plumitifs to be kept.

XXII. And be it enacted, that duplicate Registers and *Plumitifs* of all proceedings before the said Court of Queen's Bench, in civil cases, shall be kept by the joint Prothonotaries thereof, in like manner and form as Registers and *Plumitifs* are kept in like cases by the Prothonotary of the Court of Queen's Bench for the District of Quebec, to the end that in each of the said offices at Percé and New Carlisle, one set of the said Registers and *Plumitifs* may be found and access thereunto had, free of expense, by all persons desirous of consulting the same.

Transmission of certain Records.

XXIII. And be it enacted, that all records or papers relating to or affecting any real or immoveable property situate in the said County of Gaspé, which now are filed and of record at New Carlisle, in the office of the Clerk or Prothonotary thereat of the Provincial Court hereby abolished, shall forthwith after the commencement of this Act, be transferred to the office of the joint Prothonotary of the said Court of Queen's Bench to be kept at Percé, and shall there be kept and remain as part of the records and remembrances of the said office; except always the Registers in the said office at New Carlisle, known as "The Registers of Gaspé Land Claims," which shall be kept and remain in the office of the joint Prothonotary of the said Court of Queen's Bench, to be kept at New Carlisle; but it shall be the duty of the joint Prothonotaries aforesaid to cause, in the course of two years next after their appointment to office, an exact transcript or copy of all and every the entries and writings in the said Registers,

Exception as to certain Registers of Land Claims, of which copies shall be made.

to be made in books or Registers similar to the same, well bound for the purpose, and such transcript or copy being by the said joint Prothonotaries certified as such, by an entry to be by them expressly made therefor, on the first, second or third leaf at the beginning of each of the said books or Registers containing such transcript or copy, shall thereafter be deemed authentic, and as such shall be transferred to the office of the said joint Prothonotaries to be kept at Percé, and shall there be kept and remain as part of the records and remembrances of the said office at Percé, to the end that all whom it may concern may have free access thereto at all times without being subject to any fee or charge therefor, and that a copy or copies certified by the said joint Prothonotaries, (and for which they shall be entitled to receive at the rate of six pence per hundred words, and no more,) of any claim, adjudication, or entry in writing, in either of the said Registers shall be deemed authentic, and as such shall be taken and admitted in all Courts of Law in Lower Canada.

**XXIV.** And be it enacted, that the Registers, Records, Documents and Proceedings of and in the Provincial Court hereby abolished in matters cognizable by the said Court of Queen's Bench, shall forthwith, after the commencement of this Act, be transmitted into and make part of the Records, Registers, Documents and Proceedings of the said last named Court, to be kept at the office of the joint Prothonotaries thereof, in the County in which they shall be immediately before the commencement of this Act; subject always to be removed on the order of the Justices of the said Court.

Transmission of Records of Provincial Court in cases cognizable in the Queen's Bench.

**XXV.** And be it enacted, that no such judgment, order, rule or act of the said Provincial Court, legally pronounced, had or done before the commencement of this Act, shall be hereby avoided, but shall remain in full force as if this Act had not been passed; nor shall

Continuance of suits commenced in the Provincial Court.



any such action, suit, cause or proceeding depending in the said Provincial Court be abated, discontinued or annulled, but the same shall be transferred in their then present condition, respectively, and shall subsist and depend in the said Court of Queen's Bench, and other and further proceedings shall be thereon had in the said Court to judgment and execution, and as to all matters and proceedings consequent on such judgment and execution, as if such suit or action, had been originally commenced or instituted in the said Court.

Sheriff to be appointed for the District of Gaspé.

**XXVI.** And be it enacted, that so soon as may be practicable after the commencement of this Act, it shall be lawful for the Governor of this Province to appoint a fit and proper person of competent ability and integrity to be Sheriff of the said District of Gaspé who shall, before entering upon the duties of his office, give security in the manner by Law provided with regard to other Sheriffs in Lower Canada, to the amount of fifteen hundred pounds, currency.

Sheriffs' Sales of real property, how made in the said District.

**XXVII.** Provided always, and be it enacted, that from and after the commencement of this Act, all sales of real or immoveable property of whatsoever description, to be made in the said District of Gaspé by the Sheriff thereof, under any judgment, writ of execution, or order of Court, shall be made in the Township, Settlement or place where the property for sale is situate, and on the spot if practicable, or otherwise at the most public place nearest thereto, in the Township, Settlement or place within which the property for sale is situate, and of which most public place it shall be the duty of the Sheriff to give particular notice in his official publication of the sale, in addition to the other notices which by law he shall be bound to give in such publication.

Court of

**XXVIII.** And be it enacted, that nothing in this

Act contained shall prevent the Court of Queen's Bench for the District of Quebec, from continuing and finally determining and completing any suit or action, matter or proceeding pending in the said Court at the commencement of this Act, although the same, if begun or instituted after the commencement of this Act, would be cognizable by and within the jurisdiction of the Court of Queen's Bench for the said District of Gaspé.

Queen's Bench at Quebec to complete cases from Gaspé now pending before it.

XXIX. And be it enacted, that instead of the terms heretofore by law fixed for holding the General Sessions of the Peace in the Inferior District of Gaspé, which Terms are hereby discontinued, General Sessions of the Peace shall be held in each year in and for each of the said Counties of Gaspé and Bonaventure by any three Justices of the Peace, (one of whom shall be of the Quorum,) residing in such County, at the following times and places only, that is to say:—In and for the said County of Gaspé, at Percé, and at the Basin of Gaspé, during the three days immediately succeeding the sittings of the Circuit Court at the said places, respectively; and in and for the County of Bonaventure, at New Carlisle, and Carleton, during the three days immediately succeeding the sittings of the Circuit Court, at the said places, respectively; and the Commissioner of Bankrupts in the said Counties, respectively, shall be *ex officio* a Justice of the Peace for the County in which he shall reside, and it shall be his duty to act as Chairman of the General Sessions of the Peace therein: Provided always, that in case of his absence from illness or other cause, the Court, if otherwise legally constituted, shall not by reason of such absence become incompetent for the despatch of business: And provided also, that no property qualification shall be necessary to enable any such Commissioner of Bankrupts legally to act as a Justice of the Peace; any thing in the Act of the Legislature of this Province, passed in

New Terms of the General Sessions of the Peace in the said District appointed.

Commissioner of Bankrupts to be Chairman of such Sessions.

the sixth year of Her Majesty's Reign, and intituled, *An Act for the qualification of Justices of the Peace*, to the contrary notwithstanding.

Acts repealed.

- XXX. And be it enacted, that from and after the commencement of this Act, the Act of the Legislature of Lower Canada, passed in the second year of the Reign of His late Majesty King George the Fourth, and intituled, *An Act to extend the provisions of a certain Act therein mentioned, as far as the same relates to the Judicature in the Inferior District of Gaspé, and more effectually to provide for the due administration of Justice in the said District*,—and the Act of the said Legislature passed in the fourth year of the Reign last aforesaid, and intituled, *An Act to amend a certain Act therein mentioned, and further to extend the jurisdiction of the Provincial Court for the Inferior District of Gaspé*,—and the Act of the said Legislature, passed in the sixth year of the Reign last aforesaid, and intituled, *An Act to amend and continue for a limited time two certain Acts therein mentioned, relating to the Judicature in the Inferior District of Gaspé*,—and the Act of said the Legislature, passed in the second year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to continue and amend certain Acts relating to the Judicature of the Inferior District of Gaspé*,—and the Ordinance of the Governor and Special Council for the affairs of Lower Canada, passed in the Session held in the third year of Her Majesty's Reign, and intituled, *An Ordinance to render permanent certain Acts therein mentioned, relating to the administration of Justice in the Inferior District of Gaspé*,—and the Act of the Legislature of this Province, passed in the session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to provide temporarily for the administration of Justice in the Magdalen Islands in the Gulf of St. Lawrence*, shall be, and the said Acts and Ordinances, and all other Acts, Ordinances or Provisions of
- 2 G. 4. c. 5.
- 4 G. 4. c. 7.
- 6 G. 4. c. 25.
- 2 W. 4. c. 50.
- 3 & 4 V. c. 4.
- 4 & 5 V. c. 22.

Law inconsistent with or repugnant to this Act, or any provision or enactment thereof, are hereby repealed, but all Acts, Ordinances or Provisions of Law thereby repealed shall nevertheless remain repealed.

XXXI. And be it enacted, that the words "Governor of this Province," wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor or the Person authorized to execute the Commission of Governor within this Province for the time being; and that the words "Lower Canada," wherever they occur in the said enactments, are to be understood as meaning and comprehending that part of this Province of Canada which formerly constituted the Province of Lower Canada; and any word or words importing the singular number or the masculine gender only, shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Interpretation  
clause.

XXXII. And be it enacted, that this Act shall commence and have force and effect upon, from and after the twenty-first day of April, in the year of our Lord, one thousand eight hundred and forty-four, and not before.

Commence-  
ment of this  
Act.

## C A P XVIII.

An Act for the establishment of a better Court  
of Appeals in Lower Canada.

[9th December, 1843.]

Preamble.

**W**HEREAS the Provincial Court of Appeals now existing in Lower Canada, has been found by experience to be altogether insufficient and inadequate for the due administration of Justice; Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament united Kingdom of Great Britain and Ireland, and intituled, *An Act to re-Unite the Provinces of Upper and Lower Canada and for the Government of Canada*, and it is hereby enacted by the authority of the same, that so much of an Act of the Legislature of Lower Canada, passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, intituled, *An Act for the Division of the Province of Lower Canada, for amending the Judicature thereof, and for repealing certain laws therein mentioned*, as in any manner relates to the establishment and constitution of the said Provincial Court of Appeals in Lower Canada, shall be, and the same is hereby repealed, and the said Provincial Court of Appeals shall be and the same is hereby abolished.

Part of the  
Act of L. C.  
34 G. 3. c. 6  
repealed.

Court of  
Appeals estab-  
lished

II. And be it enacted, that there shall be established in Lower Canada, a Court of Record to be called "The Court of Appeals for Lower Canada"; and the said Court shall consist of all the Justices of the several Courts of Queen's Bench in Lower Canada.

III. And be it enacted, that the Court of Appeals hereby established, and the Justices thereof, shall have, hold and exercise an Appellate Civil Jurisdiction, and also the Jurisdiction of a Court of Error, within and throughout Lower Canada, with full power and authority to take cognizance of, hear, try and determine in due course of Law, all causes, matters and things appealed and to be appealed, removed and to be removed by Writ of Error from all and every the Courts and jurisdictions wherefrom an Appeal or Writ of Error by law lies or is allowed, or hereafter may by law lie or be allowed.

Appellate jurisdiction of the Court.

IV. And be it enacted, that all and every the powers, authorities and jurisdiction which by law are required to be exercised, and may or might be exercised by and are vested in the Provincial Court of Appeals hereby abolished, and by or in the several Judges or Members thereof, or any of them, as well in Court as out of Court, in Term as out of Term, or in Vacation, shall, in so far as the same may not be inconsistent with the other provisions of this Act, become and be vested in the Court of Appeals hereby established, and shall and may be as effectually exercised by the said last mentioned Court of Appeals and the Justices thereof, severally and respectively, in Court or out of Court, in Term or out of Term, or in Vacation, as the same might have been exercised and enjoyed by the Provincial Court of Appeals hereby abolished, and the several Judges or Members thereof, or any of them, in Court or out of Court, in Term or out of Term, or in Vacation, if this Act had not been passed.

Powers of the former Court of Appeals transferred to the Court hereby established, where not inconsistent with this Act.

V. And be it enacted, that in the Court of Appeals hereby established, the Chief Justice of Lower Canada, or in his absence, or in the case of vacancy of his office, the Chief Justice for the District of Montreal or for the District of Quebec, as the case may be, or in the ab-

Order of precedence among the Justices of the Court.

sence of both the said Chief Justices, or in case of vacancy of their offices, respectively, the senior of the other Justices present shall preside; and when both the said Chief Justices shall happen to be sitting together in the said Court, the Chief Justice of Lower Canada shall have precedence.

Terms of the Court

VI. And be it enacted, that three Terms of the Court of Appeals hereby established shall be holden in every year by the Justices thereof, in which Terms any four of the said Justices shall form a Quorum, and may hold the Court and exercise the powers and authority thereof; and that the said Terms shall be so holden alternately in the Cities of Quebec and Montreal, during the following periods, that is to say: from the first to the tenth day of each of the months of March, July and November, both days inclusive: Provided always, that the first Term of the said Court shall be held in the City of Quebec.

Quorum.

Proviso.

Justices of the Court appealed from not to sit in Appeal.

VII. And be it enacted, that in any case brought before the Court of Appeals hereby established, the Justices of the Court appealed from shall not sit and act in the said Court of Appeals, whether such Justices shall in the Court below have concurred in or dissented from the Judgment appealed from, or shall have been absent at the rendering thereof: Provided always, that any Judgment or Order concurred in by any Majority of the Justices present at any sitting of the said Court of Appeals, shall have the same force and effect as if concurred in by all the Justices present: And provided also, that the judgment appealed from shall stand and be affirmed in all cases where the Justices present at any sitting of the said Court of Appeals shall be equally divided on the question whether such judgment shall be affirmed or not.

Proviso:— a judgment concurred in by a majority of the Justices present to be binding.

Judgment appealed from, to be affirmed when the Court is equally divided.

Clerk to be appointed.

VIII. And be it enacted, that it shall be lawful for

the Governor of this Province to appoint, from time to time, a Clerk of the Court of Appeals hereby established; and the said Clerk shall reside either in the City of Quebec, or in the City of Montreal, and shall, by an instrument under his hand and seal, appoint a Deputy who shall reside in that one of the said Cities in which the said Clerk shall not have his domicile; and such Deputy is hereby authorized to perform the duties of the Clerk of the Court of Appeals, and shall continue to perform the said duties as acting Clerk of the said Court of Appeals, in case of the death, dismissal, suspension from office, or resignation of the said Clerk, until the appointment of his Successor in the said office; and the instrument by which such Deputy Clerk shall have been appointed, shall be entered at full length in the Register of the Court: Provided always, that it shall be lawful for the said Clerk, at all times, to remove such Deputy, and to appoint another in his place.

To have a Deputy.

Deputy's powers.

Proviso.

IX. And be it enacted, that no Clerk or Deputy Clerk of the said Court of Appeals, shall during his continuance in office, or while he shall be such Deputy, practise as an Advocate, Proctor, Solicitor, Attorney or Counsel in any Court of Law in Lower Canada.

Clerk or his Deputy not to practise as Attorney, &c.

X. And be it enacted, that all Writs and Process to be issued from and out of the said Court of Appeals hereby established, shall run and be in the name and style of Her Majesty, Her Heirs and Successors, and shall be sealed with the seal of the said Court; and shall be tested in the name of that one of the Justices of the said Court present in Lower Canada, who for the time being, shall be entitled to precedence over the other Justices thereof, and shall be signed by the said Clerk or his Deputy, whose duty it shall be to prepare and make out the same; and every such Writ or Process shall be in both the English and the French language

Style of Writs and Process.

To be in both languages.



any law, usage or custom to the contrary notwithstanding.

Case of re-  
cusation, or  
disqualifica-  
tion of Justices  
provided for.

XI. And be it enacted, that whenever any number of the Justices of the said Court of Appeals hereby established shall be lawfully recused, or disqualified or rendered incompetent, either by reason of interest or otherwise, to sit in the said Court of Appeals, in any cause cognizable thereby, so as to leave the said Court without a Quorum to take cognizance of the same, it shall be the duty of the Clerk of the Court, when duly required so to do in writing by any of the parties, to report the fact to the Governor of this Province, and such report shall be signed by him and sealed with the seal of the said Court; and it shall then be lawful for the Governor of this Province, by an instrument under his hand and seal to appoint *ad hoc* a like number of Members of the Bar of Lower Canada, to sit in the said Court of Appeals, in the place and stead of the Justices so recused, or disqualified or rendered incompetent, for the purpose of hearing and determining such cause as aforesaid; and the persons so appointed to act as Justices *ad hoc*, shall, when acting as such, have the same powers and authority in and with respect to the said cause as the Justices so recused, disqualified or rendered incompetent would otherwise have had: Provided always, that the persons so appointed shall be of at least eight years' standing at the Bar of Lower Canada.

Justices *ad hoc* to be appointed.

Proviso.

Certain Laws extended to the Court of Appeals.

XII. And be it enacted, that all and every the Laws of Lower Canada, which immediately before the period hereinafter appointed for the commencement of this Act, shall be in force to govern and direct the proceedings and practice of the Provincial Court of Appeals hereby abolished, and which are not repealed or varied by this Act, or inconsistent with the provisions thereof, shall continue to be in force and be observed

in and by the Court of Appeals hereby established, in the same manner as they would have been observed in the Provincial Court of Appeals hereby abolished, if this Act had not been passed.

XIII. And be it enacted, that it shall be the duty of the Court of Appeals hereby established, within twelve months after the commencement of this Act, to make and establish, as well for the said Court of Appeals as for the several Courts of Queen's Bench in Lower Canada, in the Superior Terms thereof, a Tariff of Fees for the Officers of the said Courts, respectively, and the Attornies practising therein, and also such Rules of Practice as may be necessary in civil matters, touching the service of Process, the execution and return of Writs, proceedings for bringing causes to issue and judgment as well those to be had in Court as out of Court, in term as out of term and in vacation, and other matters of proceeding and regulations touching the conduct of the business before the said Courts respectively; which Tariff of Fees and rules of practice, the said Court of Appeals shall have power and authority to repeal, alter and amend from time to time: Provided always, that no rule of practice so to be made and established by the said Court of Appeals, shall be contrary to, or inconsistent with this Act, or any other Act or Law in force in Lower Canada; otherwise the same shall be null and void: And provided also, that until such Tariff of Fees and rules of practice shall be made and duly established by the said Court of Appeals as aforesaid, for the said Court and for the said Courts of Queen's Bench, respectively, the Tariff of Fees and rules of practice in force with regard to the Provincial Court of Appeals hereby abolished, immediately before the commencement of this Act, shall be in force with regard to the Court of Appeals hereby established, and the Tariff of Fees and rules of practice in force at the time last mentioned with regard to

Court of Appeals to make Tariff of Fees and Rules of Practice for the said Court, and for the Courts of Q. B. in Superior Term.

Proviso.

Proviso.

What Tariffs and Rules of Practice shall be in force until others shall be made by the Court of Appeals.

the several Courts of King's Bench (hereafter to be in certain cases called Courts of Queen's Bench) in Lower Canada, shall continue to be in force with regard to the said Courts, respectively ; subject however to such amendments as may be made therein by the said Courts of Queen's Bench, respectively, until a Tariff of Fees and rules of practice shall have been made for the said Courts of Queen's Bench respectively, by the said Court of Appeals : Provided always, that nothing herein contained shall be held to continue in force or to render valid any part of the said rules of practice which may be contrary to or inconsistent with this Act, or any Act or Law in force in Lower Canada.

Proviso.

Part of the Act of L. C. 41 G. 3, c. 7, to be repealed, after a certain period.

XIV. And be it enacted, that so much of the Act of the Legislature of Lower Canada, passed in the forty-first year of the Reign of His late Majesty King George the Third, intituled, *An Act to amend certain forms of proceeding in the Courts of Civil Jurisdiction in this Province, and to facilitate the Administration of Justice*, or of any other Act or Law, as empowers any Court of King's Bench, (or Queen's Bench) to establish orders and rules of practice touching the service of Process, the execution and returns of Writs, or proceedings for bringing causes to issue, and other matters of regulation within the said Courts, for or with regard to the Superior Terms of the said Courts, shall be and is hereby repealed from and after the expiration of one year from the commencement of this Act.

Judgments of the Court to be motives.

XV. And be it enacted, that all final judgments rendered by the said Court of Appeals hereby established, shall contain a summary statement of the points of Fact and Law, and the reasons upon which such judgment shall be founded, and the names of the Justices who shall have concurred therein or entered their dissent therefrom.

XVI. And whereas it is necessary to provide for the performance of the duties of the Justices of the several Courts of Queen's Bench in Lower Canada, during the Terms of the Court of Appeals hereby established, and during a certain time before and after: Be it therefore enacted, that the Circuit Judges in and for either of the Districts of Quebec and Montreal, and the Commissioners of Bankrupts resident in the Districts of Three Rivers and St. Francis, respectively, shall, during any Term of the Court of Appeals, and during the four days next before the first day, and during the four days next after the last day of such Term, have and exercise, in such Districts, respectively, the same powers and authority as if they were appointed, for the period aforesaid, Assistant Judges of the Court of Queen's Bench in and for such Districts, respectively; excepting always the power of sitting in the said Court of Appeals.

Provision for the performance of the duties of the Justices during their attendance at the Court of Appeals.

XVII. And be it enacted, that an Appeal shall lie from the judgments of the Court of Appeals hereby established, to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, in that part of the United Kingdom of Great Britain and Ireland called England, in all, each and every of the cases in and with respect to which an Appeal, immediately before the commencement of this Act, would lie from the judgments of the Provincial Court of Appeals hereby abolished, to Her Majesty in Her Privy Council, upon the terms and conditions, and in the manner and form, and under and subject to the restrictions, rules and regulations established with regard to Appeals from the said Provincial Court of Appeals to Her Majesty in Her Privy Council.

Appeals to Her Majesty in Privy Council.

XVIII. And be it enacted, that all and every the Records, Registers, Documents and proceedings of the Provincial Court of Appeals hereby abolished, shall

Transfer of Records, &c. of the Provincial Court of

Appeals abolished by this Act.

forthwith after the commencement of this Act, be transmitted into and make part of the Records, Registers, Documents and proceedings of the Court of Appeals hereby established.

Proceedings in the Provincial Court of Appeals, to be continued in the Court hereby established.

XIX. And be it enacted, that no judgment, order, rule, or act of the Provincial Court of Appeals hereby abolished, legally pronounced, given, had or done before the commencement, of this Act, shall be hereby avoided, but shall remain in full force and virtue, as if this Act had not been passed ; nor shall any Cause, Appeal, Writ of Error, or proceeding, depending in the said Provincial Court of Appeals be abated, discontinued, or annulled, but the same shall in their then present condition, be respectively transferred to, and subsist and depend in the Court of Appeals hereby established, to all intents and purposes, as if they had been respectively commenced, brought or recorded in the said last mentioned Court ; and the said last mentioned Court shall have full power and authority to proceed accordingly in and upon all such Causes, Appeals, Writs of Error and proceedings, to judgment and execution, and to make such rules and orders respecting the same, as the Provincial Court of Appeals hereby abolished might have made, or as the said Court of Appeals hereby established is hereby empowered to make in Causes, Appeals, Writs of Error and proceedings commenced in, or depending before the said last mentioned Court.

Returns of Writs, &c., issued out of the Provincial Court of Appeals.

XX. And be it enacted, that every Writ or Process which shall have been made returnable into the Provincial Court of Appeals hereby abolished, on any day subsequent to the commencement of this Act, shall be returnable into the Court of Appeals hereby established, and shall be held and considered to be returnable on the first day of the Term of the said last mentioned Court, next following the day on which such Writ or Process shall have been made returnable.

XXI. And be it enacted, that so much of any Act, Ordinance or Law, as shall be repugnant to or inconsistent with this Act, shall be and is hereby repealed. Laws inconsistent with this Act repealed.

XXII. And be it enacted, that the words, "Governor of this Province" wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor or the Person authorized to execute the commission of Governor within this Province, for the time being; and that the words, "Lower Canada" wherever they occur in the said enactments, are to be understood as meaning and comprehending that part of this Province of Canada, which formerly constituted the Province of Lower Canada; and any word or words importing the singular number only, shall be understood to include several matters of the same kind as well as one matter, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction. Interpretation clause.

XXIII. And be it enacted, that the foregoing enactments of this Act shall commence and have force and effect upon, from and after the twenty first day of April, one thousand eight hundred and forty four, and not before. At what time this Act shall come into force.

### C A P XIX.

## An Act to provide for the Summary Trial of Small Causes in Lower Canada.

[9th December, 1843.]

**W**HEREAS experience hath shown, that an easy and expeditious mode of recovering petty debts, and deciding causes where the matter in dispute is of small value, in Lower Canada, is materially be- Precedent.

On Petition of the Inhabitants, Commissioners' Courts may be established in certain places.

Proviso.

Proviso—Certain persons not to be Commissioners.

Circuit Judges to be Commissioners *ex officio* in Quebec and Montreal.

neficial to the Inhabitants of that portion of this Province; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that whenever a petition praying for the establishment of a Commissioners' Court, for the purposes hereinafter mentioned, shall have been presented by at least one hundred proprietors of lands or tenements in any Parish, Township or extra-Parochial place in Lower Canada, to the Governor of this Province, it shall be lawful for him to appoint one or more persons resident in such Parish, Township or extra-Parochial place, to be Commissioner or Commissioners in and for the same, and to hold the Commissioners' Court therein, for the purposes of this Act: Provided always, that no appointment of a Commissioner or Commissioners shall be made upon such Petition, unless it shall be certified thereupon to the Governor, by three of the principal Inhabitants of such Parish, Township or extra-Parochial place, that the persons whose names are thereunto subscribed, are really inhabitants of such Parish, Township or extra-Parochial place, and proprietors of lands and tenements therein: And provided also, that no Bailiff, Serjeant of Militia, Tavern-keeper or person keeping a house of public entertainment, shall be appointed, or shall act as a Commissioner, for the purposes of this Act.

II. Provided always, and be it enacted, that in and for the Cities and Parishes of Quebec and Montreal, the Circuit Judges hereafter to be appointed in and for the Districts of the same names, respectively, under a

certain Act passed during the present Session, shall be *ex officio* Commissioners for the purposes of this Act, and shall hold the Commissioners' Courts in and for the places aforesaid, respectively: **Provided** a petition, as hereinbefore required, be presented, and no other Commissioners shall at any time be appointed in and for the same: **Provided also**, that by the City and Parish of Quebec, the Parish of St. Roch shall be understood to be intended and included for all the purposes of this Act.

III. And be it enacted, that each of the Commissioners' Courts aforesaid, shall have power to hear, try and determine, in a summary way, according to the rights of the parties, and to equity, and good conscience, and to the best of the knowledge and judgment of the Commissioner or Commissioners by whom they shall be held, all suits and actions, (with the exceptions hereinafter made) purely personal or relating solely to moveable property, wherein the sum or the value of the thing demanded shall not exceed six pounds five shillings, currency, and the Defendant or Defendants shall be resident within the Parish, Township or extra-Parochial place, in and for which the Commissioner or Commissioners shall have been appointed.

Amount of Jurisdiction of the Commissioners' Courts, and class of cases therein cognizable.

IV. **Provided always**, and be it enacted, that the Jurisdiction of the Commissioners' Courts established under this Act shall not extend to actions for Slander, or for Assault or Battery, nor to such as shall relate to Paternity, or to the Civil Estate of persons in general, or for Seduction, or Lying-in expenses, or for any Fine or Penalty whatever.

Exceptions.

V. And be it enacted, that any person under the age of twenty-one years, but above the age of fourteen years, may prosecute a suit in any Commissioners' Court held under this Act, for any sum of money not exceeding six

Persons under 21 but over 14 years, may sue for wages.



pounds five shillings, currency, due to him for wages, in the same manner as if he were of full age ; any law to the contrary notwithstanding.

Oral testimony  
receivable tho'  
the amount in  
dispute exceed  
100 livres.

VI. And be it enacted, that in matters cognizable in the said Commissioners' Courts, proof by oral testimony shall be receivable and sufficient in all cases wherein, before the passing of this Act, it would have been receivable and sufficient, if the sum or the value of the thing in dispute had been of less than one hundred livres, *ancien cours* ; and any law heretofore in force in Lower Canada, requiring proof in writing, or a commencement of proof in writing, in such cases, is hereby repealed.

Defendant  
may in certain  
cases be sued,  
before the  
nearest Court,  
tho' not in the  
same Parish,  
&c.

VII. Provided also, and be it enacted, that whenever there shall not be a Commissioner appointed for and resident in the Parish, Township, or extra-Parochial place in which the Defendant shall reside, or if all the Commissioners be absent or sick, or unable to act as Commissioners, so that the Court cannot be held, then such Defendant may be sued before that other Commissioners' Court which shall be held nearest to the place in which the Defendant shall reside and in the same District, provided the distance do not exceed ten leagues ; and in every case the suit may be brought before the Commissioners' Court nearest to the residence of the Defendant, although such Court be not within the same Parish, Township, or extra-Parochial place, provided it be within ten leagues, and in the same District.

One Court  
only to be held  
in each place.

VIII. Provided always, and be it enacted, that no more than one Court shall be held in any Parish, Township, or extra-Parochial place in Lower-Canada, under this Act, although two or more Commissioners may have been appointed for the same ; but the Court may be held by any one of such Commissioners, it being

nevertheless competent to all the Commissioners appointed in and for the same place, to be present and to assist at such Court if need be, or if they think fit : and, except in the Cities and Parishes of Quebec and Montreal, the place where the Court shall be held in each Parish, Township or extra-Parochial place, shall be near the Church, or at the most public and frequented place, and shall from time to time be fixed by the Commissioner, or by the majority of the Commissioners where there are more than two Commissioners in and for the same place, and when there are two Commissioners and no more, then by the Commissioner whose name is the first on the list ; and in every Summons or Order of *Subpœna* to be issued under this Act, the place where the Court is to be held shall be mentioned.

Places for holding the Courts.

By whom fixed.

To be mentioned in Summons, &c.

IX. And be it enacted, that except in and for the Cities and Parishes of Quebec and Montreal, the Commissioners' Courts aforesaid shall be held on the first Monday of every month, not being a holiday, and if it be a holiday then on the following day, and on any other days to which they may then find it necessary to adjourn for hearing witnesses and for determining suits ; and that such Courts, respectively, shall so be held publicly in some suitable room or place, which shall be provided for that purpose by the Clerks thereof, under the direction of the Commissioners ; and the expense of hiring and warming such room or place, and all other expenses necessary for the convenient holding of the said Courts shall be paid by such Clerks, respectively, out of the fees hereinafter assigned to them : Provided always, that no such Court shall at any time be held in any tavern or place of public entertainment, nor in any building thereunto appertaining.

Times of holding the Courts.

Room to be provided by the Clerk.

Proviso.

X. And be it enacted, that in and for the said Cities and Parishes of Quebec and Montreal, respectively,

Times and places of holding the Courts

in Quebec and  
Montreal.

the Commissioners' Court shall be held weekly on every Monday not being a holiday, and if it be a holiday then on the following day, and on such other days as it shall be adjourned to in the manner provided with regard to other Commissioners' Courts; and in and for the said Cities and Parishes the Commissioners' Courts shall be held in the Court Houses there situate, and in such part thereof as shall from time to time be assigned for the purpose by the Justices of the Courts of King's (or Queen's) Bench sitting in such Court Houses, respectively.

Summons,  
how issued.

XI. And be it enacted, that in any case cognizable in a Commissioners' Court, it shall be lawful for any one of the Commissioners, upon request or application to him made, to grant and cause to be issued a Summons which shall be in the form of that one of the Schedules annexed to this Act which shall suit the case, and shall not be returnable within less than three days from the day of service, in cases where the Defendant shall reside within two leagues from the place at which he shall be summoned to appear, allowing one day more between the service and return of every such Summons for every five leagues distance over and above the said two leagues.

Delay between  
service and re-  
turn of Sum-  
mons.

Case of re-  
cusation of  
Commission-  
ers provided  
for.

XII. And be it enacted, that if in any suit all the Commissioners be recused by either party (and any recusation and the grounds thereof shall be reduced to writing) and the Court be thereby rendered incompetent to proceed with the case, such suit shall immediately be transmitted to the nearest Commissioners' Court in the same District; and if the recusation be there adjudged valid, such Court shall proceed to hear and determine the cause; but if the recusation shall be adjudged frivolous or unfounded, the parties shall be sent before the Court in which the Commissioners shall have been recused, in order that such Court may proceed

as if the recusation had not been made; and in such case the Court before whom the cause shall have been originally brought, may, without any reference to the merits thereof, tax the costs of such frivolous or unfounded recusation against the party by whom it shall have been made.

XIII. And be it enacted, that in all cases where a Defendant or other party may evoke a suit out of any Circuit Court into the Court of King's Bench, or out of the Inferior Term of any Court of Queen's Bench, into the Superior Term thereof, and may appeal from thence to the Court of Appeals for Lower Canada and to Her Majesty in Her Privy Council, such Defendant or other party, being a suitor before a Commissioners' Court, shall have the same right of evocation and appeal, and may evoke the suit to the Superior Term of the Court of King's (or Queen's) Bench for the District: Provided always, that in all cases where any suit or action, against any person residing within the Jurisdiction of any Court established by this Act for any cause or matter cognizable before such Court, shall be brought before any District, Division, or Circuit Court, or Court of Queen's Bench, the Plaintiff shall not be entitled to recover any greater amount of Costs than if such suit or action, had been brought before the Court established by this Act; but this limitation of Costs shall not apply to any action, suit, or prosecution, after evocation from such Court.

Evocation and Appeal allowed in certain cases.

Proviso:—  
As to suits brought in Superior Courts which might have been brought in Commissioners' Courts.

XIV. And be it enacted, that when any notarial instrument or authentic copy of the same, or any writing under private signature, produced in evidence in any suit before any Commissioners' Court shall be alleged to be forged or falsified, such allegation shall operate as an evocation of the suit to the Court of King's (or Queen's) Bench for the District, sitting in Superior Term.

Allegation of forgery to operate as an evocation.

Transmission  
of the docu-  
ment alleged to  
be forged, &c.  
on such evo-  
cation.

XV. And be it enacted, that whenever any such evocation as is herein last mentioned shall occur, and security shall have been given as hereinafter provided, the Commissioner or one of the Commissioners before whom such document shall have been alleged to be forged or falsified, or the Clerk of the Court shall, within fifteen days next thereafter, certify and transmit to the Prothonotary of the Court of King's (or Queen's) Bench, the document impugned, all the documents produced in the cause, and a certified copy of the entries in the register respecting the same : Provided always, that no Commissioner or Clerk shall so transmit any such document, unless good and sufficient security for the payment of the costs of the "*inscription en faux*" shall have been given before him by the party making such inscription.

Proviso:—  
Security to be  
given.

Court of Q. B.  
to try the case  
and the in-  
scription en  
*faux*.

XVI. And be it enacted, that upon such evocation, the Court of King's (or Queen's) Bench shall hear, try, and determine the matter of the "*inscription en faux*," and the whole matter in issue between the parties, as if the cause had been originally instituted in the said Court, and may award such costs against the party making such inscription, if he fail to substantiate the charge thereby made, as might in like case be awarded on an "*inscription en faux*," in any case before such Court.

Any matter  
before a Com-  
missioners'  
Court may be  
referred to ar-  
bitration by  
consent of  
parties.

XVII. And be it enacted, that in any suit brought before any Commissioners' Court it shall be lawful, by consent of the parties, to refer the matter or matters in contestation in the suit, or for the Court in its discretion to order the same to be referred, to the judgment and decision of three Arbitrators, one to be named by the Court, and one by each of the parties respectively, and to be sworn before a Commissioner, or before any Justice of the Peace; and such Arbitrators shall have power to hear the parties and witnesses, and the report

and award of any two of them shall be final and conclusive to all intents and purposes, and judgment shall be entered thereon, to be executed as in ordinary cases.

XVIII. And be it enacted, that it shall be lawful for any Commissioner entitled to sit in the Court before which any suit or action shall have been instituted, on the application of either party, to issue orders of *subpœna* in the form prescribed in the Schedule to this Act, to compel the appearance of witnesses before the Court, under a penalty of not exceeding twenty shillings, nor less than five shillings, currency, for each and every default to attend, as by such order of *subpœna* commanded; and that it shall be lawful to and for any such Commissioner to administer to such witnesses, or to any party to the suit who may be lawfully examined therein, an oath or affirmation in the usual manner.

Commissioners may issue *subpœnas*.

And administer oaths to witnesses, &c.

XIX. And be it enacted, that except as hereinafter excepted, it shall not be lawful to cause the witnesses in any suit to be summoned to attend on the day of the return of the Summons to the Defendant; but that in all cases of default or plea to the action on the part of the Defendant, a subsequent day shall be named for receiving evidence; saving always, that if the Defendant should make default when the service on him has been personal, it shall then be lawful for the Plaintiff to proceed immediately to prove his case by witnesses if necessary; and in such cases, as well as in all cases of default wherein sufficient written evidence shall be adduced on the day of the return, or where the Defendant shall confess judgment, or both parties shall agree that the case be heard and determined forthwith, the Court may hear the case and give judgment, *instanter*.

Except in certain cases, a day subsequent to the return day to be appointed for hearing the cause.

Exceptions.

Cases in which the cause may be heard *instanter*.

Commissioners' Courts may allow judgments to be satisfied by instalments.

XX. And be it enacted, that it shall be lawful for any Commissioners' Court, to grant a stay of execution, and to order that the amount for which judgment shall have been given, be paid in two or in three instalments, at intervals of not more than one month each; provided that if any one of the said instalments shall not be paid at the time appointed, execution may at once issue for so much as shall then remain due: Provided always, that when any poor Defendant shall before judgment, offer good and sufficient security to the satisfaction of the Court, for the amount of the debt and costs; the Court may order that the amount of the judgment be paid by weekly instalments, the last of which shall not be made more than six months after the date of the judgment.

Proviso.

Executions to issue if the judgment be not satisfied: its nature.

XXI. And be it enacted, that if any party shall refuse or neglect to pay, and satisfy any judgment rendered in a Commissioners' Court for a sum of money within eight days after it is obtained, together with such costs as shall be adjudged thereon, any one of the Commissioners entitled to sit in the Court may, by a warrant of execution under his hand and seal, and in the form of the Schedule hereunto annexed, cause the same to be levied by the seizure, and after public notice thereof shall be given according to law, by the sale of the goods and chattels of the party so refusing or neglecting as aforesaid, which shall be found within the District, together with the costs and charges attending such execution, which shall not in any case exceed the sum of seven shillings and six pence, currency: Provided always, that when the seizure only of the goods shall have taken place, the said costs and charges shall not exceed the sum of three shillings and nine pence, currency; travelling expenses and expenses of feeding any cattle seized, excepted in all cases.

Costs on it.

Proviso.

XXII. And be it enacted, that it shall be lawful

for any Commissioners' Court, in cases cognizable by such Court, to issue Warrants of *saisie gagerie*, and *saisie revendication* (the necessary affidavit being first made before a Commissioner of such Court) and of *saisie arrêt* after judgment, in all cases where Writs of like nature are allowed to issue out of other Courts by law; and that such Warrants shall respectively be in the forms prescribed in the Schedules hereunto annexed.

Commissioners' Courts may issue warrants in the nature of certain writs.

XXIII. And be it enacted, that in every Warrant of execution, *saisie arrêt*, *saisie revendication*, and *saisie gagerie*, the day on which it is to be returned shall be named, and it shall be returned, with the proceedings thereon duly certified, on the day so named, which shall not be less than fifteen nor more than forty days from the date of such Warrant.

Return day to be appointed in warrants of execution or of seizure.

XXIV. And be it enacted, that all oppositions allowed by a Commissioner, interventions, and *saisie arrêts* after judgment, shall be heard and decided summarily before the said Commissioners' Courts, in the same manner as the causes in which they shall arise, or to which they shall relate.

Oppositions, interventions, &c., how to be decided.

XXV. And be it enacted, that the Commissioners by whom such Courts shall be held, shall have such and the like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means, as now by law are or may be exercised and used in the like cases and for the like purposes, by any Courts of Law in this Province, or by the Judges thereof, respectively, during the sittings thereof.

Commissioners' Courts to have powers for preserving order.

XXVI. Provided always, and be it enacted, that in all cases where any resistance shall be offered to the execution of any summons, warrant of execution, or any

And for enforcing execution of process.



other process, issued out of any Commissioners' Court, under the authority of this Act, the Court is hereby empowered to enforce the due execution of the same, by the means provided by the laws of Lower Canada for enforcing the execution of the process of other Courts in like cases.

Clerks to be appointed for each Court, and by whom.

XXVII. And be it enacted, that a Clerk shall be appointed for each Commissioners' Court under this Act, and the appointment shall be vested in the Commissioner, or in the majority of the Commissioners where there are more than two Commissioners, and where there are two Commissioners and no more, the appointment of such Clerk shall be vested in the Commissioner whose name shall be first upon the list: Provided always, that any Clerk who shall be appointed under this Act, shall be removable by the Commissioner, or by the Commissioners, or by a majority of them, and another Clerk may be appointed in his stead in the manner hereinbefore provided; and provided also, that such Clerk may, with the permission of the Commissioners or of a majority of them, appoint a Deputy, for whose acts he shall be responsible, and whom he may remove at pleasure.

Proviso,

Proviso.

No more than one Clerk to be appointed for any one Court.

XXVIII. And be it enacted, that no more than one Clerk shall be employed or in any way act as Clerk of the Commissioners' Court in any one Parish, Township, or extra-Parochial place, although two or more Commissioners may have been appointed in such place.

Property qualification required in any person appointed as Clerk— unless he shall give security.

XXIX. And be it enacted, that no person shall be appointed Clerk of any Commissioners' Court, who shall not have to and for his own use and benefit, and in his actual possession, a freehold estate, either in fief, *en roture*, or in free and common soccage, in absolute property, or by *emphitéose*, originally created for a term of at least twenty-one years, or by *usufruit* for his life,

in lands, tenements, or other immoveable property, lying and being within the limits of the County, in which he is to act, of the yearly value of twelve pounds currency, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of the same; unless such person shall give good and sufficient security, before one of the Commissioners entitled to sit in the Court, for the due performance of his duties, to the amount of fifty pounds currency, in which case he may act as a Clerk in the same manner as if he were qualified by property in the manner hereinbefore mentioned: Provided also, that no person who shall not have reached the legal age of majority, nor any Bailiff, Serjeant of Militia, or person keeping a house of Public Entertainment or Tavern Keeper, or vending spirituous or fermented liquors to be drunk in his house, or on his premises, shall be appointed as Clerk, and no Justice of the Peace, nor any person being the father, son, brother, brother-in-law, son-in-law, or nephew, or the clerk or agent of any one of the Commissioners, in his private concerns, shall be or act as Clerk of the Court in which such Commissioner shall be entitled to sit.

Certain persons not to be Clerks.

XXX. And be it enacted, that for each Commissioners' Court, there shall be kept by the Clerk a register of all suits which shall be instituted before such Court, and of all proceedings had and all judgments rendered therein, and of every matter and thing concerning the same, which register shall contain a succinct statement of the names, additions, and residence of the parties, the nature of the demand, and the defence set up, and shall specify what papers (if any) were produced as evidence in the cause, and the date of such papers, and when any notarial instrument shall so be produced, shall state the names of the Notaries before whom such instrument shall have been executed; and the Clerk shall give a copy of such entries to any per-

Clerk to keep a Register: its contents.

Copies to be given at a certain rate.

son demanding the same ; and for every such copy, there shall be allowed to the Clerk, at the rate of six pence currency, for every hundred words : under a penalty of ten pounds currency, on any Clerk who shall refuse or neglect to give a copy thereof, to be recovered by the party to whom such copy shall have been refused.

Register to continue to be that of the Court, notwithstanding change of Commissioners or Clerk.

XXXI. And be it enacted, that the register of the Commissioners' Court for any Parish, Township, or extra-Parochial place, shall continue to be the register of the Commissioners' Court for the same place, notwithstanding any change in the persons who shall for the time being be Commissioners or Clerk, but whenever there shall cease to be a Commissioners' Court in such place, then the person in whose hands the register shall then be, shall forthwith deposit the same and all papers belonging to the Court, in the office of the Prothonotary of the Court of King's (or Queen's) Bench for the District in which the Court shall have been held, and this under a penalty of twenty-five pounds, currency : Provided always, that the Clerk of any Commissioners' Court who shall cease to perform the duties of his office, (or in case of death, his heirs or legal representatives) shall, under the same penalty, forthwith deliver the register and papers in his or their possession to the Commissioner or Commissioners, or to the person appointed to be Clerk of the said Court.

Proviso.

Who may act as an Attorney before a Commissioners' Court.

XXXII. Provided always, and be it enacted, that no Bailiff or Sergeant of Militia shall, in any case, act as Attorney before any Commissioners' Court, nor shall any other than an Attorney or Barrister, duly commissioned to practise the Law in Lower Canada, so act without a power of Attorney in writing, except in presence of the party and at his request ; and any person not duly commissioned to practise the Law as aforesaid, who shall act or practise before any Commis-

Persons not commissioned to practise the Law must act gratis.

soners' Court as Attorney of the parties, Plaintiff or Defendant, shall be bound to do so *gratis*, without demanding or receiving any fee, perquisite or remuneration whatsoever; and any person acting or practising as Attorney of any party, before the said Commissioners or any of them, without being duly commissioned to practise the Law as aforesaid, who shall directly or indirectly receive, in consideration of such services, any fee, emolument, or remuneration whatsoever, shall be held to have obtained the same under false pretences with intent to defraud the party from whom he shall have received it, and shall be liable to punishment accordingly, and shall for ever after be incapable of acting as Attorney before any Commissioners' Court: Penalty. Provided also, that no Clerk of any such Court shall act as Attorney or *Porteur de Pièces* in any case whatsoever: Proviso. And provided further, that no Bailiff or other person who shall have served or executed any summons or process in any suit, shall be a competent witness in such suit on behalf of the party by whom such summons or process shall have been sued out, except only with regard to the service or execution of the same. Proviso.

XXXIII. And be it enacted, that no summons, order or other process issued under this Act, shall be served or executed, except by a Bailiff or a Sergeant of Militia, nor by any Bailiff or Sergeant of Militia not residing in the Parish, Township, or extra-Parochial place wherein the Defendant or witness may respectively reside, unless he shall renounce all claim to any greater sum for travelling expenses than that to which a person being resident therein would be entitled, except where there shall be no Bailiff nor Sergeant of Militia residing in the Parish, Township, or extra-Parochial place, wherein any such process is to be served, qualified or willing to make a return in writing, in which case such process may be served or executed by a Bai- Who may serve process of a Commissioners' Court.

What mileage may be allowed.

liff or Sergeant of Militia residing out of such place, and he shall be allowed his travelling expenses from the residence of the Bailiff or Sergeant of Militia residing nearest to the place where the service is to be made, or the Commissioner may in such case specially address such process to any other person by name, resident in the Parish, Township, or place where the service is to be made, who shall make oath to the due service and execution thereof: Provided always, that no warrant of execution or process authorizing the seizure of any property whatever shall be addressed to any person other than a Bailiff.

Proviso,

Fees allowed  
on certain pro-  
ceedings.

XXXIV. And whereas, it is right to fix the costs in such causes as shall be determined under this Act in any Commissioners' Court; Be it therefore enacted, that it shall be lawful for the Clerk of any Commissioners' Court, to demand and receive for every summons which he shall make and deliver to any Suitor by order of the Court or of any Commissioner entitled to sit therein, one shilling and six pence currency; for every copy of a summons, six pence currency; for every *subpœna*, nine pence currency; for every copy of a *subpœna*, six pence currency; for every judgment and copy thereof, one shilling and three pence currency; for every warrant of execution or seizure, one shilling and three pence currency; for every copy thereof, six pence currency; for entering every opposition allowed by a Commissioner, six pence currency; and that the Bailiff or Sergeant of Militia may demand and receive for every service of process and certificate thereof, the sum of one shilling currency, and at the rate of four pence currency, per mile, for the distance he shall have gone to perform such service, the distance in returning not entitling him to any allowance: Provided always, that the Bailiff or Sergeant of Militia, by whom any service shall be made as aforesaid, upon one and the same Defendant, shall not be entitled to travelling ex-

Proviso—As  
to mileage.

penses, on more than one journey though he may have more than one summons or process to serve: And provided also, that if any Plaintiff who, having given more than one summons or process to one Bailiff or Sergeant of Militia to be by him served, shall compound with him for a less sum than that to which he would be entitled, or if any Bailiff or Sergeant of Militia shall consent to any such composition, and such Plaintiff, or such Bailiff or Sergeant of Militia shall afterwards receive from any person or persons, under colour of receiving the costs on the service of such summons or process, a greater sum than that so compounded for, he shall be deemed to have obtained the same under false pretences with intent to defraud the party from whom he shall have received it, and shall be liable to punishment accordingly.

Penalty, for compounding for a less sum, and afterwards exacting a greater as mileage.

XXXV. Provided always, and be it enacted, that when the sum or the value of the thing for which judgment shall be rendered in any Commissioners' Court shall not exceed ten shillings, currency, the costs and expenses (exclusive of travelling expenses and of arbitration) which shall be adjudged against the Defendant, may be reduced and restrained by order of the Court to the principal sum or the value of the thing for which judgment shall be given, in case it shall appear just to the Court to make such order; any thing herein contained to the contrary notwithstanding.

Costs in cases where the judgment is for no more than ten shillings.

XXXVI. And be it enacted, that no Commissioner shall be entitled to, or receive any recompense or remuneration whatever, for any thing by him done under this Act.

Commissioners to act gratis.

XXXVII. Provided always, and be it enacted, that every Commissioner (except the Circuit Judges aforesaid, whose oath of office as such shall be held to extend to their duties under this Act) before proceeding

Commissioners and Clerks to take an oath of office.

to exercise his functions as such, shall take and subscribe an oath before some Justice of the Peace, well and duly, to the best of his judgment and capacity, to perform the duty of Commissioner as required by this Act, of which oath such Justice of the Peace shall give a copy and certificate to the Commissioner having taken it, who shall cause the same to be annexed to the register of the Court in which he shall sit; and the Clerk of any such Court shall in like manner, before entering upon the duties of his office, make oath before a Commissioner entitled to sit therein, faithfully and impartially to execute, to the best of his ability, the duties of his office according to the provisions of this Act; and such oath shall be entered upon the register aforesaid.

Penalty on  
Commission-  
ers or Clerks  
guilty of mis-  
conduct as  
such.

**XXXVIII.** And be it enacted, that any Commissioner or any Clerk, who in the execution of the trust reposed in him shall misdemean himself, or deliver to any Bailiff or Sergeant of Militia or other person, any process to be by him or them distributed, sold, or otherwise illegally disposed of, shall, for each such offence, incur a penalty of ten pounds, currency, and shall be thenceforth disabled from acting as Commissioner or Clerk as aforesaid.

Penalties:—  
how recovered  
and appropriated.

**XXXIX.** And be it enacted, that all pecuniary penalties hereby imposed or incurred for offences committed against this Act, may be sued for and recovered before any Court having civil jurisdiction to the amount of the fine or penalty, in the District in which the offence shall have been committed; and one moiety of such penalties shall go to the person suing for the same, and the other moiety shall be paid into the hands of the Receiver General, and shall form part of the Consolidated Revenue Fund of this Province.

XL. And be it enacted, that any wilful false swearing or false affirmation in any case in which an oath or affirmation is authorized by this Act, shall be held to be wilful and corrupt perjury, and punishable accordingly.

False swearing to be perjury.

XLI. And be it enacted, that each Commissioner appointed under this Act, shall be entitled to receive a printed copy thereof, in the French and English languages, to be transmitted to him, in the manner by law provided for the distribution of the printed Acts of the Legislature.

Each Commissioner to receive a copy of this Act.

XLII. And be it enacted, that the words "Governor of this Province," wherever they occur in the foregoing enactments, shall be understood as meaning and comprehending the Governor, or the person authorized to execute the Commission of Governor within this Province for the time being; that the words "Lower Canada," wherever they occur in the said enactments, shall be understood as meaning and comprehending that part of this Province which formerly constituted the Province of Lower Canada; and that any word or words importing the singular number or the masculine gender only, shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Interpretation clause.



## SCHEDULE No. 1.

## FORM OF SUMMONS.

Province of Canada, }  
 District of }

In the Commissioner's Court for the Parish (Township, or extra-Parochial Place, *as the case may be*) of

To A. B. of (*A. B.'s residence*), in the said District, Carpenter, (*or as the case may be*), Greeting :—

You are hereby commanded to pay to C. D. of (*C. D.'s residence*), Grocer, (*or as the case may be*), the sum of \_\_\_\_\_ Currency, which he demands of you as being due to him for (*state briefly the cause of action*), and remaining unpaid, with his costs; or to appear before this Court, at the \_\_\_\_\_ house of \_\_\_\_\_ in the said Parish (*or as the case may be*), of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ next, (*or instant*), to answer the demand of the said C. D., otherwise judgment may be given against you by default.

Given under my Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18

E. F., Commissioner.

{ L. S. }

—

SCHEDULE No. 2.

—

—

FORM OF SUBPENA.

—

Province of Canada, }  
 District of }

In the Commissioner's Court for the Township (*or, as the case may be,*) of

To

Greeting :—

You are hereby commanded, that laying aside all business and excuses, you (and each of you) be and appear in your proper person before this Court, at the house of \_\_\_\_\_ in the said Parish (*or as the case may be,*) of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, then and there to testify whatever you or either of you may know, in a cause between Plaintiff, and \_\_\_\_\_ Defendant, pending before this Court. (*If the Witness be required to bring with him any paper, or thing, mention it.*) And this you or either of you shall by no means omit, under the penalties of the law.

Given under my Hand and Seal, this  
 day of \_\_\_\_\_ 18 \_\_\_\_\_

E. F., Commissioner.

{ L. S. }

## SCHEDULE No. 3.

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FORM OF A WARRANT OF EXECUTION TO LEVY A SUM  
OF MONEY.

---

Province of Canada,     }  
District of                }

In the Commissioner's Court for the Parish (*or, as  
the case may be,*) of

To any Bailiff in the said District of

Greeting :—

Whereas, A. B. of   (*A. B's residence,  
and profession, trade or calling,*) did on the  
day of   before this Court, recover Judg-  
ment against C. D. of   (*C. D's resi-  
dence, and profession, trade or calling,*) for the sum of  
  for his debt, and  
  for his costs, of which execu-  
tion remains to be done: you are therefore hereby  
commanded to levy, of the goods and chattels and  
effects of the said C. D.,—except his beasts of the  
plough, his implements of husbandry, and the tools of  
his trade, unless the other goods and chattels shall prove  
insufficient, and excepting always the bed and bedding,  
and the necessary wearing apparel of himself and his  
family, and also one cow, three sheep, one hog, a single  
stove, and one cord of firewood, to be selected by him  
out of any larger number he may have,—(*if the seiz-  
ure be in satisfaction of a debt contracted for any cow,  
sheep, hog, stove, or firewood, it will be seizable, and*

*must be left out of the list of articles exempt from seizure,)* the aforesaid sum and costs, together with

for the costs of this execution, returning to the said C. D. the overplus, if any there be, after having satisfied the aforesaid sums ; and you are further commanded to make return of this Warrant, with your doings thereon before this Court, at the

house of \_\_\_\_\_ in the said Parish (*or as the case may be,*) of \_\_\_\_\_ on or before the day of \_\_\_\_\_ next (*or instant*).

Given under my Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_

E. F., Commissioner.

{ L. S. }

SCHEDULE No. 4.

FORM OF A WARRANT OF SIMPLE *SAISIE EN MAIN TIERCE*.

Province of Canada, }  
District of \_\_\_\_\_ }

In the Commissioner's Court for the Parish (*or, as the case may be,*) of \_\_\_\_\_

To any Bailiff of the said District of \_\_\_\_\_

Greeting :—

At the instance of A. B. of \_\_\_\_\_ (*A. B.'s*

*residence and profession, trade or calling,*) you are hereby commanded for assuring the payment of the sum of \_\_\_\_\_ pounds due him by C. D., of \_\_\_\_\_ *(C. D.'s residence and profession, trade or calling,)* under Judgment of this Court, *(state briefly the subject and date of the judgment,)* to seize and attach in the hands of E. F., of \_\_\_\_\_ *(E. F.'s residence and profession, trade or calling,)* all sums and things generally whatsoever, which he owes or shall owe on any account whatsoever, or shall have in his hands belonging to the said C. D., strictly prohibiting him from parting with the same, on pain of paying the same twice, and of being personally liable for the sum so due to the said A. B. as aforesaid.

And you are further commanded to summon the said C. D. and E. F. to appear before this Court, at the house of \_\_\_\_\_ in the said Parish, *(or as the case may be)* of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ next, *(or instant,)* at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, the said C. D. to show cause why this attachment *(saisie arrêt)* should not be declared good and valid, and the said E. F. to make his declaration under this warrant; notifying them that otherwise order may be made in the matter by default; and have you then and there this warrant, with your doings thereon.

Given under my Hand and Seal, this  
day of \_\_\_\_\_ 184

G. H., Commissioner.

{ L. S. }

SCHEDULE No. 5.

FORM OF A WARRANT OF *SAISIE GAGERIE*.

Province of Canada, }  
District of }

In the Commissioner's Court for the Township (or as the case may be) of

To any Bailiff in the said District of

Greeting :—

At the instance of A. B. of you are hereby commanded to distrain, by *Saisie Gagerie*, all the goods and chattels belonging to C. D., of (C. D.'s residence, and profession, trade or calling,) and being in the house by him occupied, (or the produce and effects in the barns and other buildings occupied by the said C. D.) for the surety and payment of the sum of due by the said C. D. to the said A. B. for the rent of the said premises, held by him of the said A. B.

And you are further commanded to summon the said C. D. to appear before this Court, at the house of , in the said Township (or as the case may be) of at the clock in the noon, on the day of instant, (or next,) to answer the demand of the said A. B., and to show cause why the said *Saisie Gagerie* should not be declared good and valid ; notifying the said C. D. that if he fail so to appear, either in person or by his Attorney, judgment

may be given against him by default;—and have you then and there this warrant with your doings thereon.

Given under my Hand and Seal, this  
day of \_\_\_\_\_, in the year of Our Lord 18

E. F., Commissioner.

{ L. S. }

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SCHEDULE No. 6.

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FORM OF A WARRANT OF '*SAISIE REVENDICA-  
TION.*

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Province of Canada, }  
District of }

In the Commissioner's Court for the Township (*or  
as the case may be*) of

To any Bailiff in the said District of

Greeting:—

At the instance of A. B., of \_\_\_\_\_ (*A. B.'s  
residence and profession, trade or calling,*) you are hereby  
commanded to seize a certain cart painted red, (*or as  
the case may be*) to be further described and pointed  
out to you by the said A. B., and which he claims  
as being his property, unjustly detained from him by  
C. D., of \_\_\_\_\_ (*C. D.'s residence and profes-  
sion, trade or calling,*) and safely to keep the said cart,  
so as to have the same forthcoming to abide the judg-  
ment to be given in the case.

And you are further commanded to summon the said C. D. to appear before this Court, at the house of \_\_\_\_\_ in the said Township (*or as the case may be*) of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, (*or next*,) to answer the demand of the said A. B., and to show cause why the said seizure should not be declared good and valid, and the said cart to be the property of the said A. B.; notifying the said C. D. that if he fail so to appear, either in person or by his Attorney, judgment may be given against him by default; and have you then and there this warrant, with your doings thereon.

Given under my Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord 18

E. F., Commissioner.

{ L. S. }

## CAP XX.

An Act to alter the Terms of the General Sessions of the Peace, in and for the District of Saint Francis.

[9th December, 1843.]

**W**HEREAS, by the Provincial Statute of Lower Preamble. Canada, passed in the third year of the Reign of His late Majesty, King George the Fourth, and intitled, *An Act to erect certain Townships therein mentioned, into an Inferior District, to be called the Inferior District of Saint Francis, and to establish Courts of Judicature therein*, and since continued, amended and made permanent by other Legislative enactments, it is among other things provided that there shall be held at Sher- Act of L. C. 3 Geo. 4. c. 17, cited.



brooke, in and for the said Inferior District of Saint Francis (now the District of Saint Francis) twice in every year, a General Session of the Peace, the terms whereof shall be from the first to the seventh day (both days included and Sundays excepted) of each of the months of February and October: And whereas it is expedient to alter the periods of holding the said General Sessions of the Peace in and for the said District; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that so much of the Provincial Statute of the late Province of Lower Canada, first above cited, as enacts that the Terms of the said Inferior District, now the District of Saint Francis, shall be from the first to the seventh day, both days included and Sundays excepted, of the months of February and October in every year, shall be, and the same is hereby repealed, from and after the twenty-first day of April, in the year one thousand eight hundred and forty-four.

A certain part of the said Act repealed.

At what time the General Sessions of the Peace shall be held in the said District.

II. And be it enacted, that from and after the day last aforesaid, the said Terms of the said General Sessions of the Peace, in and for the said District of Saint Francis, shall be from the first to the seventh day of March, and from the twenty-fourth to the thirtieth day of September in each year, both days inclusive, and Sundays and Holidays excepted.

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3.—Provincial Judge for District of St. Francis to be one of the Justices of the Court of Queen's Bench; but his salary not affected by this Act, - - - - -	"
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